



## Committee of the Whole Report For the Meeting of January 30, 2020

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**To:** Committee of the Whole **Date:** January 24, 2020  
**From:** Fraser Work, Director of Engineering & Public Works  
Tom Zworski, City Solicitor  
**Subject:** Checkout Bag Regulation Bylaw

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### RECOMMENDATION

That Council:

1. Give three readings to Checkout Bag Regulation Bylaw No. 20-025 ("Bylaw") at the daytime meeting of Council on January 30, 2020;
2. Direct the City Clerk to forward the Bylaw to the Minister of Environment and Climate Change Strategy for approval in accordance with section 9 of the *Community Charter*, and
3. Adopt the Bylaw once it has received approval of the Minister.

### EXECUTIVE SUMMARY

In 2018, the City adopted the Checkout Bag Regulation Bylaw No. 18-008, a business regulation bylaw enacted pursuant to municipal authority to regulate business, to regulate distribution of checkout bags by businesses in Victoria. The validity of this bylaw was challenged by a plastic industry lobby group. This challenge was initially dismissed by BC Supreme Court and the bylaw came into effect on July 1, 2018. However, in July 2019 the BC Court of Appeal overturned this decision and declared the bylaw invalid on the ground that it was an environmental measure rather than a business regulation. As such, the Court of Appeal ruled that it should have been enacted under the municipal power to pass bylaws for the protection of the natural environment and that it required provincial approval prior to adoption. On January 23, 2020, the Supreme Court of Canada declined to hear the City's appeal.

It is estimated that prior to the adoption of the bylaw in 2018, Victoria businesses distributed over 17 million plastic checkout bags to city residents each year. Many of these bags escape collection and present significant risks to municipal infrastructure and the environment. A significant portion of these bags also escape recycling systems and end up in the regional landfill. These risks can be avoided through the wholesale adoption of sustainable reusable bag alternatives.

The implementation of the 2018 bylaw has been considered highly successful due to its rapid adoption and compliance rate by local businesses, and the enthusiastic community responses. Even after the Court of Appeal ruling, the majority of local customers and businesses continued to adopt reusable bag alternatives, and acted as if the bylaw was still in effect. It has often been noted by community business and residents that single-use plastic checkout bags do not align with the values of Victorians.

In light of the Supreme Court of Canada declining to hear the City's appeal, the only way for City to implement the regulations first introduced in the 2018 bylaw is to re-enact the bylaw under the authority to protect the natural environment and seek provincial approval for it. Therefore, it is recommended that Council give three readings of the revised bylaw, attached as Appendix A, and forward it to the minister for provincial approval.

The proposed new bylaw is generally the same as the 2018 bylaw with the following changes:

1. Preamble has been amended to expressly identify that the bylaw is being adopted for the protection of the natural environment;
2. The enactment clause has been amended to identify section 8(3)(j) [protection of the natural environment] of the *Community Charter* as the authority for the bylaw in place of section 8(6) [regulation of business];
3. Section 4(1)(c) of the bylaw, which includes an exemption to allow for use of plastic bags for certain foods, has been amended to expressly include a reference to "seafood" to avoid any uncertainty as to the scope of the exemption;
4. Section 6 of the bylaw, which sets out the penalty for violation of the bylaw, has been amended to include a single fine provision (minimum \$100 and maximum \$10,000) to make it consistent with general practice, to provide flexibility for the courts to impose a fine that is truly appropriate to the circumstances, and to eliminate any legal uncertainty as to the validity of this provision; and
5. Transition provisions contained in the original bylaw have been removed as there is no need for gradual introduction of the new bylaw as its substantive provisions are the same as those of the 2018 bylaw, which was successfully introduced through a gradual process in 2018 and 2019.

Respectfully submitted,



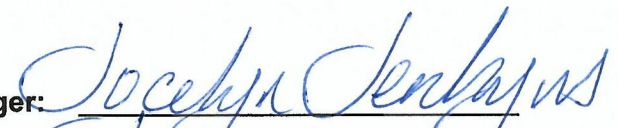
Fraser Work  
Director of Engineering & Public Works



Tom Zworski  
City Solicitor

Report accepted and recommended by the City Manager:

Date:



Jocelyn Denby  
Jan 24, 2020

**List of Attachments:**

Appendix A – draft *Checkout Bag Regulation Bylaw No. 20-025*