

DATE OF MEETING | October 19, 2020 |  
AUTHORED BY | Kirsten Gellein, Zero Waste Coordinator |  
**SUBJECT | CHECKOUT BAG REGULATION BYLAW**

## **OVERVIEW**

### **Purpose of Report**

To provide Council with the draft “Checkout Bag Regulation Bylaw 2019 No. 7283” for consideration.

**Recommendation:** That Council:

1. That “Checkout Bag Regulation Bylaw 2020 No. 7283” (To regulate single use checkout bags) pass first reading;
2. That “Checkout Bag Regulation Bylaw 2020 No. 7283” pass second reading;
3. That “Checkout Bag Regulation Bylaw 2020 No. 7283” pass third reading; and;
4. That in accordance with Section 9 of the Community Charter direct staff to forward “Checkout Bag Regulation Bylaw 2020 No. 7283” to the Minister of Environment and Climate Change Strategy for approval.

## **BACKGROUND**

In January 2020, the Supreme Court of Canada affirmed, through case dismissal, the B.C. Court of Appeal decision that:

- The nature of municipal checkout bag regulations align within Section 8(3)(j), protection of the natural environment, of the *Community Charter*; and
- Municipal checkout bag regulations subsequently fall within the spheres of concurrent authority under Section 9 of the *Community Charter*, and require approval from the respective provincial Minister.

Following the dismissal, staff reintroduced the Checkout Bag Regulation Bylaw (“Bylaw”) at the March 9, 2020 Governance and Priorities Committee meeting. The new legal precedence was reported to the Committee, along with the findings of the 2019 single-use checkout bag consultation and a summary of actions from senior government and other local jurisdiction on single-use plastics.

The Governance and Priorities Committee made the below recommendation, which was passed at the following March 16, 2020 Regular Council meeting:

...[to] direct 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 Bylaw was set to be brought back to Council in April 2020, but was put on hold to assess the impacts of COVID-19 following the provincial State of Emergency. Staff consulted with the Province for guidance, and on July 28, 2020 the Ministry of Environment and Climate Change Strategy (“the Ministry”) indicated it would advise of the next steps “in the coming months.”

On September 12, 2020, Minister George Heyman announced the approval of single-use bag bylaws from other municipalities, and that other bylaws would be considered upon submission. Minister Heyman also “proposed to draft a new regulation under the Community Charter to allow local governments to ban single-use plastic without requiring provincial approval.”

The Federal government has also resumed policy action on harmful single-use plastics. On October 7, 2020 Minister of Environment and Climate Change, the Honourable Jonathan Wilkinson, announced that Canada would maintain the 2021 timeline for banning harmful single-use plastics. These regulations are set to be finalized by the end of 2021, and will include plastic checkout bags, straws, stir sticks, six-pack rings, cutlery, and food ware made from hard-to-recycle plastics. The announcement was supported by the release of the *Proposed Integrated Management Approach to Plastic Products to Prevent Waste and Pollution*, which alongside bans of these harmful single-use plastics, discusses mechanisms to establish performance standards (e.g. recycled content requirements) and ensure end-of-life responsibility (e.g. improve and expand extended producer responsibility programs).

Also on October 7, 2020 the Federal government released the final *Science Assessment of Plastic Pollution* to affirm plastic pollution negatively impacts environmental and human health, realms protected under the *Canadian Environmental Protection Act*.

## **DISCUSSION**

Attachment A, the draft “Checkout Bag Regulation Bylaw 2020 No. 7283” has been amended to reference Section 8(3)(j), protection of the natural environment, of the *Community Charter*. Minor administrative revisions have been made, and notably the effective date has been updated to July 1, 2021. Should Council adopt the Bylaw upon approval from the Province, an amendment must be made to “Bylaw Notice Enforcement Bylaw 2012 No. 7159” to include the associated fines for the Checkout Bag Regulation Bylaw.

Since the announcements from senior government, staff have conversed with personnel at the Ministry of Environment and Climate Change Strategy to confirm next steps on proceeding with Bylaw submission for approval. Provincial staff affirmed the draft Bylaw should be approved without issue, as it is consistent with the already approved bylaws from other municipalities, however, not until the new government is called into office. Accordingly, Province staff were not able to advise on a timeline for approval, but agreed the proposed implementation date of July 1, 2021 should be practical.

In terms of duplicity with the Federal ban of single use plastic bags, there is overlap with Sections 3.1 and 3.3(a) in the Bylaw, in which no business may sell or provide a plastic bag.

However, the Federal ban does not make mention to ban biodegradable and compostable bags, which fall within the definition of plastic bags in the draft Bylaw and which no businesses are to sell or provide under Section 3.3(a). Additionally, the Federal ban will not overlie Bylaw Section 3.2 to regulate the provision of paper bags and reusable bags, nor Section 3.4 to regulate businesses from denying or discouraging the use of reusable bags.

The draft Bylaw goes beyond the scope of the proposed Federal ban to also regulate the distribution of biodegradable and compostable bags, and discourage the use of paper and reusable bags. In this respect, the draft Bylaw more strongly incorporates the principles of Zero Waste and pollution prevention hierarchies, to prioritize reduction and reuse above recycling and composting, with landfilling only when other options are exhausted. This advantage supports Council's priority of Environmental Protection.

In the initial stages of COVID-19, the BC Centre for Disease Control (BCCDC) had prohibited the use of reusable bags. Since late April, the BCCDC has once again allowed for the use of reusable checkout bags provided customers keep the bags in their cart and pack the bags themselves. Regarding the potential of spread through reusable bags, the BCCDC states the "risk of spread [on surfaces] is probably low" and advises retail stores to "make policy that works for them and their employees." A scan of other jurisdictions indicate some municipalities remain in a holding pattern, while others, like the City of Vancouver, have kept their ban in force but have withheld the education and enforcement components. The proposed date of Bylaw effect on July 1, 2021 will give time to further assess the impacts of COVID-19, and adapt education campaigns and enforcement of the Bylaw accordingly. |

## **OPTIONS**

1. 1. That "Checkout Bag Regulation Bylaw 2020 No. 7283" (To regulate single use checkout bags) pass first reading;
2. That "Checkout Bag Regulation Bylaw 2020 No. 7283" pass second reading;
3. That "Checkout Bag Regulation Bylaw 2020 No. 7283" pass third reading; and
4. That in accordance with Section 9 of the Community Charter direct staff to forward "Checkout Bag Regulation Bylaw 2020 No. 7283" to the Minister of Environment and Climate Change Strategy for approval.

The advantage of this option is being a 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 disadvantages are uncertainty in timeline for receiving Ministerial approval, and some overlap with the proposed Federal regulation to ban single-use plastic bags by the end of 2021.

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

2. That Council withhold the "Checkout Bag Regulation Bylaw 2019 No. 7283", under expectation the Federal regulation to ban single-use plastic bags is set to be finalized by the end of 2021.

The advantage of this option is the administrative onus falls to the Federal government, and the regulation will harmonize with a much larger geography. The disadvantage is the Federal ban will not regulate the distribution of biodegradable, compostable, paper and reusable bags.

There are no financial implications for this option.

3. That Council provide alternate direction.

### **SUMMARY POINTS**

- Under the *Community Charter*, the City of Nanaimo is required to obtain approval from the Minister of Environment and Climate Change Strategy prior to adoption of the draft “Checkout Bag Regulation Bylaw 2019 No. 7283”.
- The Government of Canada and Province of British Columbia have announced plans regulate plastic waste, with the Federal Government set to ban harmful single-use plastics in late 2021.
- In addition to regulating the distribution of single-use plastic checkout bags, the draft “Checkout Bag Regulation Bylaw 2019 No. 7283” would regulate the distribution of biodegradable, compostable, paper and reusable bags.

### **ATTACHMENTS:**

- A. Draft “Checkout Bag Regulation Bylaw 2020 No. 7283”
- B. Checkout Bag Regulation Bylaw Presentation

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