

DATE OF MEETING | March 9, 2020 |

AUTHORED BY | Kirsten Gellein, Zero Waste Coordinator
David Thompson, Acting Manager of Sanitation & Recycling |

SUBJECT **Single-Use Checkout Bag Regulation Update**

OVERVIEW

Purpose of Report

1) To report on the findings of the single-use checkout bag consultation, as conducted in spring 2019; and 2) to summarize the actions of senior government and other local jurisdictions on single-use plastics, including check-out bags. |

Recommendation

That the Governance and Priorities Committee recommends its preferred option to Council, regarding regulating single-use checkout bags.

BACKGROUND

At the November 26, 2018, Committee of the Whole meeting, Council directed Staff to prepare a Bylaw to regulate the use of single use checkout bags using the City of Victoria's Bylaw as a model and prepare a consultation plan for Council's review.

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| December 11, 2017 | Council moved and seconded that the City of Nanaimo wish to ban the use of plastic bags by retailers in the City of Nanaimo to the extent permitted by law and direct Staff to report back to Council with options and soon as possible. |
| November 26, 2018 | Council directed staff to proceed with consultation to implement a bylaw regulating the use of single-use plastic checkout bags. |
| February 11, 2019 | Council approved the Single-Use Plastic Checkout Bag consultation plan with \$15,350 in funding from General Taxation. |
| March - June 2019 | Single-Use Plastic Checkout Bag Consultation period. |
| June - July 2019 | Analyze feedback and draft regulation |

The regulation was set to return to Council in August 2019, by reporting back on the consultation results and proposing a new draft regulation with incorporation of community feedback. However, in summer 2019 this process was put on hold following significant announcements in single-use plastic regulations from the Federal and Provincial governments, and a B.C. Court of Appeal ruling to strike down the City of Victoria's plastic bag ban. The key dates are outlined below, and further detailed in the Discussion.

June 10, 2019	The Government of Canada announces a plan to ban “harmful single-use plastics” as early as 2021. ¹
June 27, 2019	The Canadian Council of Ministers of the Environment approved the Canada-wide Action Plan on Zero Plastic Waste: Phase 1.
July 11, 2019	B.C. Court of Appeal struck down the City of Victoria’s Checkout Bag Regulation Bylaw.
July 25, 2019	The Government of British Columbia announced the Clean BC Plastics Action Plan and policy consultation engagement strategy.
January 2020	Under authority granted through the Vancouver Charter, the City of Vancouver implements its first phase of single-use plastics bans with a ban of foam cups and take-out containers.
January 23, 2020	In review of the City of Victoria’s leave to appeal of the B.C. Court of Appeal decision, the Supreme Court of Canada dismissed the application, with costs.
January 30, 2020	The City of Victoria updated Checkout Bag Regulation Bylaw 20-025, gave three readings and forwarded the bylaw to the Minister of Environment and Climate Change Strategy for approval.
January 30, 2020	Government of Canada announces the Draft science assessment of plastic pollution, confirming plastic bags are harmful to Canada’s environment.

DISCUSSION

Single-Use Checkout Bag Consultation Results

In spring 2019, the City of Nanaimo launched a public consultation campaign to inform on the interest and scope of single-use checkout bag regulation. The consultation results have been analyzed and implemented into draft “Checkout Bag Regulation Bylaw 2019 No. 7283” (Attachment A). Overall, survey and retailer roundtable feedback suggests strong public support for the following components of a regulation:

- Plastic single-use checkout bags should be banned.
- The charge for single-use paper bags should be \$0.25/ea.
- Minimum recycled content levels should be included for paper single-use checkout bags.
- The list of exemptions is reasonably correct, without including additional exemptions for take-out food or photographic products.

Retailer Consultation

¹ <https://pm.gc.ca/en/news/news-releases/2019/06/10/canada-ban-harmful-single-use-plastics-and-hold-companies-responsible>

Consultation with local retailers included an online survey and a roundtable hosted by the Greater Nanaimo Chamber of Commerce. Forty-six survey responses were received and four retailers participated in the round-table. In general, there was a high degree of familiarity with single-use checkout bag regulations as implemented in other jurisdictions.

Details of the survey results are included in the Single Use Checkout Bags – Consultation Results (Attachment B). Findings of note include:

- Almost 70% of respondents were small businesses;
- 50% of respondents currently do not provide plastic checkout bags;
- Of those retailers that do provide plastic checkout bags, and track quantities, they supply more than 2.5 million single-use plastic checkout bags in Nanaimo each year;
- 69% of respondents are not in favour of a deposit system forming part of the regulation;
- 61% of retailers already offer an alternative to plastic checkout bags, if a customer requests. Alternatives include:
 - Carry-out service;
 - Re-usable bags; and
 - Totes for regular orders.
- 70% of respondents preferred leaflets, handouts, and links to City online resources as methods to communicate with their customers on the regulation;
- There was general consensus on the proposed list of exemptions, with the following proposed additions:
 - Takeout food;
 - Photo products; and
 - Compostable plastics.
- Respondents expressed significant support (>50%) for “packages for loose bulk items”, “to protect prepared foods and bakery goods”, and “transport live fish”;
- 20% (9/44) of respondents stated that there should be no exemptions.

At the retailer round-table, participants were concerned about sanitary conditions of certain re-usable bags. Discussion was held on efforts that retailers and the City could work on to reduce this concern. Information on how to keep re-usable bags clean and to get the most useful life out of them was felt to be important. Also, retailers could train their staff to recognize these conditions and implement procedures that would address any negative impacts.

Residential Consultation

The consultation with local residents consisted of an online survey and a project webpage. Residents were directed to the survey through radio advertisement and social media posts. 1,555 responses and two direct emails were received during the consultation period.

Details of the survey results are included in the Single Use Checkout Bags – Consultation Results (Attachment B). Findings of note include:

- Strong support (65%) for a ban on single-use plastic checkout bags.
 - 6% of respondents do not use plastic checkout bags.
 - 4% of respondents are resistant to regulation of any sort.
 - 1.5% recommended that all plastic single-use checkout bags be compostable;
- With respect to using mandated pricing to change behaviour, most respondents identified \$1.00 / bag as the level that would result in them switching to re-usable bags from plastic checkout bags;

- If plastic checkout bags were to be banned, 71% of respondents would switch to re-usable bags;
- More than 85% of respondents support a minimum level of recycled content in paper checkout bags;
- With respect to using mandated pricing to change behaviour, most respondents identified \$0.25 / bag as the level that would result in them switching to re-usable bags from paper checkout bags;
- There was general consensus on the proposed list of exemptions, with notable support for “to contain frozen food, meats, and seafood” and “transport live fish”;
 - Almost 12% (186/1,555) of respondents stated that there should be no exemptions;
- Respondents indicated high levels of support for all identified education channels, with the highest being social media (73%).

Federal Actions towards Banning Harmful Single-Use Plastics

On June 10, 2019 the Government of Canada announced it would be taking actions to reduce plastic pollution, and introduce a ban on harmful single-use plastics “as early as 2021 under the Canadian Environmental Protection Act and taking other steps to reduce plastic waste, where supported by scientific evidence and when warranted.”² The announcement described harmful single-use plastics as items such as shopping bags, straws, cutlery, plates, and stir sticks.

Following up from this announcement, on June 27, 2019 the Canadian Council of Ministers of the Environment (CCME) affirmed the 2021 goal to introduce bans on harmful single-use plastics in the *Canada-wide Action Plan on Zero Plastic Waste: Phase 1 report*. The CCME will develop a roadmap to management harmful single-use plastics, and noted the work associated with this action area will be completed by the end of 2021.”³

On January 30, 2020 the Government of Canada released its *Draft science assessment of plastic pollution*. As a scientific backing for the ban on harmful single-use plastics and to strengthen the CCME action plan, the assessment confirms bags and straws can harm wildlife and damage habitats. The assessment also brought attention to the issues of microplastics causing harm to freshwater and ocean habitats. Upon releasing the assessment, the Government of Canada reaffirmed their commitment to have new regulations in effect as early as 2021.⁴

Provincial - Clean BC Plastic Action Plan

On July 25, 2019, the Province of British Columbia introduced the *Clean BC Plastic Action Plan*. One of the plan’s four action areas is for bans on single-use packaging. Following from the release of the plan, the Province launched a public consultation platform to help determine the

² <https://pm.gc.ca/en/news/backgrounders/2019/06/10/government-canada-taking-action-reduce-plastic-pollution>

³ https://www.ccme.ca/files/Resources/waste/plastics/1289_CCME%20Canada-wide%20Action%20Plan%20on%20Zero%20Plastic%20Waste_EN_June%2027-19.pdf

⁴ <https://www.canada.ca/en/environment-climate-change/news/2020/01/draft-science-assessment-of-plastic-pollution-confirms-negative-impact-of-plastic-pollution-on-the-environment-in-canada.html>

types of plastic packaging to ban, and identify exemptions of any items necessary for health, safety and accessibility.

The Plastic Action Plan brings attention to inter-jurisdictional strategies when considering single-use plastic bans. Making note of the Federal announcement to ban plastic and the court proceedings with the City of Victoria ban, the plan brings into balance the preference to avoid duplicating regulations and introduce a harmonized provincial regulation, with the desire to take immediate action to protect the environment. Accordingly, the primary policy options highlighted in the plan are to:

- *“Consider provincial bans for plastic packaging under the Environmental Management Act.*
- *“Support the development of recycled content performance standards being led by the federal government.”⁵*

The Province is set to release a *What We Heard Report* and incorporate public feedback into a new plastic waste regulatory framework in winter 2020.

In addition to the above actions, single-use checkout bags are currently regulated under the Recycling Regulation of the BC Environmental Management Act. This Regulation places the responsibility for end-of-life management of specified products and materials onto industry. This program is delivered in British Columbia through RecycleBC, the stewardship agency representing producers and brand owners who sell printed paper and packaging in British Columbia. Any new regulation would likely result in adjustments to existing regulation and stewardship agency service delivery plans, which could be a complex and time consuming undertaking.

Municipal Precedent

Upon hearing a petition for judicial review from the Canadian Plastic Bag Association, on July 11, 2019 the B.C. Court of Appeal made a decision to strike down the City of Victoria’s Checkout Bag Regulation Bylaw (Attachment C). The basis for the decision was that a bylaw relating to protection of the environment under s.9 of the Community Charter requires approval of the Minister of Environment, which was not submitted for nor approved.

In the Plastics Action Plan, the Province affirms the jurisdictional processes for lawful implementation of single-use bag bans, reiterating “...municipalities wishing to exercise their regulatory authority for protection of the natural environment are required to obtain Provincial approval.”⁶

Following the B.C. Court of Appeal decision, the City of Victoria brought forward a leave to appeal to the Supreme Court of Canada. Affirming the B.C. Court of Appeals decision, the higher court dismissed, with costs, Victoria’s leave to appeal on January 23, 2020.

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https://cleanbc.gov.bc.ca/app/uploads/sites/436/2019/08/CleanBC_PlasticsActionPlan_ConsultationPaper_07252019_B.pdf

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https://cleanbc.gov.bc.ca/app/uploads/sites/436/2019/08/CleanBC_PlasticsActionPlan_ConsultationPaper_07252019_B.pdf

After the Supreme Court of Canada decision, the City of Victoria brought forward and motioned to approve a revised bylaw on January 30, 2020. The proposed City of Victoria Checkout Bag Regulation Bylaw No. 20-025 mirrors the existing checkout bag regulation bylaw approved in 2018, with notable amendments to reframe the bylaw for protection of the environment, under the *Community Charter* section 8(3)(j). The City of Victoria's bylaw has since been submitted to the Province for ministerial approval.

Victoria's bylaw joins a handful of others awaiting approval from the Minister of Environment and Climate Change Strategy, including the City of Richmond, the Town of Esquimalt, the Regional District of North Okanagan, and the District of Saanich. Saanich had adopted a Checkout Bag Regulation Bylaw in June 2019, but repealed and revised the bylaw following the B.C. Court of Appeal decision.

Under authority granted by the Vancouver Charter, as of January 1, 2020 the City of Vancouver has implemented a foam cup and take-out container ban. With foam as the first phase in its Single-use Item Reduction Strategy, to follow are bans on straws and utensils in April 2020, and shopping bags and cups in January 2021.

Despite the B.C. Court of Appeal ruling, a number local governments have implemented single-use bag bans without applying for or receiving approval from the Province. These governments include the District of Squamish, Town of Qualicum Beach, District of Tofino, Resort Municipality of Ucluelet, Village of Cumberland, and the City of Salmon Arm. The City of Courtenay had aimed to implement their adopted single-use plastic regulation, but motioned in December 2019 to wait, pending Provincial and Federal clarification and action.

Very recently, the District of Tofino and the Resort Municipality of Ucluelet both repealed their municipal Bylaws to give three readings to a Bylaw requiring Ministerial approval.

OPTIONS

1. That the Governance and Priorities Committee recommends that Council directs staff to revise draft "Checkout Bag Regulation Bylaw 2019 No. 7283" in reference to section 8(3)(j) of the Community Charter, and return with the revised Bylaw for first, second and third reading at the next scheduled Council meeting, to be forwarded to the Minister of Environment and Climate Change Strategy for approval.

The advantage of this option is legally sound action to position Nanaimo as a leader in environmental protection, as aligned with the priorities of Environmental Responsibility, Governance Excellence and Economic Health in the Strategic Plan. The disadvantage of this option is the uncertainty in timeline for receiving Ministerial approval.

Financial Implications: the enforcement costs, in bylaw staff time, and the utilization of the \$15,350 in public education funds as included in the 2020 budget.

2. That the Governance and Priorities Committee recommends that Council approve the wording of the draft "Checkout Bag Regulation Bylaw 2019 No. 7283" and direct Staff to prepare the Bylaw for first, second and third reading for the next scheduled Council meeting.

The advantage of this option is taking quick action to position Nanaimo as a leader in environmental protection, as aligned with the priority of Environmental Responsibility in the Strategic Plan. The disadvantages of this option are the high risk and susceptibility to litigation upon implementing a bylaw of this nature without Provincial approval.

Financial Implications: the enforcement costs, in bylaw staff time, and the utilization of the \$15,350 in public education funds as included in the 2020 budget.

3. That Council directs staff to hold the “Checkout Bag Regulation Bylaw 2019 No. 7283” until Federal and Provincial strategies are implemented, and in the interim, create and launch an education and resource campaign for residents and businesses based on the Consultation results. |

The advantages of this option is the low risk, and decreased staff time from utilizing resources made available with a harmonized Provincial and/or Federal checkout bag ban. The disadvantages of this option are related to the uncertainty in the timeline of bans from senior governments, and a lack of clarity on municipal responsibility in enforcing these bans.

Financial Implications: the utilization of the \$15,350 in public education funds as included in the 2020 budget.

4. That Council provides alternate direction to staff.

Depending on the direction provided, staff may have to conduct additional research or outreach, which may delay regulation.

SUMMARY POINTS

- The results from the Single-use Checkout Ban Regulation consultation indicate strong support from residents and businesses on the banning of plastic single-use checkout bags, charge for single-use paper bags, requirement of minimum recycled content levels for paper bags, and the proposed exempted packaging.
- The Government of Canada and Province of British Columbia have announced plans to create and implement regulation to take action on plastic waste, with the Federal Government aiming to ban harmful single-use plastics as early as 2021.
- Recent judgements made by the B.C. Court of Appeal and Supreme Court of Canada affirm the necessity for municipalities to receive Provincial approval for bylaws to regulate or ban single-use checkout bags.

ATTACHMENTS:

- A. Draft “Checkout Bag Regulation Bylaw 2019 No. 7283”
- B. Presentation on the Single Use Checkout Bags – Consultation Results
- C. BC Court of Appeal, Canadian Plastic Bag Association v. Victoria (City), 2019
- D. Single Use Plastics – Regulatory Landscape - Graphic |

Submitted by:

Kirsten Gellein
Zero Waste Coordinator |

Concurrence by:

David Thompson
Acting Manager, Sanitation & Recycling

Bill Sims
General Manager,
Engineering & Public Works
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