



## Committee of the Whole Report For the Meeting of December 13, 2018

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**To:** Committee of the Whole **Date:** December 7, 2018  
**From:** Fraser Work, Director Engineering & Public Works  
**Subject:** Checkout Bag Regulation Bylaw Implementation

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### RECOMMENDATION

That Council:

1. Direct the City Solicitor to bring forward amendments to the Checkout Bag Regulation Bylaw:
  - (a) to provide an exemption to the requirement that a business charge a fee for paper bags provided as part of a drive-through food service;
  - (b) to clarify that the exemption for packaging of fish also includes other seafood.
2. Direct staff to delay any enforcement of Checkout Bag Regulation Bylaw until after adoption of any amendments referred to in paragraph 1.
3. Direct staff to report back on the performance of the Checkout Bag Regulation Bylaw after one year of it coming into effect.

### EXECUTIVE SUMMARY

On January 11, 2018, Council adopted the Checkout Bag Regulation Bylaw. The purpose of the Bylaw is to regulate the business use of single use checkout bags and promote the responsible and sustainable business practices that are consistent with the values of the community, which aim to reduce the creation of waste and associated municipal costs, and to better steward municipal property, including sewers, streets and parks. The Bylaw came into effect July 1, 2018 and included a provision to transition businesses away from plastic checkout bags by using existing checkout bag stock before January 1, 2019.

Since the Bylaw came into effect, City staff have continued to educate and liaise with business stakeholders to provide guidance, clarification and supporting information related to the Bylaw. A City/business focus group was convened to identify how the City could best support the transition to reusable bags, in compliance with the Bylaw. The City developed education and information tools to support bylaw communication with customers. Three information sessions were also held to support a broader understanding of the requirements and details of the Bylaw. The City also implemented a public awareness campaign to prepare customers for the change.

The City held additional meetings with food service businesses to discuss their unique compliance concerns related to paper bag specifications and associated charges. It was clear that businesses were able to transition away from plastic checkout bags, but were challenged to meet the paper bag fee terms of the regulation. In July 2018, Restaurants Canada sent an email to the City raising

Bylaw compliance concerns shared amongst their members. The concerns centred on the price sensitivity of the paper bag costs for smaller orders, and the food safety considerations of using customer-provided reusable bags for packaging open food. A subsequent letter from Restaurants Canada was sent to the City in October 2018, requesting that the Bylaw be amended to delay the enforcement period. In November 2018, staff held a workshop with Restaurants Canada and other food service business representatives to discuss the details of their correspondence and to explore potential solutions to their logistical and food safety issues.

Staff have reviewed the food service concerns and recommend Council consider amending the Bylaw in advance of any enforcement activities in 2019. The proposed option would exempt paper bag fees for the drive through food services, where bag numbers are not known at point of sale and reusable bag alternatives are not viable due to food safety requirements. This recommendation would still require food service businesses to charge a fee for paper bags at front counter operations and for delivery services. Staff assess that this approach aligns with the spirit and intent of the bylaw, and honours the unique challenges of drive-through food services at this early phase of City checkout bag regulation. Opportunity for industry to innovate exists in this case, as it does in other areas where exemptions are already applied. The City would support and promote industry's continued efforts to innovate away from single use materials that quickly become waste after one or only a few uses.

In November, 2018, staff also completed a review of current business readiness and compliance with the Bylaw. The results indicated that there is a high-degree of compliance in the move away from plastic checkout bags. Several businesses do still distribute plastic bags as part of their usage of legacy stock, which is authorised until January 1, 2019. Thus far, there is a lesser degree of compliance with food service businesses charging a fee for paper and reusable bags, and with businesses meeting the paper bag labelling requirements.

Staff recommend Council consider amending the bylaw to exempt the requirement that a business charge a fee for paper checkout bags provided as part of a drive-through food service, and to withhold enforcement of the penalties in the Bylaw until after amendments are officially completed. Staff will continue to educate and enforce the Bylaw in 2019, and report back to Council with overall Bylaw performance and any recommended modifications or improvements.

## **PURPOSE**

The purpose of this report is to provide Council with options to address compliance concerns with the Checkout Bag Regulation Bylaw raised by the food service sector and members of the Accessibility Working Group.

## **BACKGROUND**

The single-use plastic bag is a powerful, ubiquitous example in our community of "throw away consumerism", causing materials to quickly become waste after only one or few uses. 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, and many in the public have suggested that the continued overuse of single-use plastic bags is inconsistent with the values of Victorians. Single use plastic bags impose social, financial and environmental costs when littered on our beaches or in the public realm, and when collected, transported and managed in our landfill. The continued practice of distributing single-use plastic checkout bags is an unsustainable, wasteful and prevalent cultural norm.

Staff had engaged and analysed the issue starting in early 2016, and presented several reports and recommendations to meet Council's direction to phase in a ban on plastic checkout bags.

On December 14, 2017, Council completed the initial three readings of the approved Bylaw and endorsed a set of recommendations that directed staff to:

- Implement the Checkout Bag Regulation Bylaw, effective July 1, 2018;
- Deliver the proposed engagement and education program between January and December 2018; and
- Include in the 2018 the financial plan an allocation of \$30,000 from 2017 surplus to complete the necessary engagement and education programs.

On January 11, 2018 Council adopted the Checkout Bag Regulation Bylaw No. 18-008.

## ISSUES AND ANALYSIS

### Bylaw Engagement

Prior to the bylaw drafting, staff consulted with several stakeholder groups, and held three workshops with businesses after 10 meetings with community and stakeholders groups, and online, social, news and direct information and correspondence. Staff have continued to engage with businesses and the public since the Checkout Bag Regulation Bylaw was adopted on January 11, 2018. In advance of the Bylaw coming into effect, staff convened a focus group to identify opportunities for the City to support businesses in compliance with the Bylaw. The recommendations of the focus group suggested that the City create communication tools that businesses could use to help inform customers and reduce confusion related to the Bylaw. The City also held three business information sessions and developed a campaign to help build public awareness of the Bylaw.

Over this six month period staff distributed communication tools to more than 350 business and responded to more than 200 email inquiries. Approximately 90% of emails came from businesses seeking clarification and information related to the following:

- **General Information:** Requests from businesses seeking general guidance or specific interpretation with the language of Bylaw (78% of emails)
- **Fees:** Requests from businesses seeking specific guidance on the application of paper and reusable bag fees, including whether taxes need to be charged and whether the fees need to be remitted to the City (18% of emails)
- **Food Safety:** Concerns with the hygiene of reusable bags for the purpose of packaging food (4% of emails)

Implementation of the Bylaw included a transition period to allow businesses to use up their remaining plastic checkout bags and to focus on Bylaw education and awareness.

The following key issues are discussed in more detail below and have been considered by staff in terms of the current checkout bag regulation language and intent:

- Food service sector challenges,
- Seafood minor language change,
- Paper bag material specifications and labelling.

## **Food Service Sector Checkout Bag Considerations**

Food service businesses and representatives participated in the engagement process in 2017. During those sessions, a Vancouver Island representative from the BC Restaurant and Food Service Association (BCRFA) acted as a main point of contact for the Victoria food service sector. Two special meetings and one workshop were also held to focus on the food service sector to better understand their unique Bylaw issues and concerns. Staff also held one session focused on Bylaw information specific to food service businesses in advance of the Bylaw coming into effect.

In July 2018, Restaurants Canada sent an email to the City (Appendix A) raising the following Bylaw compliance concerns:

- That restaurant customers are price sensitive and additional fees could compromise their customer relations;
- That printed paper and packaging already has an embedded fee to account for the recycling costs associated with the provincial extended producer responsibility program; and
- That the introduction of potentially non-hygienic reusable bags into the food packaging process could compromise food safety.

An additional letter from Restaurants Canada dated October 25, 2018 (Appendix B) was sent to the City requesting that the Bylaw be amended to delay the enforcement period past January 1, 2019 to allow time for operational concerns with the Bylaw to be addressed, communicated and implemented.

In November 2018, staff held a workshop with Restaurants Canada and their members to better understand their concerns. The majority of the compliance challenges raised at the workshop were categorized as logistical or food safety related. Participants also indicated that their businesses did not use plastic checkout bags, and as a result their concerns were related to the Bylaw provisions associated with paper and reusable bags. While many stakeholders have historically indicated concerns over bag fees imposed on the customer, drive-through food services do encounter a unique challenge where reusable bags pose operational and food safety challenges.

### ***Drive-Through Food Service Issues***

After consultation with food service businesses to better understand their Bylaw compliance concerns, staff consider pursuing options to address the following issues:

- Food Safety Procedures for Drive-Through Food Service – The paper bags used to package take-out food are integrated into the food preparation process and form a component of restaurant food safety procedures. Customer provided reusable bags are not permitted to enter this process as a result of cross-contamination health risks.
- Unavoidable Customer Price Increases for Drive-Through Orders – Drive-through packaging processes restrict the opportunity for customers to provide their own reusable bags on the basis of food safety risks. Since hygienic reusable takeout containers do not exist in the Victoria market, it is inevitable that a drive-through customer use a paper bag and pay the required fee.

### **Clarification of Exemption for Frozen or Raw Foods**

Following the adoption of the Bylaw, concern was raised by a member of the Accessibility Working Group that the exemption in section 4(1)(c) is ambiguous in that it refers to fish and not other seafood. This poses a concern in relation to the packaging of foods which may pose a hazard to persons with allergies to some seafood products. Although technically the legal definition of “fish” is broad enough to cover all seafood, it is possible that this could confuse some businesses or the public. Therefore, to avoid any uncertainty, an amendment to specifically include “seafood” in section 4(1)(c) could reduce any confusion.

### **Technical Specifications for Paper Bags**

Staff have identified that the two largest paper bag manufactures serving British Columbia are able to produce paper bags with 40% post-consumer recycled paper and that at least four packaging distributors currently supply local businesses with paper bags that meet the technical specifications of the Bylaw. This list of suppliers has been provided to business through the City’s website or upon request, and through our business association partners. Suppliers are confident that there is an adequate supply of compliant paper bags to meet the requirement of Victoria businesses given that four of the six identified paper bag distributors and manufacturers serve the entire North American market.

### **Checkout Bag Compliance Performance Review**

In November 2018, staff completed a review of business readiness and compliance with the Bylaw. Businesses were categorized and assessed as follows:

- **Major Retail and Grocery** - Staff conducted in-person visits and phone calls with all major retail and grocery businesses.
- **Small and Medium Enterprise (SME) Retail** - Staff conducted visits to a random sample of businesses to assess compliance and readiness with the provisions in the Bylaw specifically intended to reduce single-use checkout bags.
- **Food Service** - Staff collected information as part of the ongoing targeted consultation process for this sector in addition to a small number of random sampled restaurants.
- An additional audit of businesses was completed to assess whether paper bags distributed by businesses met the technical specification of the Bylaw.

The following table includes the results of the in-person visits conducted with businesses to review their compliance with the Bylaw, discussed below. All businesses indicated to staff that if they were still using plastic bags, it was old bag stock, which they will no longer offer as of January 1, 2019.

Category of Business	Number of Businesses Visited (% of total)	Businesses that have stopped using plastic checkout bags	Businesses charging a fee for paper and reusable bags
Major Retail and Grocery	13 (100%)	92%	90%
SME Retail	79 (6%)	85%	82%
Food Service	45 (7%)	91%	38%

A further review of the paper checkout bags provided by businesses suggest that approximately only one-third of the bags are fully compliant with the definition of a “Paper Bag” in the Bylaw.

Overall, the Bylaw compliance and readiness review indicates that:

- There is a high degree of compliance with the provision that businesses not sell or provide a customer with a plastic checkout bag.
- All businesses expressed intent to be fully compliant (ie. through elimination of all plastic checkout bags) before January 1, 2019.
- There is a high degree of compliance with major retail and grocery and SME retail businesses charging a fee for paper and reusable bags.
- There is a low degree of compliance with food service businesses charging a fee for paper and reusable bags.
- There is currently a low degree of compliance with businesses meeting the full technical paper bag specifications.

## OPTIONS AND IMPACTS

Options are presented below for Council's consideration in addressing the Bylaw compliance issues identified through consultation with representatives from the food service sector.

### Drive-Through Food Service

Compliance issues for food service businesses relate to food safety incompatibilities with drive-through service operations. The following options are presented for Council's consideration:

#### Option 1 – Exemption by Business Activity (**recommended**)

Option 1 proposes an exemption to the requirement that a business charge a fee for paper bags provided as part of a drive-through food service.

##### *Impacts*

- This option would allow quick service restaurants to continue to follow their current food safety, transactional and packaging procedures for drive-through operations.
- Under this option, the exemption would not apply to self-serve or takeout activities at the front counter of a restaurant, nor would it apply to delivery services. In these cases, opportunities exist for the customer to bag the food themselves using a reusable bag, or in the case of delivery, alternative or reusable packaging options are available.
- This option would still require food service businesses to ask customers whether they need a bag.

#### Option 2 – Altering Small Paper Bag Dimensions

The Checkout Bag Regulation Bylaw includes a provision that a business does not need to charge a fee for paper bags less than 15 cm by 20 cm. Option 2 proposes altering the dimensions of a "Small Paper Bag" in the Bylaw to encompass the dimensions of paper checkout bags commonly used by food service businesses to package drive-through orders.

##### *Impacts*

- This change would encompass the majority of paper bags used for drive-through service operations.
- This change could have the unintended consequence of exempting paper checkout bags used by other types of business or could encourage a business to use multiple small bags instead of a single large bag at checkout.

### Option 3 – Exemption by Business Type

Option 3 proposes an exemption to the requirement that a business charge a fee for paper bags for any business categorized as food service.

#### *Impacts*

- This option would allow quick service and full service restaurants to continue to follow their current food safety, transactional and packaging procedures.
- The objective of the Bylaw to reduce single-use checkout bags could be met through maintaining the requirement that a business ask first whether a customer needs a bag, but this provision is difficult to enforce and is a weaker tool for changing behaviour than a fee.

### Option 4 – No Change

This option proposes that the Bylaw language be left as is and that no amendments be made to address compliance concerns raised by stakeholders from the food service sector.

#### *Impacts*

- Restaurants could continue to use paper bags as part of their food safety procedures but they would be required to charge customers a fee for the bags.
- This option raises challenges for drive-through food service where orders are paid before the food is packaged and where food safety procedures do not allow customer-provided reusable bags to enter the food preparation process.
- It is anticipated that leaving the Bylaw unchanged would not result in a reduction of single-use paper bags from drive-through operations since viable reusable alternatives are not currently available in the Victoria market.

### Clarification of Exemption for Frozen or Raw Foods

A member of the Accessibility Working Group raised concern that the term fish may be ambiguous in capturing hazards to persons with allergies to some seafood products.

### Option 1 – Replace “fish” with “seafood” in Section 4(1)(c) (recommended)

Option 1 proposes an amendment to the exemption in section 4(1)(c) of the Checkout Bag Regulation Bylaw to specifically include “seafood”.

#### *Impacts*

- This option adds clarity to business or customer interpretation of section 4(1)(c) of the Bylaw.

### Option 2 – No Change

Option 2 proposes that section 4(1)(c) in the Bylaw remained unchanged using the legal definition of “fish” to cover all seafood.

#### *Impacts*

- This option may confuse business or customer interpretation of the Bylaw.

## NEXT STEPS

In the current Bylaw, January 1, 2019 concludes transition provisions, which will require that a checkout bag provided by a business is in compliance with the Bylaw. Any amended Bylaw needs to be read by Council should they decide to provide an exemption or make any change. Upon Council's decision related to these recommendations, staff will continue to support compliance at their discretion through ongoing education, engagement and enforcement. Ongoing engagement and education activities will carry forward into 2019, and staff will continually assess Bylaw and checkout bag performance in preparation for the report that Council directed staff to present one year after the Bylaw coming into effect.

### *Accessibility Considerations*

The recommended Bylaw amendment addresses the concerns raised by a member of the Accessibility Working Group.

### *Financial Plan Considerations*

The recommendations in this report can be accommodated into regular operations and therefore do not have implications to the Financial Plan.

## CONCLUSION

Staff continue to engage community and business stakeholders during the transition period and into the next phase of the checkout bag regulation program. Staff have brought forward unique concerns raised in relation to drive-through food services that escaped the initial engagement and Bylaw development processes. Minor changes to the Bylaw are recommended by staff that are intended to reduce undue risks of food safety and those instances where reusable bag alternatives may not yet be suitable. Staff consider that the recommended amendments do not deviate from the spirit or the intent of the Bylaw, and can be reviewed in the future, as industry continues to innovate to find the most sustainable ways to manage single use materials and reduce unsustainable business practices. Staff will report back after or before one year of Bylaw implementation with a review of Bylaw performance and any additional considerations for Council.

Respectfully submitted,




Rory Tooke  
Manager, Sustainability, Assets &  
Support Services



Fraser Work  
Director, Engineering and Public Works

Report accepted and recommended by the City Manager:

  
Date: Dec 7, 2018

### List of Attachments

Appendix A – Email from Restaurants Canada, dated July 18, 2018

Appendix B – Letter from Restaurants Canada, dated October 25, 2018