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## MEMORANDUM

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June 26, 2015

*Re: Municipal Authority to enact a bylaw banning plastic bags*

The following memorandum outlines the authority the City of Victoria has to enact a bylaw banning plastic bags.

### **I. Brief Conclusions**

There is overlapping authority between municipalities in British Columbia and the Province in respect of the protection of the natural environment. However, the Province has specifically provided that municipalities 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, whether or not it is located on private property. Pursuant to this power specifically designated by the Province, a bylaw banning plastic bags is within the jurisdiction of the City of Victoria to enact to prevent single-use plastic bags from pollution and obstructing local waterways.

The first part of this memorandum reviews some of the laws that apply to the power of a municipality to protect the natural environment. The second part of this memorandum applies the law to indicate the source of the City of Victoria's authority to enact a bylaw banning plastic bags.

### **II. The law**

The *Community Charter* (the "*Charter*") is one of the major pieces of legislation that gives municipalities the powers required to meet the needs of their communities.<sup>1</sup>

Pursuant to the *Charter*, some of the purposes of a municipality include providing for stewardship of the public assets of its community,<sup>2</sup> and fostering the economic, social and environmental well-being of its community.<sup>3</sup>

#### **A. The general power of a municipality to regulate for the protection of the environment**

Section 8(3) (j) of the *Charter* sets out that a municipal council may, by bylaw, regulate, prohibit and impose requirements in relation to the protection of the natural environment. This power includes the power to regulate, prohibit and impose requirements, as applicable, respecting persons, property, things and activities in relation to the matter.<sup>4</sup>

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<sup>1</sup> Ministry of Community, Sport & Cultural Development: Online at:  
[http://www.cscd.gov.bc.ca/lgd/gov\\_structure/community\\_charter/faqs.htm](http://www.cscd.gov.bc.ca/lgd/gov_structure/community_charter/faqs.htm)

<sup>2</sup> *Community Charter*, (the "*Charter*"), SBC 2003, c 26, s 7(c).

<sup>3</sup> See note 1, s 7(d).

<sup>4</sup> See note 1, s 8(7)(b).

In addition, the term “regulate” is defined in the *Charter* and it includes - authorize, control, inspect, limit and restrict, including by establishing rules respecting what must be done or not be done, in relation to the persons, properties, activities, things or other matters being regulated.<sup>5</sup>

It should be noted that this particular power may not be used to do anything that a council is specifically authorized to do under Part 26 [*Planning and Land Use Management*] or Part 27 [*Heritage Conservation*] of the [Local Government Act](#).<sup>6</sup> These parts of the *Local Government Act* do not appear to grant specific authorization for the implementation of a bylaw banning plastic bags.

The *Charter* goes on to provide examples of this particular municipal power to regulate, which includes the following powers:

- a) to provide that persons may engage in a regulated activity only in accordance with the rules established by bylaw;
- b) to prohibit persons from doing things with their property;
- c) to require persons to do things with their property, to do things at their expense and to provide security for fulfilling a requirement.

#### B. Shared jurisdiction with British Columbia

The *Charter* sets out that these powers provided to the municipality are subject to any specific conditions and restrictions established under the *Charter*, or under another Act, and must be exercised in accordance with the *Charter* unless otherwise provided.<sup>7</sup>

One of the restrictions on the power of a municipality to regulate in relation to the protection of the natural environment is found in section 9 of the *Charter*, which concerns areas of shared jurisdiction with British Columbia. Section 9(1)(b) specifically provides that bylaws for the protection of the natural environment fall into a “sphere of concurrent authority” with the Province. This means that in recognition of the Provincial interest in this matter, a municipality may not adopt a bylaw for the protection of the natural environment 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.<sup>8</sup>

##### i. *Regulations under subsection 4*

Under subsection 4, the minister responsible, which in this case appears to be the Minister of Water, Land and Air Protection, may enact regulations that do the following:

- (a) Establish matters in relation to which municipalities may exercise authority either:
  - i. by specifying the matters in relation to which they may exercise authority, or
  - ii. by providing that the restriction only applies in relation to specified matters;

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<sup>5</sup> See note 1, Schedule, Definitions and Rules of Interpretation.

<sup>6</sup> See note 1, s 8(7)(c).

<sup>7</sup> See note 1, s 8(10).

<sup>8</sup> See note 1, s 9(3).

- (b) provide that the exercise of the municipal authority is subject to the restrictions and conditions established by the regulation;
- (c) provide that the exercise of the municipal 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.<sup>9</sup>

The Province has passed a regulation under subsection 4 called the *Spheres of Concurrent Jurisdiction - Environment and Wildlife Regulation* (the “*Environment Regulation*”),<sup>10</sup> which specifies the matters a municipality may regulate on in respect of protecting the natural environment. Section 2(1) (a) of the *Regulation* provides 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, whether or not it is located on private property”.

This above power gives the City of Victoria the clear jurisdiction to enact a bylaw banning single-use plastic bags in order to prevent the single-use plastic bags dispensed by local businesses from finding their way into local waterways, which cause pollution and obstruction.

Furthermore, this provision is not subject to any restrictions in the *Regulation*, and there are no other provisions in the *Regulation* that appear relevant to implementing a bylaw banning plastic bags.<sup>11</sup>

The content of the *Regulation* is managed by way of a Consultation Agreement between the Ministry of Water, Land and Air Protection, the Union of BC Municipalities, and the Ministry of Community, Aboriginal and Women’s Services (the minister responsible for the *Charter*). Over time, the parties to the Agreement are able to monitor, review and potentially amend the *Regulation*. The Agreement provides that municipalities can bring forward proposals for amending the *Regulation*, which will be reviewed by a committee and possibly recommended. Presently, Section 5 of the Agreement establishes areas where municipal bylaws for the protection of the natural environment will not be considered. These areas include:

- Environmental agreements;
- Pesticide management;
- Waste management;
- Contaminated sites;
- Special wastes;
- Water management;
- Air management;
- Parks and protected areas; and
- Wildlife and fish recreation.

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<sup>9</sup> See note 1, s 9(4).

<sup>10</sup> *Environment and Wildlife Regulation*, BC Reg 235/2008.

<sup>11</sup> The *Cumulative Regulation Bulletins* 2014 and 2015 do not indicate any non-consolidated amendments to this *Regulation* that may be in effect. Available online at: <http://www.qp.gov.bc.ca/statreg/bulletin/index.htm#list>

While these are broad categories, the Agreement provides specific details about the types of bylaws that are restricted. These details do not specifically apply to a bylaw banning single-use plastic bags.

*ii. Agreements under subsection 5*

Subsection 9(5) provides that 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).

*iii. Ministerial approval*

A municipality may also seek approval from the minister responsible to implement a bylaw respecting the natural environment if it has not been granted the authority to do so through a subsection (4) regulation or a subsection (5) agreement.

**III. The application of the law to the facts**

The City of Victoria, by way of the *Charter*, has the general authority to enact bylaws for the protection of the natural environment. However, British Columbia has concurrent authority or shared jurisdiction with municipalities in respect of the protection of the natural environment. As a result of this overlap, a municipality may only validly regulate in this particular area if it does so in accordance with a regulation established by the Province, an agreement made with the Province, or an approval issued by Province.

Pursuant to the provincial *Environment Regulation*, municipalities have the authority to:

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, whether or not it is located on private property.

As noted, this above power gives the City of Victoria the clear jurisdiction to enact a bylaw banning single-use plastic bags in order to prevent the single-use plastic bags dispensed by local businesses from finding their way into local waterways, which cause pollution and obstruction.

Further, the power to regulate in respect of the protection of the natural environment includes the power to limit and restrict in relation to the matter being regulated, in this case, single-use plastic bags. Therefore, it is within the power of the City of Victoria to enact a bylaw that imposes an outright ban on the sale and distribution of single-use plastic bags.