



STAFF REPORT TO COUNCIL

Council Meeting: FEBRUARY 11, 2020

500 Matterson Drive, Ucluelet, BC V0R 3A0

FILE NO: 3900-25

FROM: NICOLE MORIN, CORPORATE / PLANNING CLERK

REPORT NO: 20-12

SUBJECT: SINGLE-USE ITEM REGULATION BYLAW No. 1266, 2020

ATTACHMENT(S): APPENDIX A – BYLAW No. 1266, 2020

RECOMMENDATION(S):

1. **THAT** “District of Ucluelet Single-Use Item Regulation Bylaw No. 1266, 2020” be introduced and given first, second and third reading.
2. **THAT** a copy of the Bylaw be sent to the Minister of Environment and Climate Change Strategy for approval.
3. **THAT** an opportunity for representations from the public be provided before adoption.

PURPOSE:

The purpose of this report is to introduce a revised single-use item bylaw for Council’s consideration.

BACKGROUND:

In May of 2019, Council adopted “District of Ucluelet Single-Use Plastic Regulation Bylaw No. 1247, 2019” (the “2019 District Bylaw”). The 2019 District Bylaw was enacted pursuant to the municipal authority to regulate business under section 8 (6) of the *Community Charter* in order to regulate the distribution of paper and plastic bags by businesses in Ucluelet. District of Ucluelet and District of Tofino adopted essentially the same regulations in order to ensure a cohesive regulatory scheme across the West Coast, and modelled the regulations on a similar bylaw passed by the City of Victoria (the “City”) in 2018 (the “Victoria Bylaw”).

In 2018, a challenge to the validity of the Victoria Bylaw was dismissed by BC Supreme Court and the Victoria Bylaw came into effect on July 1, 2018. In July 2019, the BC Court of Appeal overturned the Supreme Court decision and declared the Victoria Bylaw invalid on the grounds 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, which required approval from the (then) Minister of Environment prior to adoption.

On January 23, 2020, the Supreme Court of Canada declined to hear the City's appeal and the Court of Appeal's decision is final.

Even after the Court of Appeal ruling setting aside the Victoria Bylaw, the 2019 District Bylaw remains unchallenged and in force, and the majority of local customers and businesses in Ucluelet and Tofino continue to adopt reusable bag alternatives.

DISCUSSION:

The implementation of the 2019 District Bylaw, and similar District of Tofino bylaw, has been considered highly successful due to the rapid adoption and compliance by local businesses, and the enthusiastic community response. Following the guidance from the BC Court of Appeal, staff is recommending that Council give consideration to the enactment of Bylaw No. 1266 which would:

1. Repeal the 2019 District Bylaw; and
2. Enact a single use item regulation under the concurrent sphere of authority to protect the natural environment found in section 8(3)(j) of the *Community Charter*.

Section 9 of the *Community Charter* requires that before a bylaw is adopted under the concurrent authority to protect the natural environment, approval from the Province must be sought. One of the ways listed in section 9(3) is through approval of the minister responsible. Therefore, before Council adopts Bylaw No. 1266, approval from the Minister of Environment and Climate Change Strategy is required.

The proposed new Bylaw No. 1266 has similar provisions to the 2019 District Bylaw with the following changes:

1. The preamble has been amended to expressly identify that the bylaw is being adopted for the protection of the natural environment;
2. Section 4 of the bylaw, which lists the exemptions to allow for single use bags in certain cases, has been amended to expressly exempt small paper and plastic bags only (under 15cm x 30cm) to avoid any uncertainty as to the scope of the exemption; and
3. Transition provisions contained in the original bylaw have been removed as there is no need for gradual introduction of the new bylaw.

POLICY OR LEGISLATIVE IMPACTS:

Council's power to amend or repeal a bylaw is subject to the same requirements as the power to adopt a new bylaw under that authority (S. 137 of the *Community Charter*). As "District of Ucluelet Single-Use Plastic Regulation Bylaw No. 1247, 2019" was adopted under section 8 (6) [business regulation] of the *Community Charter*, its repeal is subject to the same notification and public comment provisions as its adoption.

Before repealing Bylaw No. 1247, Council must:

- give notice of its intention in the form and manner, at the times and as often as the council considers reasonable, and
- provide an opportunity for persons who consider they are affected by the bylaw to make representations to Council.

Staff recommends that notice be given through the agenda publishing process (email subscription, social media, website) and that an opportunity for public representations be provided before adoption, after ministerial approval.

Timeline:

The timeline for adoption and enforcement of Bylaw No. 1266 is as follows:

- February 2020: Bylaw receives first, second and third reading and is forwarded to Minister Minster of Environment and Climate Change Strategy for approval.
 - Spring 2020: Opportunity is provided for public representations to Council.
 - Spring/Summer 2020: Bylaw No. 1266, 2020 is adopted and Bylaw No. 1247, 2019 is repealed.
 - Spring/Summer 2020: Bylaw No. 1266, 2020 comes into force.

FINANCIAL IMPACTS:

There are no additional financial impacts associated with the enactment of Bylaw No. 1266 or the repeal of Bylaw No. 1247.

OPTIONS REVIEW:

1. **THAT** Council give first, second, and third reading to the "District of Ucluelet Single-use Item Regulation Bylaw No. 1266, 2020". **(Recommended)**
 2. **THAT** Council make amendments to Bylaw No. 1266 and give first, second and third reading to the "District of Ucluelet Single-use Item Regulation Bylaw No. 1266, 2020" as amended.
 3. **THAT** Council provide alternative direction to staff.

Respectfully submitted: Nicole Morin, Corporate / Planning Clerk
Mark Boysen, Chief Administrative Officer

DISTRICT OF UCLUELET

BYLAW NO. 1266, 2020

A bylaw to regulate single-use items.

WHEREAS the *Community Charter* authorizes a council to regulate in relation to protection of the natural environment with approval from the minister responsible;

AND WHEREAS the Council of the District of Ucluelet wishes to establish a bylaw to reduce the creation of waste from single-use items and the associated municipal costs to better steward municipal property, including sewers, streets, parks, beaches and waterways;

AND WHEREAS the Council of the District of Ucluelet wishes to promote responsible and sustainable environmental practices that are consistent with the values of the community;

NOW THEREFORE the Council of the District of Ucluelet, in open meeting, enacts as follows:

1. Citation

This bylaw may be cited for all purposes as the “District of Ucluelet Single-Use Item Regulation Bylaw No. 1266, 2020.”

2. Definitions

In this bylaw:

“Checkout Bag” means:

- (a) any bag that is intended for the purpose of transporting items received by a customer from a Business;
- (b) and includes Paper Bags, Plastic Bags, or Reusable Bags;

“Business” means any person, organization, or group engaged in a trade, business, profession, occupation, calling, employment or purpose that is regulated under the Business Licence Regulation Bylaw and, for the purposes of section 3, includes a person employed by, or operating on behalf of, a Business;

“Drinking Straw” means a tube used to transfer a beverage from a container to the mouth of the individual drinking the beverage by suction;

“Reusable Bag” means a bag with handles that is for the purpose of transporting items purchased by the customer from a Business and is designed and manufactured to be capable of at least 100 uses;

“Paper Bag” means a bag made out of paper, but does not include a Small Paper Bag;

“Plastic Bag” means any bag made with plastic, including biodegradable plastic or compostable plastic, but does not include a Reusable Bag;

“Plastic Drinking Straw” means a straw made primarily of plastic, including biodegradable or compostable plastic;

“Small Paper Bag” or “Small Plastic Bag” means any bag made out of paper that is less than 15 centimetres by 30 centimetres when flat.

3. Regulation

(1) Except as provided in this Bylaw, no Business may provide a customer with any of the following items:

- (a) Checkout Bag;
- (b) Plastic Drinking Straw.

(2) A Business may provide a Checkout Bag to a customer only if:

- (a) the customer is first asked whether they need 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) \$0.25 per Paper Bag; and
 - (ii) \$2.00 per Reusable Bag.

(3) For certainty, no Business may:

- (a) sell or provide to a customer any of the items listed in section (1) except as provided by this Bylaw; or
- (b) provide a Checkout Bag to a customer free of charge.

(4) No Business shall deny or discourage a customer from using their own Checkout Bag or drinking straw.

4. Exemptions

(1) Section 3 does not apply to Small Paper Bags or Small Plastic Bags used to:

- (a) package loose bulk items such as fruit, vegetables, nuts, grains, and candy;
- (b) package loose small hardware items such as nails and bolts;
- (c) contain or wrap frozen foods, meat, poultry, or fish, whether pre-packaged or not;
- (d) wrap flowers or potted plants;
- (e) protect prepared foods or bakery goods that are not pre-packaged;
- (f) contain prescription drugs received from a pharmacy;

(2) Section 3 does not apply to Plastic Bags used to protect linens, bedding, construction materials or other similarly large items that cannot easily fit in a Reusable Bag;

(3) This bylaw does not apply to the sale of Plastic Bags intended for use at the customer’s home or business, provided they are prepackaged and sold in packages of multiple bags.

- (4) This bylaw does not apply to the sale of Plastic Drinking Straws intended for use in the customer's home, provided they are sold in packages of multiple straws.
- (5) Notwithstanding section 3(2) and 3(3), a Business may provide a Checkout Bag without asking and free of charge if the bag has been donated to the Business for the purpose of being reused by other customers, and:
 - (a) the bag has already been used by a customer, or
 - (b) in the case of a Reusable Bag, the bag is made from 100% recycled materials.

5. Offence

- (1) A person commits an offence and is subject to the penalties imposed by this bylaw, and the Offence Act if that person:
 - (a) contravenes a provision of this bylaw;
 - (b) consents to, allows, or permits an act or thing to be done contrary to this bylaw; or
 - (c) neglects or refrains from doing anything required by a provision of this bylaw.
- (2) Each day that a contravention of a provision of this bylaw occurs or continues shall constitute a separate offence.

6. Enforcement

- (1) Bylaw Enforcement Officers of the District of Ucluelet are responsible for the enforcement and administration of this Bylaw.
- (2) For the purposes of this bylaw, the designated Bylaw Enforcement Officer means any of the following:
 - (a) Chief Administrative Officer or his designate;
 - (b) Bylaw Enforcement Officer or his designate or
 - (c) Manager of Community Planning or his designate.
- (3) No person shall unreasonably obstruct or prevent a Bylaw Enforcement Officer from carrying out his or her duties as prescribed in this bylaw. The Bylaw Enforcement Officer is authorized and empowered to inspect, compel and require that all the regulations and provisions in this bylaw are carried out.
- (4) Every person who contravenes any provision of this bylaw, or who suffers or permits any act or thing to be done in contravention of this bylaw, or who refuses, omits, or neglects to fulfil, observe, carry out, or perform a duty or obligation imposed by this bylaw, shall be deemed to have committed an offence against this bylaw and:
 - (a) shall be liable to a fine set out in "Schedule A" attached hereto and forming part of this bylaw, as amended from time to time; or
 - (b) shall be liable to a penalty set out in the "Municipal Ticket Information System Bylaw No. 949, 2004" as amended from time to time; or
 - (c) shall be liable, upon summary conviction, to the penalties provided under the

“Offence Act” and amendments thereto; or
(d) any combination of (4) (a), (b), and (c).

(5) The intent of this Bylaw is to set standards of general public interest, and not to impose a duty on the District of Ucluelet or its employees to enforce its provisions and:

- (a) A failure to administer or enforce its provisions or the incomplete or inadequate administration or enforcement of its provisions is not to give rise to a cause of action in favour of any person; and
- (b) The grant of any approval or permission or issuance of any permit is not a representation, warranty or statement of compliance with the Bylaw and the issuance thereof in error is not to give rise to a cause of action.

7. Severability

If any provision of this Bylaw is held to be invalid by any court of competent jurisdiction, that provision shall be severed and its severance shall not affect the validity of the remainder of the Bylaw.

8. Effective Date

This Bylaw shall come into force and effect on [Month, Day, Year of Adoption].

9. Repeal

“District of Ucluelet Single-Use Plastic Regulation Bylaw No. 1247, 2019” is hereby repealed.

READ A FIRST TIME this [] day of [], 2020.

READ A SECOND TIME this [] day of [], 2020.

READ A THIRD TIME this [] day of [], 2020.

APPROVED BY THE MINISTRY OF ENVIRONMENT AND CLIMATE CHANGE STRATEGY this [] day of [], 2020.

NOTICE GIVEN UNDER SECTION 59(2)A AND (3) OF THE COMMUNITY CHARTER on this [] day of [], 2020.

OPPORTUNITY TO MAKE REPRESENTATIONS TO COUNCIL UNDER SECTION 59(2)(B) PROVIDED this [] day of [], 2020.

ADOPTED this this [] day of [], 2020.

CERTIFIED A TRUE AND CORRECT COPY of the “District of Ucluelet Single-Use Item Regulation Bylaw No. 1266, 2020.”

Mayco Noël
Mayor

Mark Boysen
Corporate Officer

THE CORPORATE SEAL of the
District of Ucluelet was hereto
affixed in the presence of:

Mark Boysen
Corporate Officer

SCHEDULE "A"
Fines and Penalties

Fines for tickets issued pursuant to this Bylaw shall be as follows:

Description of Offence	Section #	Fine - 1st Offence	Fine - if paid within 7 days	Fine - 2nd and Each Subsequent Offence
Providing a Checkout Bag to a customer except as provided in the bylaw	3(1)(a)	\$100	\$75	\$200
Providing a Plastic Drinking Straw to a customer except as provided in the bylaw	3(1)(b)	\$100	\$75	\$200
Denying or discouraging customer's own Checkout Bag or Drinking Straw.	3(4)	\$100	\$75	\$200