

“Whatever Happened To ... Cincinnati’s Bag Ban?”



Sierra Club Ohio
January 31, 2023

Sierra Club Ohio works on solutions to plastic pollution throughout the state.



Please visit <https://www.sierraclub.org/ohio/plastics> to learn more and to get involved.

“Whatever Happened to ... Cincinnati’s Bag Ban?”

1. **What** is a bag ban?
2. The City of Cincinnati’s **2020 bag ordinance**.
3. The effect of **state law** on local bag ordinances.
4. **Other** local bag ordinances in Ohio.
5. What should the City of Cincinnati **do next**?



1. **What** is a bag ban?

In this context, the phrase “**bag ban**” refers to a local ordinance that prohibits the distribution of certain types of shopping bags at certain locations and/or by certain retailers.

The ability of local governments to adopt and enforce ordinances such as bag bans, which are intended to protect public health and safety, is enshrined in Ohio’s Constitution and is generally referred to as the power of “Home Rule.”

“Municipalities shall have 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.”

- Ohio Constitution, Article XVIII, Section 3

2. The City of Cincinnati's **2020 bag ordinance**.

On September 10, 2020, City Council voted 7-1 to adopt an ordinance regulating the distribution of single-use carryout bags in the City of Cincinnati.

The ordinance, which has never been enforced, states that restaurants and other businesses such as grocery stores that are classified as "**food service establishments**" **may not distribute single-use plastic or non-recycled paper (minimum 40 percent post-consumer content) bags** to customers.

The ordinance also states that the same business would be required to **charge customers \$0.05 for each recycled paper or reusable bag**, if the business chooses to distribute those bags to customers; revenue from the bag charges will be retained by the businesses.

Any customers that bring their own bags of any type to a food service establishment or restaurant may use those bags to carry goods.

3. The effect of **state law** on local bag ordinances.

House Bill 242 was passed by the Ohio legislature in 2020 and recodified in a later budget bill.

HB 242 prohibits local governments from charging a **fee or tax on “auxiliary containers”** such as single-use shopping bags.

HB 242 does **NOT** prohibit local governments from **banning** the distribution of single-use bags.

Jones's Bill to Ban Fees on Plastic Bags Signed into Law

October 13, 2020

[Don Jones News](#)

COLUMBUS – State Representative Don Jones (R-Freeport) today announced that Governor DeWine has signed House Bill 242 into law. The bill prohibits local governments from imposing taxes and fees on the use, sale and consumption of auxiliary containers for 12 months.

Ohio Revised Code Section 715.013

(A) Except as otherwise expressly authorized by the Revised Code, no municipal corporation shall levy a tax that is the same as or similar to a tax levied under Chapter 322., 3734., 3769., 4123., 4141., 4301., 4303., 4305., 4307., 4309., 5707., 5725., 5726., 5727., 5728., 5729., 5731., 5735., 5736., 5737., 5739., 5741., 5743., 5747., 5749., or 5751. of the Revised Code.

(B) 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.

(C) This section does not prohibit a municipal corporation from levying an income tax or withholding tax in accordance with Chapter 718. of the Revised Code, or a tax on any of the following:

- (1) Amounts received for admission to any place;
- (2) The income of an electric company or combined company, as defined in section 5727.01 of the Revised Code;
- (3) On and after January 1, 2004, the income of a telephone company, as defined in section 5727.01 of the Revised Code.

4. **Other** local bag ordinances in Ohio.

Notably, bag bans in both **Cuyahoga County** and the **City of Bexley** went into effect at the beginning of **2022**. The **City of Athens** is expected to pass its own bag ban in **2023**.

The Bexley ordinance was adopted in 2019 and looked very similar to the ordinance that Cincinnati would adopt in 2020: it provided for a ban on single-use plastic bags and required retailers to charge a fee for other bags.

The Bexley ordinance initially went into effect in 2020 but was amended later that year to eliminate its fee provision and bring it into more obvious compliance with Ohio's House Bill 242.

In 2021, the *Columbus Dispatch* quoted the **Mayor of Bexley** as saying: “[T]he ban that we have in place is legal and it's not in any way counteracted by state action.”

As of January 2023, we've seen no evidence that the City of Bexley or Cuyahoga County have faced any legal challenges to their imposed bag bans.

City of Bexley

The new single use plastic bag provisions take effect on January 1, 2022, preventing local businesses from distributing single use plastic bags *in certain instances*.

- Single use plastic bags are still allowed for produce, meat, and certain other situations, such as dry cleaning bags. The ban applies in the majority of situations where a retailer is selling a product and providing a bag for carrying the product out of the store.
- Residents may bring any type of bag (plastic, paper, canvas) to use in any Bexley store they wish with no fees or restrictions.

5. What should the City of Cincinnati **do next**?

- **Amend** the 2020 bag ordinance, in part by repealing the \$0.05 fee that retailers are required to charge for recycled paper and reusable bags.
- **Educate** the public about and promote the use of reusable bags.
- Distribute **free reusable bags** to residents.
- Adopt implementing regulations for the amended 2020 bag ordinance.
- **Enforce** the amended 2020 bag ordinance.
- **Prohibit** the distribution of single-use plastic items in other contexts where the City of Cincinnati has the appropriate authority to do so.
- Include other provisions in the **2023 Green Cincinnati Plan** to address plastic pollution.