

# AGENDA

## *COUNCIL WORKSHOP*

**Tuesday, July 9, 2019**

**5:00 p.m.**

**Committee Room, Municipal Hall**

**355 West Queens Road,**

**North Vancouver, BC**

**Council Members:**

Mayor Mike Little

Councillor Jordan Back

Councillor Mathew Bond

Councillor Megan Curren

Councillor Betty Forbes

Councillor Jim Hanson

Councillor Lisa Muri



[www.dnv.org](http://www.dnv.org)

THIS PAGE LEFT BLANK INTENTIONALLY

## COUNCIL WORKSHOP

**5:00 p.m.**  
**Tuesday, July 9, 2019**  
**Committee Room, Municipal Hall,**  
**355 West Queens Road, North Vancouver**

### AGENDA

#### **1. ADOPTION OF THE AGENDA**

##### **1.1. July 9, 2019 Council Workshop Agenda**

*Recommendation:*

THAT the agenda for the July 9, 2019 Council Workshop is adopted as circulated, including the addition of any items listed in the agenda addendum.

#### **2. ADOPTION OF MINUTES**

#### **3. REPORTS FROM COUNCIL OR STAFF**

##### **3.1. Taking Action to Reduce Single-Use Items**

**p. 7-47**

File No. 11.5360.90

Joint Report: Manager – Public Works and Solid Waste Co-ordinator, June 28, 2019

Appendix A: Description of Potential Single-Use Item Regulatory Measures

Appendix B: Integrated Solid Waste and Resource Management Plan, Detailed  
Actions Related to Increased Plastics Recycling

Appendix C: National and Local Commitments/Actions by Governments

Appendix D: Canadian Plastic Bag Association v. The Corporation of the City of  
Victoria

Appendix E: Harmonized Province-Wide Action on Single-Use Item Reduction

*Recommendation:*

THAT the June 28, 2019 joint report of the Manager – Public Works and Solid Waste Co-ordinator entitled Taking Action to Reduce Single-Use Items is received for information.

#### **4. PUBLIC INPUT**

(maximum of ten minutes total)

#### **5. ADJOURNMENT**

*Recommendation:*

THAT the July 9, 2019 Council Workshop is adjourned.

THIS PAGE LEFT BLANK INTENTIONALLY

## REPORTS

THIS PAGE LEFT BLANK INTENTIONALLY

AGENDA INFORMATION	
<input type="checkbox"/> Regular Meeting	Date: _____
<input type="checkbox"/> Other:	Date: _____



## The District of North Vancouver REPORT TO COUNCIL

June 28, 2019  
File: 11.5360.90

**AUTHOR:** Len Jensen, Manager, Public Works  
Bo Ocampo, Solid Waste Co-ordinator

**SUBJECT:** Re: Taking Action to Reduce Single-Use Items

**RECOMMENDATION:**

THAT Council receive this report for information.

**REASON FOR REPORT:**

This report responds to a recommendation to staff at the May 6, 2019 Regular Meeting of Council where the following motions were endorsed:

*THAT Council support taking action at a municipal level to regulate single-use items;*

*AND THAT staff report back to Council within 90 days with the costs to create and enforce policy, timeframe and process (engagement with community, business and stakeholder groups) to regulate single-use items;*

*AND THAT staff update Council on current action at the regional, provincial and federal level to reduce and regulate single-use items.*

**SUMMARY:**

This report will provide background information for a Council workshop on single-use items. It will outline the issues and challenges associated with regulating single-use items, and the implications of restricting these items.

The purpose of the July 9<sup>th</sup> workshop is to facilitate discussion, and for staff to receive input with respect to: (1) the scope of single-use items for which regulation would be both appropriate and practicable, and (2) the extent of research and consultation to be pursued by staff.

**BACKGROUND:**

The term "single-use item" can encompass a variety of products. These items can range from items used for groceries and takeout (i.e., plastic bags and straws) to disposable razors, cigarette butts, balloons, cotton swabs, etc. The proliferation of single-use items can be

## **SUBJECT: Re: Taking Action to Reduce Single-Use Items**

June 28, 2019

---

found across a variety of sectors such as retail, food service, consumer goods, and industry. They can also encompass different material types – plastics, polystyrene foam, wood, and compostable materials.

### **What are the environmental impacts of single-use items?**

Many single-use items provide benefits such as food waste reduction, food safety, shipping cost savings, and durability. However, as these items are produced in significant amounts, they result in increased resource consumption and garbage. They also become particularly problematic when they are not disposed of correctly and enter the environment. Contributing factors to this issue include difficulty collecting these items for proper disposal (as they are often used away from home) and littering in public spaces.

The impact of plastic waste on the environment has received heightened public attention in recent years. Globally, it is estimated that one garbage truckload of plastic waste enters the ocean every minute, and that amount continues to increase steadily. In Canada, less than 10% of the approximately three million tonnes of plastic used annually is collected for recycling.

### **What are the impacts of single-use items on local government?**

From a local government perspective, these items are problematic due to their negative financial impacts on municipal infrastructure and services. Municipal collection of single-use items from public spaces costs taxpayers millions of dollars annually, and single-use debris enters catch basins, pumps, and storm inlets as litter. In Metro Vancouver, it is estimated that 1.1 billion single-use items are disposed of each year (the equivalent of 440 items per person).

### **How can the use of single-use items be reduced?**

Potential approaches to regulate single-use items include:

- ✦ 'By request-only' regulations
- ✦ Mandatory fees for purchase of single use items
- ✦ Requirement of reuse/reduction targets from businesses
- ✦ Restrictions on sale/distribution (bans)

Detailed explanations of these regulatory measures can be found in **Appendix A**.

### **What is currently being done to reduce single-use items?**

At this time, there is no harmonized legislation at the provincial or federal level. Currently, District of North Vancouver (the "District") residents can recycle some single-use items through curbside collection and at local depots.

#### Provincial Legislation

The *Recycling Regulation* enacted under the *Environmental Management Act* (B.C.) imposes obligations on producers of certain products. Producers of regulated products are required to create Extended Producer Responsibility ("EPR") Plans and to operate industry programs that include collection and recycling of those products. The regulation represents an attempt to move from government managed and financed waste management programs. EPR is an



## **SUBJECT: Re: Taking Action to Reduce Single-Use Items**

June 28, 2019

---

environmental policy approach in which the producers of a particular product are responsible for the management of that product across its whole life cycle. This includes incentives for producers to create better designed products which can be disposed of responsibly.

Packaging and Paper Products (“PPP”) waste from the residential sector in British Columbia are currently regulated under an EPR Plan which is administered by Recycle BC on behalf of industry. Of the single-use items most commonly targeted by municipalities for regulation, only disposable straws and single-use utensils are not currently accepted through the Recycle BC Program. The other items (plastic bags, polystyrene cups and containers, plastic takeout containers, and disposable hot and cold cups) are either accepted in residential recycling collection programs or at participating depots.

### Metro Vancouver

Waste reduction is a key priority in Metro Vancouver’s Integrated Solid Waste and Resource Management Plan (ISWRMP) (**Appendix B**). Single-use item reduction is an opportunity for municipalities to further this goal. Metro Vancouver has undertaken actions to address single-use items (see **Appendix C**), but they have stated that their jurisdiction is limited to the end of life management of waste and as such they have limited regulatory authority in relation to single-use items. Metro Vancouver will continue to support their member municipalities by developing a toolkit which will provide resources and include best management practices for the regulation of single-use items.

### Other Municipalities in British Columbia

Many municipalities in the province are taking action to reduce single-use items. These actions range from preliminary consultation with the local community to outright bans of certain materials. A summary of federal, provincial, regional, and local actions are outlined in **Appendix C**.

### **EXISTING POLICY:**

The District has broad powers under the *Community Charter* to regulate businesses within its boundaries, but it cannot adopt bylaws for the purpose of protecting the environment without either an agreement with the Province or the Province’s prior approval of the bylaw.

If the District wishes to prohibit single-use items as a matter of business regulation, then it must do so for a municipal purpose that is separate from broader environmental concerns. An example of such a municipal purpose would be the reduction of the impact of certain specified single-use items on municipal facilities and services.

Before adopting any bylaw under the *Charter*, a council is required to:

- (a) give notice of its intention, and
- (b) provide an opportunity for persons who consider they are affected by the bylaw to make representations to council.

### **LIABILITY/RISK:**

The most significant risk associated with the regulation of single-use items is the possibility of legal action challenging the validity of the bylaw. In 2018, the Canadian Plastic Bag

## **SUBJECT: Re: Taking Action to Reduce Single-Use Items**

June 28, 2019

---

Association (CPBA) pursued legal action against the City of Victoria's Checkout Bag Regulation Bylaw. CPBA's primary argument was that the bylaw constituted environmental regulation, which falls under provincial jurisdiction and would require the consent of the province. The B.C. Supreme Court ultimately ruled in favour of Victoria and dismissed the legal challenge. However, in May of this year, the CPBA filed an appeal. The appeal has been heard but judgment has not yet been rendered. See **Appendix D** for the BC Supreme Court judgment – *Canadian Plastic Bag Association v. The Corporation of the City of Victoria*.

### **Unintended Consequences**

In addition to the legal risk associated with the regulation of single-use items, there are also a number of unintended consequences that may arise which may impact residents and businesses. These impacts and challenges should be considered and addressed through consultation with affected stakeholders.

Examples of unintended consequences may include the following:

- ✦ An increase in the use of alternatives with a higher environmental impact (i.e., paper, reusable items, compostables, unrecyclable materials, etc.).
- ✦ An increase in certain plastics markets (e.g., trash bags).
- ✦ Accessibility issues for those with disabilities who are physically unable to drink other than through a straw.
- ✦ Challenges related to food safety and contamination associated with items such as reusable takeout containers.
- ✦ Some businesses lack dishwashing infrastructure for reusable cups and dishes.
- ✦ Limited alternatives for leaky items such as soup, frozen beverages, and bubble tea.
- ✦ Effect on charitable institutional food providers, hospitals, care facilities, etc.

Note that a number of these issues could be addressed by the inclusion of exemptions in the bylaw.

### **Options**

#### **Scoping**

There are two methods by which the District can determine the scope of single-use items that it wishes to regulate:

1. Develop a discussion paper which would identify the different items that could be targeted for regulation. The discussion paper could address the following considerations for each product: available alternatives, unintended consequences of regulation, and comparison of the environmental impacts between the identified single-use item and associated alternative.
- or;

**SUBJECT: Re: Taking Action to Reduce Single-Use Items**

June 28, 2019

---

2. Create a bylaw in line with those created by other jurisdictions in the Lower Mainland. Other municipalities have initially targeted the following items:

- Single-use bags
- Disposable straws
- Polystyrene cups and takeout containers
- Non-compostable takeout containers (general)
- Disposable hot and cold cups
- Single-use utensils

During this process, staff can also explore the feasibility of regulating other single-use items in alignment with potential harmonized provincial or federal regulations.

We recommend Council adopt a position consistent with other municipalities such as the City of Vancouver and City of Victoria by targeting one item at a time. Ideally, decisions to regulate are data based (e.g., impact on infrastructure and availability of alternatives). Following the selection of a particular item, a consultation and implementation program would be developed based on best practices learned from other municipalities. Staff would then gradually expand regulation to cover other single-use items.

#### Approaches to Regulation

##### **Environmental**

To pursue regulation based on environmental rationale, Mayor and Council would need to enter into an agreement with the Province that allows the District of North Vancouver to regulate single-use items within the municipality based on environmental impacts, or request that the Minister responsible gives his or her approval for the municipality to pass such bylaws, or pass regulation which has the same effect. This would likely be more difficult and time-consuming than simply regulating businesses for municipal purposes, but would have the advantage of being more resistant to legal challenges. That said, if the B.C. Court of Appeal upholds the judgment of the B.C. Supreme Court in *Canadian Plastic Bag Association v. Victoria (City)*, then legal challenges may be less likely.

##### **Impacts to Local Infrastructure and Services**

To address the local impacts and be in compliance with the Community Charter staff would carry out curbside and litter audits (as well as other studies as required) to gain an understanding of the single-use items that most significantly impact District infrastructure. It is expected this could be completed within 18 months. Staff would report back on results.

Once the impacts to infrastructure are understood (or the District receives approval from or an agreement with the Province, if the District wishes to regulate for an environmental purpose), staff would draft the necessary bylaw to reduce or restrict the single-use items identified as problematic for the District. Staff would then proceed with consultation on the drafted bylaw and provide an opportunity for persons who consider they are affected by the bylaw to make representations to Council.

##### **Immediate Implementation**

Should Council wish to follow the approach of a number of other municipalities and move towards immediate adoption of a ban on some single-use items, it is still recommended that staff undertake a public consultation process including consulting with the Chamber of

**SUBJECT: Re: Taking Action to Reduce Single-Use Items**

June 28, 2019

---

Commerce to reach out to affected business groups and understand the time they will need to turn over existing inventory to new zero waste replacements for the banned items.

**Concurrence:**

Staff will work collaboratively with legal counsel to draft a legally defensible bylaw or bylaw amendments aimed at reducing or banning single-use items, and communications for public and stakeholder engagement.

**Financial Impacts:**

Following decisions in this workshop Staff will develop and report back on funding requirements. Approved costs will be addressed as part of the annual capital and operating budget process.

**Public Input:**

In addition to the consultation requirements in the Community Charter staff also recommend consultation with the Chamber of Commerce to consult with affected business groups and understand the time they will need to turn over existing inventory to new zero waste replacements for the banned items.

**Timing/Approval Process:**

Staff will develop and report back in September 2019 on funding requirements based on feedback regarding potential regulatory measures from Council following the workshop. Approved costs will be addressed as part of the annual capital and operating budget process.

**Conclusion:**

The regulation of certain single-use items at the District will demonstrate leadership, align with the actions of other Lower Mainland municipalities, and convey the municipality's concern regarding the impact of these items on municipal services and infrastructure and (if appropriate) the environment. However, it is difficult for municipalities to regulate these items in isolation and the District should continue to advocate for harmonized provincial and/or federal standards.

In addition to the information above, the following is also recommended for Council's consideration:


- THAT the District of North Vancouver submit a resolution to the 2019 Union of British Columbia Municipalities Convention requesting the provincial government's support for regulating single-use items.
- AND THAT the Mayor write to the North Shore MLA's, Minister of Environment and Climate Change, and Premier to request support for the regulation of single-use items.
- AND THAT staff continue to work with other levels of government (regional, provincial, and federal) towards a harmonized approach to regulation.
- AND THAT staff work with the District of West Vancouver and City of North Vancouver on joint single-use items initiatives where appropriate.

**SUBJECT: Re: Taking Action to Reduce Single-Use Items**

June 28, 2019

- AND THAT this report is forwarded to the District of West Vancouver, City of North Vancouver, Squamish Nation, and Tsleil-Waututh Nation for information and support.

Respectfully submitted,



Len Jensen,  
Public Works Manager



Bo Ocampo  
Solid Waste Co-ordinator

REVIEWED WITH:		
<input type="checkbox"/> Community Planning	<input type="checkbox"/> Clerk's Office	External Agencies:
<input type="checkbox"/> Development Planning	<input type="checkbox"/> Communications	<input type="checkbox"/> Library Board
<input type="checkbox"/> Development Engineering	<input type="checkbox"/> Finance	<input type="checkbox"/> NS Health
<input type="checkbox"/> Utilities	<input type="checkbox"/> Fire Services	<input type="checkbox"/> RCMP
<input type="checkbox"/> Engineering Operations	<input type="checkbox"/> ITS	<input type="checkbox"/> NVRC
<input type="checkbox"/> Parks	<input type="checkbox"/> Solicitor	<input type="checkbox"/> Museum & Arch.
<input type="checkbox"/> Environment	<input type="checkbox"/> GIS	<input type="checkbox"/> Other:
<input type="checkbox"/> Facilities	<input type="checkbox"/> Real Estate	
<input type="checkbox"/> Human Resources	<input type="checkbox"/> Bylaw Services	

THIS PAGE LEFT BLANK INTENTIONALLY

## **Appendix A – Description of Potential Single-Use Item Regulatory Measures**

By request-only regulations – Requires that businesses distribute single-use items only upon the request of the customer. These regulations have less of an impact on businesses than bans while reducing the number of single-use items distributed.

Mandatory fees – Through regulation, businesses can be required to charge fees for single-use items. Studies have shown that fees for single-use items are more effective than discounts to change behaviour. To increase effectiveness, fees should be visible (such as those explicitly shown on a receipt).

Require reuse/reduction targets – This approach allows flexibility for businesses as they are able to select their method of meeting defined reduction targets and then report back on progress. This may allow innovation and an opportunity for businesses and customers to adjust to changes before potentially implementing other regulatory measures such as a ban.

Restrictions on sale/distribution – Bans (outright prohibition on sale/distribution) of certain single-use items can be equitable and effective for waste prevention. However, unless carefully implemented, bans may create unintended consequences (i.e., creating other types of waste or adversely impacting those that require the use of single-use items).

THIS PAGE LEFT BLANK INTENTIONALLY



**Appendix B – Integrated Solid Waste and Resource Management Plan, Detailed Actions Related to Increased Plastics Recycling**

<b>Strategy 2.8: Target plastics for increased recycling</b>	
<b>ISWRMP Strategy and Actions</b>	<b>Current Status of Key Strategies and Actions in the ISWRMP</b>
<b>2.8.1 MV Will:</b> Expand the recycling of plastics in the residential and commercial sectors. (a) Establish a standard for municipal programs for collection of plastics based on market strength.	<b>[ACTION COMPLETED]</b>  Approximately one-third of residents in Metro Vancouver receive recycling service directly from RecycleBC (formerly MMBC). Many others are served by their local municipality under contract to RecycleBC. As a result, collection of recyclables from residents is mostly standardized. Under provincial regulation, an equivalent EPR program for the ICI sector is expected in the coming years.
(b) In cooperation with retail partners and municipalities, undertake social marketing pilot programs to reduce the use of disposable take-out food and beverage packaging including plastic and other disposable bags.	This is primarily covered under actions 1.3.2 and 1.3.4 which involve the collaboration of member municipalities with Metro Vancouver to develop and deliver programs and education for businesses on waste reduction opportunities.
<b>2.8.2 Municipalities Will:</b> Work with Metro Vancouver on programs to reduce the use of disposable take-out food and beverage packaging including plastic and other disposable bags.	<b>[ACTION COMPLETED]</b>  This initiative has been supplanted by the new Provincial regulations mandating that single family residential recycling programs (and eventually multifamily recycling, public spaces recycling, and ICI recycling programs) for packaging and printed papers be part of an EPR program to be administered by industry.  Metro Vancouver continues to provide input, on behalf of our member municipalities, to the industry stewards on the development and implementation of their stewardship plans.
<b>2.8.3 Other Governments &amp; Agencies Will:</b> The Provincial Government to develop EPR programs for all plastics that provide incentives for alternatives to non-recyclable plastics. <b>2.8.4 Other Governments &amp; Agencies Will:</b> The Provincial and Federal Governments to require all plastic material sold in BC to have a material code identifying its composition.	<b>[ACTION COMPLETED]</b>  Approximately one-third of residents in Metro Vancouver receive recycling service directly from RecycleBC (formerly MMBC). Many others are served by their local municipality under contract to RecycleBC. As a result, collection of recyclables from residents is mostly standardized. Under provincial regulation, an equivalent EPR program for the ICI sector is expected in the coming years.

THIS PAGE LEFT BLANK INTENTIONALLY

## **Appendix C**

### **National and Local Commitments/Actions by Governments**

#### ***Government of Canada***

##### **Canadian Ban on Single-Use Plastics by 2021**

On June 10th, the federal government announced a commitment to ban certain single-use plastics as early as 2021. The details regarding the announcement still remain unclear at the time of this report. However, the Prime Minister stated that their proposed actions will be grounded in scientific evidence and align with similar actions being taken in the European Union and other countries where appropriate.

This commitment will also be dependent upon the re-election of the Trudeau government. Some local municipalities have already passed regulations to limit or ban certain single-use items. However, there is still a strong desire from local government to continue to advocate for harmonization at the federal and provincial and level.

##### **Oceans Plastics Charter**

Canada launched an Oceans Plastics Charter as part of its 2018 G7 presidency. The commitments outlined in the report include the following categories:

1. Sustainable design, production and after-use markets
2. Collection, management and other systems and infrastructure
3. Sustainable lifestyles and education
4. Research, innovation, and new technologies
5. Coastal and shoreline action

The government also announced it will invest \$100 million to support developing countries to assist with the development and implementation of sound waste management.

#### ***Canadian Council of Ministers of the Environment***

In 2018, the Canadian Council of Ministers of the Environment (CCME) approved in principle a Canada-wide strategy on zero plastic waste with a vision to keep all plastics in the economy and out of the environment. The strategy outlines areas for action that are important for Canada and that also align with areas presented in the Ocean Plastics Charter. The ten areas that will drive the development of future action as part of the strategy include:

- |                        |                            |
|------------------------|----------------------------|
| 1. Product design      | 6. Consumer awareness      |
| 2. Single-use plastics | 7. Aquatic activities      |
| 3. Collection systems  | 8. Research and monitoring |
| 4. Markets             | 9. Clean-up                |
| 5. Recycling capacity  | 10. Global action          |

The CCME is in the process of developing an action plan in which they will report back for ministers to consider in 2019.

#### ***Federation of Canadian Municipalities***

**SUBJECT: Re: Taking Action to Reduce Single-Use Items**

June 28, 2019

---

The Federation of Canadian Municipalities (FCM) called on the government of Canada to develop national strategy to eliminate plastic pollution. The FCM suggested a range of regulations related to different types of plastics including, but not limited to, regulations aimed at micro-plastics, reducing consumer and industrial use of single-use plastics, and implementing packaging standards to ensure recyclability.

***Ministry of Environment***

The Ministry of Environment has not yet announced plans for the harmonized regulation of single-use items. The Province has expressed continued interest in ongoing collaboration with regional and local government.

***Union of BC Municipalities***

The Union of BC Municipalities endorsed that the Province of BC engage the packaging industry to develop a provincial single-use item reduction strategy.

***Metro Vancouver***

Some of the key actions undertaken by Metro Vancouver regarding single-use items are as follows:

- ✦ October 2017 – the Greater Vancouver Sewerage and Drainage District Board resolved to develop regional actions
- ✦ February 2019 – initiated the development of a single-use item reduction toolkit for municipalities
- ✦ March 2019 – wrote to the Province in support of a provincial single-use item reduction strategy

***British Columbia Municipalities***

The following is a summary of the actions some local municipalities have taken related to the regulation of single-use items:

***City of North Vancouver***

- ✦ Staff have not received formal Council direction to pursue regulation
- ✦ Staff are currently working on an integrated plan for climate action goals which will include goals related to moving the City towards zero waste

***District of West Vancouver***

- ✦ Council proposed a UBCM motion requesting that the provincial government provide clear approval for local governments to regulate the distribution of single-use items for environmental purposes
- ✦ Staff will present at a regular Council meeting on July 22

***City of Richmond***

- ✦ Banning single-use check-out bags, polystyrene containers, and single-use straws
- ✦ Staff are reporting back on July 15, 2019 General Purposes Committee with implementation plans, budgets, and draft bylaws

***District of Squamish***

## **SUBJECT: Re: Taking Action to Reduce Single-Use Items**

June 28, 2019

---

- ✦ Council directed staff to move forward with banning single-use plastic check-out bags and straws
- ✦ Stakeholder engagement from June to September 2019 on bylaw development
- ✦ Draft bylaw to be brought to Council on September 10, 2019 with an effective date of January 1, 2020 and enforcement beginning April 1, 2020

### **City of Vancouver**

- ✦ Foam cups and take-out containers bylaw was adopted and the ban will be implemented January 2020
- ✦ Regulation for plastic Straws, plastic and paper shopping bags, disposable cups and utensils will be brought forward to Council November 30, 2019

### **Upcoming bylaw changes summary**

-  **Foam cups and foam take-out containers**  
Jan 1, 2020: ban begins for food vendors
-  **Plastic straws**  
By Nov 30, 2019: by-law presented to Council  
April 2020: ban begins
-  **Plastic and paper bags**  
By Nov 30, 2019: by-law presented to Council
-  **Disposable cups**  
By Nov 30, 2019: by-law presented to Council
-  **Disposable utensils**  
By Nov 30, 2019: by-law presented to Council
-  **Take-out containers**  
Pilot program details to be determined.

**SUBJECT: Re: Taking Action to Reduce Single-Use Items**  
**June 28, 2019**

---

**Timeline for City of Vancouver – Single-Use Items**



**City of Victoria**

- Implemented a check-out bag regulation bylaw which came into effect July 1, 2018
- Increase in regulated amounts to charge for checkout bags coming into effect July 1, 2019 \$0.25 for paper bags, \$2 for reusable
- In 2018, the Canadian Plastic Bag Association (CPBA) pursued legal action against the City of Victoria's Checkout Bag Regulation Bylaw
- In May 2019 the CPBA filed an appeal which is currently ongoing

**SUBJECT: Re: Taking Action to Reduce Single-Use Items**  
June 28, 2019

---

**Timeline for City of Victoria – Single-use Items**

May 2016	<ul style="list-style-type: none"><li>• City Council directs staff to meet with key business and waste management stakeholders to explore ways to reduce single-use plastic bags in the city. <a href="#">Read Council meeting minutes from May 26, 2016 here</a></li><li>• Research and analysis of industry practices and innovation</li></ul>
May 2017	<ul style="list-style-type: none"><li>• Phase I: Engagement kick-off event with local stakeholders</li></ul>
September – October 2017	<ul style="list-style-type: none"><li>• City staff hosted three separate meetings with industry representatives, advocacy groups, and local businesses</li></ul>
October 18, 2017	Open House and Public Meeting
October 26, 2017	Council approved a motion to consider a new single-use checkout bag bylaw, prohibiting businesses from selling and distributing plastic bags to customers. For complete details, read the <a href="#">Committee of the Whole report</a> and draft <a href="#">Checkout Bag Regulation Bylaw the PowerPoint presentation presented by City staff</a> .
October 30 - December 1	<ul style="list-style-type: none"><li>• Phase II: Engagement</li></ul> <p>The City invited review and comment on the draft <a href="#">Checkout Bag Regulation Bylaw [PDF - 357 KB]</a> from retail businesses, stakeholders and the public.</p> <p>Feedback was collected and included in the December 14 Council report</p> <p>The feedback was used to update the bylaw and also informed the communications strategy for retail businesses and the community.</p>
December 14, 2017	<ul style="list-style-type: none"><li>• Staff presented feedback received recommended changes to the bylaw.</li><li>• City Council passed first, second and third reading of the proposed Checkout Bag Regulation Bylaw and will consider it for adoption at the January 11, 2018, Council meeting.</li></ul>
January 11, 2018	<ul style="list-style-type: none"><li>• City Council adopted the Bag Reduction Bylaw</li></ul>

There are also many smaller communities on Vancouver Island that have followed Victoria's direction.

**Retail Council of Canada**

The Retail Council of Canada has voiced their concerns regarding the regulation of single-use items and preference for provincial harmonization in a letter sent to Premier Horgan on May 1, 2019 (**Appendix E**).

THIS PAGE LEFT BLANK INTENTIONALLY



CANADIAN PLASTIC BAG ASSOCIATION VS CITY OF VICTORIA

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Canadian Plastic Bag Association v.  
Victoria (City),*  
2018 BCSC 1007

Date: 20180619  
Docket: S180740  
Registry: Vancouver

Between:

**Canadian Plastic Bag Association**

Petitioner

And

**The Corporation of the City of Victoria**

Respondent

Before: The Honourable Mr. Justice Smith

**Reasons for Judgment**

Counsel for the Petitioner:

N. Baker

Counsel for the Respondent:

T. Zworski  
C. Moffatt

Place and Date of Hearing:

Vancouver, B.C.  
May 8 and 9, 2018

Place and Date of Judgment:

Vancouver, B.C.  
June 19, 2018

2018 BCSC 1007 (CanLII)

**INTRODUCTION**

[1] The City of Victoria has enacted a bylaw that prohibits businesses from providing single-use plastic bags to customers and requires them to charge a mandatory minimum fee for paper and reusable bags. The petitioner is an organization that represents manufacturers and distributors of plastic shopping bags. It seeks an order setting aside the bylaw, arguing that the City had no power to enact it without provincial approval.

[2] The City's powers are set out in its enabling legislation – the *Community Charter*, S.B.C. 2003, c. 26 [CC] and the *Local Government Act*, R.S.B.C. 2015, c. 1 [LGA]. Those powers include the power to make regulations “in relation to business” and the City says the bylaw was enacted under that authority. The petitioner says the bylaw is in fact, an environmental regulation. Although the CC allows the City to enact bylaws for “protection of the natural environment,” it can only do so with approval or agreement of the provincial government.

**BACKGROUND**

[3] The Checkout Bag Regulation Bylaw No. 18-008 (“Bylaw 18-008”) comes into force on July 1, 2018, although enforcement through imposition of fines will not begin until January 1, 2019. It defines a “checkout bag” as:

- (a) any bag intended to be used by a customer for the purpose of transporting items purchased or received by the customer from the business providing the bag; or
- (b) bags used to package take-out or delivery of food
- (c) and includes Paper Bags, Plastic Bags, or Reusable Bags;

[4] The key provisions of Bylaw 18-008 are contained in s. 3

- 3 (1) Except as provided in this Bylaw, no Business shall provide a Checkout Bag to a customer.
- (2) A Business may provide a Checkout Bag to a customer only if:
  - (a) the customer is first asked whether he or she needs a bag;
  - (b) the bag provided is a Paper Bag or a Reusable Bag; and
  - (c) the customer is charged a fee not less than

- (i) 15 cents per Paper Bag; and
  - (ii) \$1 per Reusable Bag.
- (3) For certainty, no Business may:
  - (a) sell or provide to a customer a Plastic Bag; or
  - (b) provide a Checkout Bag to a customer free of charge.

[5] As of January 1, 2019, the fees for paper and reusable bags will increase to 25 cents and \$2 respectively. Those fees do not apply to small paper bags used for items such as bulk foods, meat, bakery goods, and plants.

[6] A preamble to Bylaw 18-008 says:

The purpose of this Bylaw is to regulate business use of single use checkout bags to reduce the creation of waste and associated municipal costs, to better steward municipal property, including sewers, streets and parks, and to promote responsible and sustainable business practices that are consistent with the values of the community.

[7] The process leading to Bylaw 18-008 began in June 2015, when representatives of the Surfrider Foundation ("Surfrider") contacted the mayor to advise they would be proposing a draft bylaw to ban the use of single-use plastic bags. In a subsequent letter to City council, Surfrider described itself as one of the "largest non-profit grassroots organizations dedicated to the protection of the ocean, waves and beaches." It said single-use plastic bags pollute and obstruct local waterways and constitute "one of the biggest threats to our marine environment". Material submitted by Surfrider included a draft bylaw and petition forms with more than 2,500 signatures.

[8] In May 2016, council received a report from the City's Director of Engineering and Public Works that estimated Victoria businesses distribute more than 17 million single-use plastic bags a year, of which as many as 798,000 are littered and not collected. However, the report conceded there were no reliable statistics on this point. The report said:

Reducing the waste accumulated from single-use shopping bags will prevent litter and its associated downstream environmental, economic and social costs. ...

[9] The report set out a number of possible policy options, including a ban on plastic bags combined with a fee to deter a corresponding increase in the use of paper bags. It said:

... This option is not recommended due to the lack of customer choice and the misalignment in logic caused by banning a bag with less environmental impact. This combination could be supported if the plastic bags were creating a much worse local litter problem, when compared to other bag alternatives, but the evidence to support such a claim has not been identified in the City.

[10] It recommended that, as an initial step, the City work with local businesses to promote a voluntary fee for both plastic and paper bags.

[11] At the same time, the City solicitor said in a report to council, dated May 25, 2016 that the City's power to regulate businesses would allow it to ban the use of plastic bags:

... if it is satisfied that unregulated use of single use plastic bags has negative local impacts such as increased littering, impact on the landfill, clogging City sewers, etc.. On the other hand, if the only concern or reason for regulating or banning single-use plastic bags relates to their alleged global environmental impact, such regulation would most likely fall under the authority to regulate for the protection of the natural environment. Bylaws enacted under this authority require ministerial approval, potentially significantly limiting Council's regulatory power.

[12] On March 23, 2017, council considered a further report from the Director of Engineering and Public Works, reporting on consultations that had taken place with businesses and other interested parties. (The date on the report is March 14, 2016, but its content clearly shows that to be a typographical error). It says, in part:

The volume of single use plastic bags entering the waste stream and escaping collection systems is a growing concern for cities, and should be addressed by improved waste management schemes and more sustainable consumer behaviour. The wholesale adoption of sustainable, re-usable retail bags is considered an ideal outcome, if the bags are fabricated, used and recycled in the manner that minimizes environmental and social impacts. Introducing regulations to promote the reduction of single-use plastics is an

effort to change consumer behaviour to reduce single-use packaging and its impacts on landfills and the surrounding environment.

... It should be noted that single use plastic retail bags out-perform paper bags in most life cycle impact areas, except when they are discarded as litter, which can harm the natural land and ocean environments. Plastic bag litter may persist for several decades may result in ecosystem decline and can harm wildlife.

[13] The report refers to a comment from provincial staff that a bylaw banning plastic bags would fall under the City's power to protect the natural environment, but provincial approval would be required. Other documents indicate the source of that comment to have been an email from a senior policy analyst in the Ministry of the Environment. There is no evidence the City raised the matter with the province at the ministerial level.

[14] Council directed staff to continue consultations and report back with a draft bylaw in October 2017. City staff submitted that draft along with a report dated October 23, 2017.

[15] Like the draft bylaw submitted by Surfrider two years earlier, the draft prepared by City staff prohibited the sale or free provision of plastic bags, subject to certain exceptions. Unlike the Surfrider draft, it allowed businesses to provide paper or re-usable bags for a fee if customers requested them. The report explained:

... The draft bylaw establishes controls necessary to reduce the risk of any corresponding and significant increase in single-use paper bag use, or an excessive use of reusable bags – both of which could have more damaging environmental and local waste management impacts when compared to the corresponding reduction of plastic bags. Although paper bags perform better if littered (i.e. they break down more easily), they require more energy and create more waste and pollution, as compared to a common single use plastic bag. ...

... The free provision of single-use materials represents a systemic business/consumer transaction that privileges short-term convenience over long term sustainability. The current overuse of plastic checkout bags in our community is unsustainable over the long term and has been identified by many in the public to be inconsistent with the values of Victorians. The single-use plastic bag is powerful, ubiquitous example in our community of "throw-away consumerism" and is not merely unsustainable due to the upstream and downstream environmental impacts of plastic waste, but due to the wasteful and prevalent cultural norms that are consuming scarce resources in a manner that is not economically or socially sustainable.

[16] Under the heading “Problem Definition,” the report said:

A large volume of single use plastic retail bags is entering the waste stream and escaping collection systems, and can be addressed by improved waste avoidance schemes and more sustainable business practice and consumer habits....

Introducing regulations to promote the reduction of single-use materials is aligned with universal waste management hierarchical principles to first reduce waste at the source, thereby eliminating the frequent and common instances where consumers are accumulating material that becomes waste after only a few uses. A wholesale and rapid shift away from prominent, single-use materials will reduce the waste-management burden across the chain of collection, transport, and product end-of-life.

[17] The report said that the City’s waste management costs were increasing for a number of reasons and it was difficult to estimate how much could be saved by a ban on plastic bags alone:

More accurate and comprehensive detail across our operational and logistics chains would be required in order to quantify such savings or impacts. That being said, any reduction in waste material can help promote reduced garbage volume and pickup frequency, reduced contamination, litter reduction, GHG savings, human resources implications etc. Reducing the transport of low density material is a benefit. Drastically reducing any mobile plastic film also helps reduce the risk of fouling underground storm water systems, which will be increasingly impacted in seasons with heavy rainfall, that are becoming more frequent/severe in our changing climate.

[18] City staff held further meetings with retail and business representatives between October and December 2017 and received emails from individual members of the public. That resulted in some amendments to proposed Bylaw 18-008. The amended version received three readings on December 14, 2017 and was adopted on January 11, 2018.

### **ANALYSIS**

[19] The petitioner brings its application pursuant to s. 623 of *LGA*, which allows the Court to “set aside all or part of the municipal instrument for illegality”. The application may be made by; (a) an elector of the municipality or; (b) a person interested in a bylaw. The City does not dispute the petitioner’s standing. The

petitioner also relies on the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241 [JRPA] to ask the Court to review the City's decision to adopt Bylaw 18-008.

[20] Challenges to municipal legislation may raise two distinct questions that attract different standards of review. The issue raised in this petition is whether the governing legislation gives the City the legal authority to enact Bylaw 18-008. That is a true question of jurisdiction to be reviewed on a standard of correctness: *Nanaimo (City) v. Rascal Trucking Ltd.*, 2000 SCC 13 at para. 33; *Society of Fort Langley Residents for Sustainable Development v. Langley (Township)*, 2014 BCCA 271 [Society of Fort Langley] at para. 10

[21] If a municipality has the power to adopt a bylaw, its decision to do so is reviewable on a standard of reasonableness. The deference owed to municipal decisions in such cases recognizes that municipal councils are elected and accountable to voters: *Nanaimo (City)* at para 35.

[22] That deferential standard is consistent with s. 1(1) of the CC, which reads:

1 (1) Municipalities and their councils are recognized as an order of government within their jurisdiction that

(a) is democratically elected, autonomous, responsible and accountable,

(b) is established and continued by the will of the residents of their communities, and

(c) provides for the municipal purposes of their communities.

[23] This petition seeks a declaration that Bylaw 18-008 is *ultra vires* and so does not raise any issue that attracts a reasonableness standard. I mention that standard only because decided cases must be read with some care to identify which question was before the court. Deferential language used when the court was considering the reasonableness of a municipal action may not be applicable to a question of whether the action fell within the municipality's power.

[24] Section 8(3) of the CC lists a number of matters in relation to which a municipal council "...may, by bylaw, regulate, prohibit and impose requirements...". These include: "(j) protection of the natural environment".

[25] However, s. 9 identifies some of those matters as being ones in which the province has concurrent authority and imposes limitations on the municipal authority:

9 (1) This section applies in relation to the following

\*\*\*

(b) bylaws under section 8 (3) (j) [*protection of the natural environment*];

\*\*\*

(3) Recognizing the Provincial interest in matters dealt with by bylaws referred to in subsection (1), a council may not adopt a bylaw to which this section applies unless the bylaw is

(a) in accordance with a regulation under subsection (4),

(b) in accordance with an agreement under subsection (5), or

(c) approved by the minister responsible.

(4) The minister responsible may, by regulation, do the following:

(a) establish matters in relation to which municipalities may exercise authority as contemplated by subsection (3) (a), either

(i) by specifying the matters in relation to which they may exercise authority, or

(ii) by providing that the restriction under subsection (3) only applies in relation to specified matters;

(b) provide that the exercise of that authority is subject to the restrictions and conditions established by the regulation;

(c) provide that the exercise of that authority may be made subject to restrictions and conditions specified by the minister responsible or by a person designated by name or title in the regulation.

(5) The minister responsible may enter into an agreement with one or more municipalities that has the same effect in relation to the municipalities as a regulation that could be made under subsection (4).

\*\*\*

[26] There is no evidence the City ever sought or obtained approval under s. 9(3)(c) and no evidence of any agreement under s. 9(3)(b). I have been referred to one regulation made under ss. 9(3)(a) and (4), which will be discussed later in these Reasons.

[27] The petitioner says Bylaw 18-008 required provincial approval under s. 9 because City council was responding to the issues raised by Surfrider and was



acting to protect the natural environment, including the ocean environment beyond the City's borders.

[28] The City relies on s. 8(6) of the CC, which says: "A council may, by bylaw, regulate in relation to business."

[29] The term "regulate" is broadly defined in the Schedule to the CC:

**"regulate"** includes authorize, control, inspect, limit and restrict, including by establishing rules respecting what must or must not be done, in relation to the persons, properties, activities, things or other matters being regulated

[30] Therefore, the City says Bylaw 18-008 falls within its power to regulate business because it simply regulates a specific transaction – the provision of a bag to a customer for carrying goods that have been purchased.

[31] In determining whether municipal legislation authorizes the exercise of a certain power, the Court is required take a "broad and purposive approach". That approach is consistent with the general approach to statutory interpretation, which requires "the words of an Act ... to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)*, 2004 SCC 19 at paras. 6-8.

[32] That "broad and purposive approach" is codified in s. 4(1) of the CC, which reads:

4 (1) The powers conferred on municipalities and their councils under this Act or the *Local Government Act* must be interpreted broadly in accordance with the purposes of those Acts and in accordance with municipal purposes.

[33] In *Society of Fort Langley*, the Court of Appeal said at para. 18, after referring to s. 4(1):

[18] Frankly, the Court can take the hint – municipal legislation should be approached in the spirit of searching for the purpose broadly targeted by the enabling legislation and the elected council, and in the words of the Court in *Neilson*, "with a view to giving effect to the intention of the Municipal Council as expressed in the bylaw upon a reasonable basis that will accomplish that purpose".

[34] The Court must consider both the purpose and effects of the bylaw. The purpose is determined by examining both intrinsic evidence, such as the preamble or the general purposes stated in the resolution authorizing the measure, and extrinsic evidence, such as that of the circumstances in which the measure was adopted. The effects are determined by considering both the legal ramifications of the words used and the practical consequences of the application of a bylaw. The fact that a measure has merely incidental effects on area within the powers of another level of government does not render the measure *ultra vires*: *Rogers Communications Inc. v. Châteauguay (City)*, 2016 SCC 23 at paras. 36 and 37.

[35] In *International Bio Research v. Richmond (City)*, 2011 BCSC 471, the Court said at paras. 14 and 15 that the purpose of a bylaw must be taken from its wording and the minutes and public submissions surrounding its adoption, with the primary record being the material before council when it made the decision.

[36] In that case, the Court upheld a municipal bylaw that prohibited the sale of puppies and dogs in pet stores. That jurisdiction was found to exist under two of the enumerated powers in s. 8 of the CC – the power to regulate in relation to business and the power to regulate with respect to animals. In relation to the business regulation power, the Court said at para. 37 that municipal regulation of the conduct of a business, including prohibiting certain types of transactions, is an established aspect of valid business regulation.

[37] If the power to regulate business includes the power to regulate what may or may not be sold, it must be broad enough to regulate how those items are packaged after they have been purchased. However, *International Bio Research* did not raise any issues of concurrent jurisdiction under s. 9.

[38] The purpose of s. 9 is to safeguard the provincial interest: *Peachland (District) v. Peachland Self Storage Ltd.*, 2013 BCCA 273 [*Peachland*] at para. 20. In this case, the Attorney General was given notice of the petition but did not appear and the City argues that is an indication that no provincial interest is engaged. In my view, no such inference can be drawn. The province does not appear to have taken

any position in *Peachland*, but the Court of Appeal nevertheless gave effect to what it found to be the provincial interest.

[39] In *Peachland*, the municipality enacted a bylaw limiting the amount of soil that could be removed from any parcel of land in any calendar year. Section 8(3)(m) of the CC allowed a municipality to “regulate prohibit and impose requirements” in relation to the removal and deposit of soil, but s. 9 required provincial approval for a bylaw that went so far as to prohibit soil removal. The issue was whether a bylaw provision purporting to be only a regulation was in fact so restrictive that it effectively prohibited industrial scale soil extraction. The Court found that it was effectively a prohibition and provincial approval was required.

[40] In *Peachland*, there could be no question that the bylaw purported to govern conduct of parties directly engaged in the activity referred to s. 9 – soil removal. In this case, it is necessary to consider what kind of bylaw can be considered one for “protection of the natural environment” within the meaning of the CC.

[41] As said above, I have been referred only one regulation made pursuant to s. 9(4) of the CC. That regulation, made in 2004, is called the *Spheres of Concurrent Jurisdiction – Environment and Wildlife Regulation*, B.C. Reg. 144/2004. Section 2(1)(a) of that regulation says that a municipality may:

...regulate, prohibit and impose requirements in relation to polluting or obstructing, or impeding the flow of, a stream, creek, waterway, watercourse, waterworks, ditch, drain or sewer...

[42] At one point in argument, counsel for the City suggested that if Bylaw 18-008 is one for protection of the environment, it is authorized by the regulation's reference to sewers, which are also mentioned in Bylaw 18-008's preamble. I cannot give the regulation that broad an interpretation and it is not necessary to do so.

[43] The primary relevance of the regulation, in my view, is that by specifying the activities a bylaw may regulate for protection of the natural environment, it also provides some guidance as to what kind of activities may be sufficiently similar that any municipal regulation of them would require similar provincial approval. In other

words, it provides assistance in interpreting what the legislation means when it refers to a bylaw for protection of the natural environment.

[44] In addition to the provision referred to above, dealing with pollution and obstruction of waterways, the regulation also permits municipalities to regulate or prohibit, subject to certain exceptions, the application of pesticides. It addresses activities of parties specifically involved in activities that may directly affect the natural environment.

[45] For example, the regulation would permit a municipality to prohibit or impose restrictions on a building project that could obstruct or pollute a nearby stream, to specify what materials may or may not be directly discharged into the sewer system, and to define what form of pesticides, if any, homeowners may apply to their lawns and gardens.

[46] I find that, in order to be considered a bylaw for the protection of the natural environment within the meaning of ss. 8(3)(j) and 9(1)(b) of the CC, a bylaw must similarly regulate the conduct of parties directly engaged in activities that are considered to have a negative environmental impact.

[47] The bylaw at issue addresses the transaction in which a merchant packages the goods purchased by a customer. Although a plastic checkout bag may ultimately find its way into the natural environment, that is the result of subsequent actions by the customer or by others who subsequently come into possession of the bag. It is not the inevitable, direct or immediate result of the transaction that Bylaw 18-008 seeks to regulate.

[48] For that reason, I find that Bylaw 18-008, in its immediate effect, is properly characterized as a business regulation, rather than a bylaw for protection of the natural environment.

[49] If I am wrong in my finding of what constitutes a bylaw for the protection of the environment, I find that any environmental purpose or effect of Bylaw 18-008 is at

most additional to its purpose and effect of regulating a particular business transaction.

[50] In *Peachland*, the Court was interpreting a single municipal power in s. 8 of the CC that was subject to the concurrent jurisdiction in s. 9. There was no suggestion, as in this case, that Bylaw 18-008 was enacted under a different s. 8 power to which s. 9 did not apply.

[51] In that regard, some meaning must be given to s. 8(7)(a), which reads:

(7) The powers under subsections (3) to (6) to regulate, prohibit and impose requirements, as applicable, in relation to a matter

(a) are separate powers that may be exercised independently of one another,

[52] I interpret that to mean that a bylaw properly enacted under one of the enumerated powers is valid whether or not it may also be interpreted as engaging one or more of the others.

[53] Clearly, the initial impetus for Bylaw 18-008 was the submission by Surfrider, which addressed broad environmental concerns that extended far beyond the City of Victoria. Those concerns undoubtedly remained at least part of the motivations of at least some members of council.

[54] However, the initial Surfrider presentation was followed by a process, extending over approximately two years, that included council obtaining further information from City staff. That process identified specific municipal concerns related to matters such as waste collection systems, sewers, drainage, and litter control. Of particular importance, in my view, was the final staff report of October 23, 2017, which was before council when it adopted Bylaw 18-008. That report specifically identified those matters of valid municipal purpose, although it also referred to the broader environment questions.

[55] Where a municipal council may have more than one purpose in adopting a bylaw, the governing principle was stated in *Koslowski v. West Vancouver* (1981),

122 D.L.R. (3d) 440. In that case, the municipality had considered a change to its zoning bylaw that would have had the effect of preventing residential development on a certain property. When the property owners obtained interim injunctions preventing the enactment of that bylaw, the City enacted a bylaw to expropriate the property. The stated purpose of the expropriation bylaw was to acquire the property "for sewerage and drainage purposes". The City had installed a sewer line running the length of the property some years earlier but had not acquired an easement at that time.

[56] The property owners argued that the expropriation bylaw had not been passed for the stated purpose, but for an "ulterior" purpose and was therefore illegal. Chief Justice McEachern found that council had been "unremitting" in its opposition to residential development and only focused its attention on sewers when the rezoning failed. But, he said, the existence of another purpose in addition to that stated in the bylaw did not render the bylaw illegal:

53 In this case I believe Council was anxious - even determined - to prevent the use of Lot A for residential purposes, and it was also concerned about the security and safety of its existing sewers. If one were to measure Council's concern in some objective way I would say Council was more Concerned about the proposed use of Lot A which Council understandably believed was an undesirable use, but such an objective measurement would also disclose that Council honestly believed, on the basis of professional advice, that the proposed construction and the existing sewer on an easement or right-of-way were incompatible, or nearly incompatible, even though arrangements could be made that would permit them to survive together.

54 In such circumstances, did Council have an "ulterior" or illegal purpose? There is no doubt, as I have said, that Council was determined to prevent the use of Lot A for the construction of a residence. But Council's opposition was not coloured by an ulterior purpose. It was entitled to be concerned about sewers, and the evidence does not satisfy me that such concern was not legitimate, or that it assumed a lawful purpose just to disguise an ulterior purpose. The fact that Council had more than one purpose, and the fact that one of its purposes may have been its predominant purpose, and beyond its power, does not prevent Council from acting lawfully if it also has an honest purpose that is within its statutory powers.

55 Where is the line to be drawn? When there is more than one purpose, as in this case, the test of predominant purpose may not be appropriate to determine legality because it is not always possible to ascertain the predominant purpose, or the scales may be weighted only slightly one way or

the other. In my view legislative action should be upheld in most cases as long as the Court is satisfied that Council does in fact have a lawful purpose and it acts in good faith. In such circumstances good faith is a proper test by which to judge the conduct of Council. If Council acts in good faith, and it has one or more lawful purposes, then its enactments should not be set aside.

(Emphasis added)

[57] *Koslowski* was applied in *International Bio Research*, where the Court said at paragraph 47 that the municipality need have only one proper purpose for the bylaw to be valid, even if members of council had other motivations.

[58] I find no evidence of bad faith in this case. Although some members of council may have been motivated by broad environment concerns, council's attention was properly drawn to ways in which discarded plastic bags impact municipal facilities and services. Council decided that those issues could be addressed by prohibiting a specific form of consumer transaction. It is true that City staff were unable to quantify the degree to which plastic bags impacted those municipal facilities and services, but the question of whether the bylaw was a reasonable response to the identified municipal problem is not before me. The petition seeks only a finding that the bylaw is *ultra vires* and I find it to be a valid exercise of the City's business regulation power.

[59] The petitioner further argues that the City is regulating and/or prohibiting in relation to municipal solid waste, a power it does not have. That submission relies on the *Environmental Management Act*, S.B.C. 2003, c. 53 [EMA], which gives regional districts (rather than individual municipalities), the authority to make bylaws for the management of municipal solid waste in accordance with a provincially approved waste management plan.

[60] However, the EMA defines "management" as including: "...the collection, transportation, handling, processing, storage, treatment, utilization and disposal of any substance".

[61] Bylaw 18-008 does not deal with any of those activities in relation to solid waste. It is aimed at preventing the creation of certain waste and to avoid the need for any management of that waste. As such, I find that the *EMA* has no application.

[62] The petitioner argues in the alternative that the City has no authority to compel businesses to charge a minimum fee for paper and reusable bags. That submission relies on ss. 193 and 194 of the CC. Section 193 provides that a municipality must not impose fees or taxes except as authorized by the CC or other legislation. Section 194(1) provides that fees may be imposed in respect of:

- (a) all or part of a service of the municipality,
- (b) the use of municipal property, or
- (c) the exercise of authority to regulate, prohibit or impose requirements.

[63] The difference between a fee and a tax is that a fee must bear some relationship to the cost of the service provided, while a tax need not: *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2 at para. 27.

[64] In *Canadian Wireless Telecommunications Association v. Nanaimo (City)*, 2012 BCSC 1017, the Court struck down a bylaw that imposed a fee on telecommunications providers that provided their customers with access to the 911 call answer centre operated by the city. The purported fee was found to be an unauthorized tax. In *Surdell-Kennedy Taxi Ltd. v. Surrey (City of)*, 2001 BCSC 1265, the Court found that an “auction” process for issuing new taxi licences lacked the required connection to the cost of the licencing system.

[65] I do not find either those authorities or the sections of the CC that the petitioner relies on to be applicable to the fees mandated by Bylaw 18-008. The defining feature of either a municipal tax or a municipal fee must, in the ordinary meaning of those terms, be that the funds collected are at some point remitted to the municipality that imposed the tax or fee. That is not the case here. Although Bylaw 18-008 requires businesses to charge a fee for paper or re-usable bags, they are not required to remit those fees or any portion of them to the City.



**CONCLUSION**

[66] For all of these reasons, I find Bylaw 18-008 to be within the City's authority under the CC. The petition must be dismissed.

"Smith J."

THIS PAGE LEFT BLANK INTENTIONALLY

## Appendix E



410-890 Pender St W  
Vancouver, BC V6C 1J9  
(604) 736-0368  
1 (800) 663-5135

1 May 2019

Premier John Horgan  
PO Box 9041, Stn Prov Govt  
Victoria, B.C. V8W 9E1

By electronic mail to: [premier@gov.bc.ca](mailto:premier@gov.bc.ca)

Dear Premier Horgan,

**Subject: Harmonized province-wide action on single-use item reduction**

*Retail is Canada's largest private sector employer with over 2.1 million Canadians working in our industry. The sector annually generates over \$76 billion in wages and employee benefits. Core retail sales (excluding vehicles and gasoline) were \$375 billion in 2018. Retail Council of Canada (RCC) members represent more than two-thirds of core retail sales in the country. RCC is a not-for-profit industry-funded association that represents small, medium and large retail businesses in every community across the country. As the Voice of Retail™ in Canada, we proudly represent more than 45,000 storefronts in all retail formats, including department, grocery, specialty, discount, independent retailers and online merchants.*

RCC is writing to encourage the Government of British Columbia to undertake province-wide harmonized action with respect to the reduction of plastic single-use items. Provincial action is critical to provide: (a) improved environmental outcomes, (b) lower operational and cost impacts for business, and, (c) lower cost impacts for consumers.

We are cognizant that this is a matter currently under discussion with the Federal government and other provinces, including through the Canadian Council of Ministers of the Environment. Prince Edward Island has already instituted harmonized action on plastic check-out bags; the Government of Newfoundland and Labrador has indicated that they intend to take similar action; and, New Brunswick's Minister of Environment has indicated that he is open to harmonized action.

In every Canadian province, retail is one of the most competitive sectors of the economy. Retailers are in constant competition for customers. Even in small towns, retail competition is no longer limited to the brick-and-mortar retailer, as competition now includes online retailers from the United States and overseas. In such a competitive environment, customer demands have increased, profit margins have decreased, and customer service is more important than ever. It is critical that any action taken by the Province not unintentionally tilt the balance to retailers from outside the Province.

On March 13, 2019, Metro Vancouver wrote the Province to encourage harmonized action on single-use items. Metro Vancouver argues that "a provincial single-use item reduction strategy is essential to reducing the volume of plastic entering the waste stream in the Province of B.C." RCC concurs with Metro Vancouver.

Retail is urging British Columbia to act expeditiously because harmonized action is greatly preferable to hundreds of municipalities taking a myriad of different approaches to solutions. A harmonized

## **SUBJECT: Re: Taking Action to Reduce Single-Use Items**

June 28, 2019

---

Retail Council of Canada | Conseil canadien du commerce de détail

approach will provide better environmental outcomes, have lower operational impacts on business, and will be less costly to consumers.

The existing situation, where one local government has already passed a bylaw, at least 28 other local governments have discussed enacting bylaws, and virtually all B.C. municipalities have had a discussion on this subject, is creating a landscape where operating a retail business in British Columbia is becoming overly complex.

### **Retail Action To Date**

RCC members have already taken significant actions to reduce the distribution of single-use items. Ours is a very competitive industry and we are reliant upon Government to maintain a level playing-field. A situation where a store on one side of a major arterial road is subject to one set of rules, and their competitor on the other side of the street is not, is inherently uneven.

1. Retail has already, on a widespread basis, instituted fees for checkout bags. These bag fees have an immediate impact on reduction of bag distribution. However, imposition of the fees has reduced the service we are providing to our customers, and impacted affordability for those consumers of limited means, and those with disabilities.
2. Retail, working with manufacturers, built and funded a blue box system that collects packaging and paper products. Unfortunately, it is less practical to collect soft plastic and small single-use plastics through the blue box and therefore the system is reliant upon depots and return-to-retail to collect many single-use plastics.
3. Retail is a member of the non-profit corporation that operates Encorp Pacific. Encorp is one of the world's most successful used beverage container recovery programs and is the "gold standard" for British Columbia's extended producer responsibility programs.
4. Retail actively participates in 26 different product stewardship programs in British Columbia – the most extensive producer responsibility regime in North America. B.C.'s stewardship programs, in aggregate, already cost British Columbian consumers more than \$500 million annually.
5. For many decades, individual retail stores have voluntarily accepted the return of packaging and products and ensured that end-of-first-life material was managed appropriately.

### **Recommendations**

Civil society continues to press for action to reduce the proliferation of plastic single-use items. The City of Vancouver has undertaken a significant effort and produced very worthwhile recommendations on how to proceed. That work can form the basis of solutions province-wide.

From our experience in jurisdictions with bag bans, mandatory bag fees and other bylaw parameters, we have some relevant learnings for a province-wide action plan:

RetailCouncil.org

Vancouver · Winnipeg · Toronto · Ottawa · Montréal · Halifax

1. **Phased approach:** The retail industry's preference would be to start with a two-year mandatory minimum single-use plastic bag fee prior to the introduction of a ban to move consumers along the path to meaningful reduction. If this is not an option Government is willing to consider, only a mandatory single-use plastic bag ban will produce the result that communities demand.
2. **Simple fee structures:** if the government does choose to institute fees for plastic single-use items, we note that each of these fees will require reprogramming point-of-sale equipment to charge that fee, or staff training to charge those fees. This reprogramming and training is particularly more onerous and unaffordable for small business. Accordingly, we favour one standard flat fee over various plastic single-use items that remains constant – to simplify the operational impacts for small business.
3. **Retailers do not support single-use item fees remitted to the Government** due to the significant administrative and cost burdens. Moreover, this could have an unintended impact of reducing the retailers' interest in providing the best environmental outcome in favour of the lowest cost.
4. **A standardized list of exemptions will simplify consumer-citizens' understanding of the system, and greatly simplify the impacts on retail operations.** Common exemptions include plastic bags used to:
  - package or contain loose bulk items such as fruit, vegetables, nuts, grains, or candy
  - package or contain loose small hardware items such as nails, screws, nut and bolts
  - package or contain or wrap frozen foods, meat, poultry, or fish, whether pre-packaged or not
  - wrap flowers or potted plants
  - protect prepared foods or bakery goods that are not pre-packaged
  - contain prescription drugs and over-the-counter medications
  - transport live fish
  - protect household linens such as draperies, bedding, and other similar items that cannot easily fit in a reusable bag
  - protect fragile and breakable items such as glassware, ceramics, ornaments and lighting products
  - protect newspapers or other printed material intended to be left at the customer's residence or place of business
  - protect clothes after professional laundering or dry cleaning
  - protect tires that cannot easily fit in a reusable bag
5. **Standardized definitions of plastic and reusable bags will also simplify consumer-citizens' understanding of the system and greatly simplify the impacts upon retail operations.** The most common definitions of these are:

"single-use plastic bag" means any bag made with plastic, including biodegradable plastic or compostable plastic, but does not include a reusable plastic bag;

"reusable plastic bag" means a bag with handles that is

(i) intended to be used for transporting items purchased or received by the customer from a business, and

(ii) designed and manufactured to be capable of at least 100 uses.

6. **Environmental impact must be considered.** While we recommend that there be a minimum cost for reusable plastic bags, we note that there is a significant difference between the environmental impact of several bag types. We prefer that the creation of environmentally-benign reusable bags be encouraged.

One municipality initially included language mandating that reusable bags be machine-washable – which would have excluded jute bags. Other municipalities considered mandating cloth bags, although polyester textiles may contribute a significant volume of micro-plastic to our natural environment. Cotton production not only uses significant water resources, but traceability becomes critical to avoid purchase from jurisdictions with poor labour practices.

7. **It is critical that any law be written in a manner that is respectful of both those with disabilities, and, those of limited income.** (We need to identify ways of answering the needs of those with disabilities and those without stable homes. One unintended consequence of a ban is that people on crutches or using medical devices find it hard to use a paper bag versus a plastic bag with handles. Another is that people living on the street prefer plastic over paper because plastic helps keep belongings dry.)
8. **Affordability and outcomes must be considered together.** The majority of plastic bags distributed by retailers are reused by consumer-citizens for disposing household trash. These are replaced by consumers through the purchase of packages of plastic bags designed for household trash. This has a significant negative impact upon low-income households (and does not provide any meaningful environmental benefit). The province and local government must prioritize actions to reduce consumer demand of plastic bags used to store and transport household trash.
9. **We advocate for language which is flexible enough to permit a retailer to waive any fee for the paper bags (and other paper-fibre single-use items) that will inevitably replace a portion of those plastic bags (and other plastic single-use items) to provide business with the discretion to not charge the disabled, seniors or low-income members of their communities.** The fine provisions also can limit a retailers' ability to appropriately compete in the retail marketplace – for example, offering branded reusable bags for Earth Day.
10. **Great care must be taken when drafting compliance provisions.** Several existing bylaw compliance proposals provide for fines to retail workers who fail to comply with the bylaw. In some cases, the cause of non-compliance may be for a bona fide customer service cause – for example, to replace a low-income consumer's reusable bag

RCC accepts that in the present day there are two outcomes that will replace single-use items – reusable products that may also be made of plastic, and paper products. We are dissatisfied with these outcomes. For example, paper bags are significantly heavier. Their manufacture and transport produce significantly more greenhouse gases. Reusable plastic products are most often comprised of more plastic fibre than single-use items. Only a significant number of reuses of reusable plastic products produces a better environmental outcome.

**SUBJECT: Re: Taking Action to Reduce Single-Use Items**  
**June 28, 2019**

---

Retail Council of Canada | Conseil canadien du commerce de détail

Accordingly, we urge Government to promote innovation in packaging and product design and caution Government not to inadvertently promote a path that leads to lesser environmental outcomes.

RCC and our members welcome discussions with your Government on the issue of single-use plastic items as we continue those discussions with other Provinces. Thank you for taking the views of British Columbia's retail sector into consideration on this issue. Should you have any questions, concerns or comments regarding this letter, please feel free to contact me.

Yours truly,



**Greg Wilson**  
**Director of Government Relations (B.C.)**

**Copy: Hon. George Heyman, MLA, Minister of Environment and Climate Change Strategy**  
**Andrew Wilkinson, MLA, Leader of the Official Opposition**  
**Members of the Legislative Assembly**  
**Metro Vancouver Regional District**  
**Local governments considering plastic ban bylaws**  
**Retail Council of Canada members operating stores, and employing people, in B.C.**

THIS PAGE LEFT BLANK INTENTIONALLY