

# Options to Address Single-Use Items, Misleading Advertising, and Textile Waste in the City of Toronto

**Date:** June 25, 2018

**To:** Public Works and Infrastructure Committee

**From:** General Manager, Solid Waste Management Services

**Wards:** All

## SUMMARY

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This report responds to the Public Works and Infrastructure Committee's direction received on April 11, 2018, to report back on the ability of the City to address various waste materials as well as producer claims with respect to the recyclability of products and packaging.

The report outlines:

- A potential process for reducing and/or eliminating single-use or takeaway packaging or products not accepted in the City's Blue Bin Recycling Program.
- The ability of the City to address misleading advertising of a product or packaging with respect to recyclability or compostability that affects the City.
- The ability of the City to require retailers of textile material to post reuse, recycling and waste disposal options at the point of purchase.

Solid Waste Management Services, as part of the Long Term Waste Management Strategy, will investigate measures to address single-use items, misleading advertising, and textile waste to continue to reduce contamination in the City's Waste Diversion Programs and divert waste from landfill.

Starting in 2018, staff will begin to develop a work plan aimed to reduce the use of single-use or takeaway packaging or products, which will include pre-consultation with residents and stakeholders to identify items for targeted reduction and solicit input on policy tools. Solid Waste Management Services will take steps to address misleading advertising that make claims of a product's recyclability or compostability when it is not accepted in the City's Waste Diversion Programs, including sending letters to manufacturers to help reduce contamination in the City's Waste Diversion Programs. Staff will also seek opportunities to educate residents and retailers on management options for textile waste, such as reuse, donation or return to retailer, to further reduce contamination in the City's Blue Bin Recycling Program.

## RECOMMENDATIONS

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The General Manager, Solid Waste Management Services, recommends that:

1. The Public Works and Infrastructure Committee receive this report for information.

## FINANCIAL IMPACT

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There are no immediate financial implications resulting from this report.

The Interim Chief Financial Officer has reviewed this report and agrees with the financial impact information.

## DECISION HISTORY

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At its meeting of April 24, 25, 26, and 27, 2018, City Council adopted item PW28.8, entitled "State of Toronto's Blue Bin Recycling Program". City Council adopted the April 11, 2018, recommendations of the Public Works and Infrastructure Committee on the same report, directing the General Manager, Solid Waste Management Services to report to Public Works and Infrastructure Committee at the July 10, 2018 meeting on: a process to reduce and/or eliminate single-use or takeaway packaging or products not accepted in the City's Blue Bin Recycling Program; the ability of the City to address misleading advertising of product or packaging recyclability; and the ability of the City to require retailers of textile material to post reuse and recyclability options at the point of purchase.

The City Council Decision document can be viewed at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.PW28.8>

At its meeting of April 11, 2018, Public Works and Infrastructure Committee adopted Item PW28.9 entitled "Review of Single-Serve Coffee Pods in the City of Toronto's Waste Diversion Programs".

The Public Works and Infrastructure Committee Decision document can be viewed at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.PW28.9>

At its meeting of January 19, 2018, the Public Works and Infrastructure Committee considered item PW26.7, entitled "Reducing the use of Single-Use Products" and referred the item to the General Manager, Solid Waste Management Services, for consideration as part of the Long Term Waste Management Strategy.

The Public Works and Infrastructure Committee Decision document can be viewed at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.PW26.7>

At its meeting of September 19, 2017, the Public Works and Infrastructure Committee adopted item PW23.6, entitled "Municipal Principles to Guide Transition of the Blue Bin Program". This report committed staff to update Committee and City Council regarding progress toward developing an amended Blue Box Program Plan under the *Waste Diversion Transition Act, 2016*, the final amended Blue Box Program Plan submitted to the Minister of Environment and Climate Change for the transition period under the *Waste Diversion Transition Act, 2016*, and when the Province issues regulations or policy statements focusing on designated material and new diversion Program Plans under the *Resource Recovery and Circular Economy Act, 2016*.

The Public Works and Infrastructure Committee Decision document can be viewed at: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.PW23.6>

At its meeting of July 4, 5, 6, and 7, 2017, City Council adopted Item PW22.4 entitled "New Provincial Waste Management Framework Legislation - Bill 151: Waste-Free Ontario Act, 2016 - Update" and requested that the General Manager, Solid Waste Management Services report back to the September 19, 2017, Public Works and Infrastructure Committee, on a list of proposed principles that will guide the discussions and negotiations between the City and producers of designated materials collected in the City's Waste Diversion Programs. City Council authorized the General Manager, Solid Waste Management Services to renew and extend until 2022, the authorization for the General Manager, Solid Waste Management Services and/or designate to negotiate and enter into any agreements (including but not limited to agreements to receive external funding) necessary for the City's continued waste diversion operations throughout the transition period under the *Waste Diversion Transition Act, 2016*, based in part on the updated pricing information presented in the Confidential Attachment 1 to the report (May 24, 2017) from the General Manager, Solid Waste Management Services, on terms satisfactory to the General Manager, Solid Waste Management Services and each in a form satisfactory to the City Solicitor and in accordance with the Confidential Attachment 1.

The City Council Decision document can be viewed at: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.PW22.4>

At its meeting of July 12, 13, 14, and 15, 2016, City Council adopted Item PW14.2 entitled "Final Long Term Waste Management Strategy", and adopted the recommended options and implementation plan, as presented in Attachment 1 to the report (June 2, 2016) from the General Manager, Solid Waste Management Services.

The City Council Decision document can be viewed at: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.PW14.2>

At its meeting of June 19, 2013, the Public Works and Infrastructure Committee adopted without amendment Item PW24.4 entitled "Options to Reduce the Use and Disposal of Plastic Shopping Carryout Bags in Toronto".

The Public Works and Infrastructure Decision document can be viewed at: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.PW24.2>

At its meeting of November 30, December 1, 2, 4 and 7, 2009, City Council adopted item PW28.18, entitled "Potential Changes to the *Waste Diversion Act, 2002*, and the Blue Box Program Plan and Impacts on Hot Drink Cup and Plastic Take-out Food Containers", including direction to defer any further work with respect to policies and By-law development related to plastic take-out food containers and hot drink cups until after Provincial policies have been established.

The City Council Decision document can be viewed at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2009.PW28.18>

At its meeting of December 1, 2, and 3, 2008, City Council adopted, as amended, item PW20.1 entitled "Proposed Measure to Reduce In-Store Packaging Waste and Litter, Municipal Hazardous and Special Waste and Plastic Water Bottles".

The City Council Decision document can be viewed at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2008.PW20.1>

At its meeting of June 19, 20, and 22, 2007, City Council adopted, as amended, Item EX9.1 entitled "Proposed Initiatives and Financing Model to Get to 70% Solid Waste Diversion by 2010" (the "Target 70 Report").

The City Council Decision document can be viewed at (refer pages 1 to 9):

<https://www.toronto.ca/legdocs/mmis/2007/cc/decisions/2007-06-19-cc10-dd.pdf>

At its meeting of December 11, 12, and 13, 2007, City Council adopted, as amended, Item PW11.13, entitled "Response to Council Motions – Getting to 70% Diversion by 2010".

The City Council Decision document can be viewed at (refer pages 110 to 111):

<https://www.toronto.ca/legdocs/mmis/2007/cc/decisions/2007-12-11-cc15-dd.pdf>

## **COMMENTS**

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Solid Waste Management Services operates one of the most comprehensive and effective recycling programs in Ontario, recovering over 200,000 tonnes of Blue Bin materials annually. However, as recently reported to City Council, in a report entitled "State of Toronto's Blue Bin Recycling Program", the Blue Bin Recycling Program continues to experience challenges with contamination - or improperly sorted waste - that can make recovering and marketing materials from this program more difficult and costly. Reducing the use of problematic materials such as single-use takeaway products and packaging or addressing the presence of textiles which are not accepted in the City's Blue Bin Recycling Program would be one effective method to address ongoing contamination issues. Moreover, advertising in the Toronto market that makes misleading claims about the products' recyclability or compostability also negatively impacts the City's Waste Diversion Programs, resulting in increased contamination and costs.

A comprehensive strategy to address single-use products not compatible with the Blue Bin Program, as well as to educate ratepayers on what materials are truly recyclable in Toronto, should help reduce contamination in the Blue Bin Recycling Program and address broader environmental goals for the City.

### **Historical Efforts to Address Single-Use or Takeaway Products and Packaging in the City of Toronto**

In 2007, City Council set a waste diversion goal of 70% diversion by 2010, and adopted a variety of measures to achieve this target. Proceeding from the direction of the 'Target 70' report, Solid Waste Management Services has undertaken several steps to establish policies to address single-use and takeaway products or packaging. Methods or tools employed to date include:

- In 2008, the In-store Packaging Waste Diversion Working Group was established consisting of City staff, councillors and representatives from retail sectors, with a mandate to explore a range of mechanisms to reduce single-use and takeaway packaging.
- In 2008, City Council adopted a decision to mandate retailers charge a \$0.05 fee for plastic shopping carry out bags.
- In 2008, Public Works and Infrastructure Committee considered a report that recommended a policy to reduce hot drink cups by mandating a \$0.20 discount for using reusable containers. This report was not adopted, and staff was requested to further consult with the retailers and establish a working group for hot drink cups.
- In 2009, City Council directed that Solid Waste Management Services defer any further work with respect to policies and by-law development related to plastic take-out food containers and hot drink cups until changes to the *Waste Diversion Act, 2002*, are announced. Working groups established to address in-store packaging and hot drink cups were dismissed until Provincial regulation is clear.
- In 2009, City Council adopted a By-law (Toronto Municipal Code - Chapter 604, packaging) that prohibits retailers from offering or providing bags which are not compatible with the City's Blue Bin Recycling Program.
- Between 2009 and 2013, advertising campaigns aimed at changing the purchasing behaviour of residents to reduce waste (e.g., encouraging the use of reusable mugs for coffee and water) were implemented.
- In 2012, City Council declared the Plastic Bag Fee a success and moved to rescind the \$0.05 plastic bag fee. At the same meeting, City Council adopted a motion without notice that would prohibit retailers from distributing single-use plastic carryout bags to customers. In November 2012, City Council decided not to proceed with the bag ban, based in part on privileged legal advice received from the City Solicitor with respect to how the ban was adopted.

- In 2016, City Council adopted the Long Term Waste Management Strategy (the Waste Strategy) which includes a focus on waste reduction and recommendations to consider policy tools to reduce packaging.
- Since 2016, staff participated in consultations on the development of the *Waste-Free Ontario Act, 2016*, where staff advocated for increased regulation on packaging to ensure source reduction and compatibility with municipal programs.
- In 2017/2018, Solid Waste Management Services developed the Addition of New Materials to the City's Waste Diversion Program policy for addition of new materials to the City's Waste Diversion Programs, in consultation with stakeholders and the general public. The new policy places greater responsibility on producers of waste materials to design their product for compatibility with Toronto's Blue Bin and Green Bin programs, and was presented in a report to Public Works and Infrastructure Committee in June 2018.

Solid Waste Management Services has not recently recommended new By-laws or regulatory measures to influence waste diversion to allow the Provincial government to establish policy and regulation and to ensure any municipal regulation coincides with Provincial law. Any policies or regulatory approaches established by the City must follow an appropriately thorough consultation process. Further information on the existing Provincial waste diversion framework and other jurisdictions' approaches to single-use items is available in Attachment 1.

#### *Proposed Process to Determine City Policy on Single-Use and Takeaway Items*

Public feedback received during development of the Long Term Waste Management Strategy indicated strong public support for reducing problematic waste materials such as single-use or takeaway products and packaging. Efforts of the City to reduce these waste materials would be best served by a combination of voluntary and mandatory approaches.

A proposed approach to reducing and/or eliminating these materials in Toronto should commence with public and stakeholder consultation to determine which products and packaging should be targeted, and which approaches will best serve Toronto residents and ratepayers. Beginning in late 2018, Solid Waste Management Services will formulate a work plan and identify resources to undertake:

- Public and stakeholder consultation on voluntary approaches available to the City to address single-use and takeaway products and packaging, including:
- Financial or other incentives to encourage the reduction/elimination of targeted materials from restaurants and retailers.
- Financial or other incentives to encourage residents and ratepayers to reduce their own use of targeted materials.

As well as:

- Public and stakeholder consultation on regulatory approaches available to the City to address single-use and takeaway products and packaging, including:
- The list of single-use and takeaway products and packages to be targeted by the City for reduction/elimination.
- Mandatory signage for locations distributing targeted materials.
- Mandatory fees or levies on sale of targeted materials.
- By-laws banning or restricting the collection or use of targeted materials in the city.

Through feedback received at initial round(s) of consultation, staff will identify voluntary and mandatory approaches to be further developed for implementation. In 2019, staff will report back on which mandatory approaches, if any, were supported by the public consultation process and present Committee and City Council with specific mandatory approaches and By-law options. Further information about the City's authority to implement voluntary and mandatory approaches to address single-use or takeaway products and packaging is available in Attachment 2.

Following a second round of consultation on these specific regulatory approaches, staff would report back with recommendations on specific By-law(s) or changes to the Toronto Municipal Code targeting single-use and takeaway products and packaging. Updates will be provided on progress made to date to identify areas for continuous improvement in addressing the targeted materials. This approach should allow time for the Provincial government to establish new policies and regulations under the *Resource Recovery and Circular Economy Act, 2016*, such that the City can ensure any municipal regulations align accordingly.

### **Addressing Misleading Advertising**

Products and packaging that are sold into the Toronto marketplace are also distributed beyond the City's borders. Materials accepted in municipal waste diversion programs across Ontario are not the same, making producers' messaging on program participation different from municipality to municipality.

As consumers become increasingly aware and concerned about the environmental performance of products, the value of the environmental claims rests on the assurance that the information provided on its proper disposal is credible and objective. It is not only important for environmental claims to be credible for consumers, but the information must be consistent with local municipal waste systems, as inaccurate information increases contamination and processing costs. Misleading advertising of product and/or packaging recyclability and compostability in Toronto can result in harm to the City.

The *Federal Competition Act, R.S.C. 1985*, and the *Provincial Consumer Protection Act, 2002*, each prohibit false, misleading or deceptive representations about products in the marketplace and provide remedies where such representations harm consumers, competitors or others. Those prohibitions can extend to representations about the

recyclability and compostability of packaging which should be tailored to the disposal options provided at the municipal level.

Where a false, misleading or deceptive practice occurs with respect to advertising in Toronto or to Toronto consumers about a product's compatibility with the City's waste disposal system, the City may be in a position to address the harms resulting from such practice in one of several ways:

### *Complaining to a Regulatory Body to Investigate Compliance*

The Competition Bureau Canada, an independent federal law enforcement agency, ensures that businesses operate in a competitive manner. It administers and enforces the *Competition Act*, a law aimed at preventing anti-competitive practices. The *Competition Act* prohibits the making of a representation to the public that is false or misleading in a significant way. The Competition Bureau published a guideline entitled "Environmental Claims: A Guide for Industry and Advertisers", which discusses misrepresentations with respect to use of the term "compostable" and use of the term "recyclable", among other things.

To address industry advertising that misleads the public on whether a product and/or packaging is compatible with the City's Waste Diversion Programs including advertisements that omit disclaimers to consult local municipal programs before disposal, one option for the City would be to submit an advocacy request or complaint to the Competition Bureau for evaluation and investigation. Such investigation could lead to the industry voluntarily taking measures to correct the misleading information or could lead to the Competition Bureau, together with the Ministry of the Attorney General, undertaking civil or criminal enforcement action. If a case is brought to the Competition Bureau and a court determines that there has been conduct that contradicts the *Competition Act* there may be penalties including a requirement to publish a corrective notice, monetary payment for restitution, or even frozen assets.

Similarly, Ontario's *Consumer Protection Act, 2002*, prohibits false, misleading, or deceptive presentations that harm consumers and an offence can result in civil or criminal penalties. To supplement a *Competition Act*, complaint submitted to the Competition Bureau, the City may want to submit a *Consumer Protection Act, 2002*, complaint to the Ministry of Government and Consumer Services which administers and enforces this statute. However, with the focus of the *Consumer Protection Act, 2002*, on protecting consumers, it is not clear how effective this remedy would be for the City, which is not a consumer of the products with advertisements at issue.

### *Correspondences to Product Manufacturers with Misleading Advertisements*

Solid Waste Management Services has in the past sent a joint municipal letter (Regional Public Works Commissioners of Ontario, Association of Municipalities of Ontario, and the Municipal Waste Association) to a brand owner that introduced and advertised their packaging as being compostable. The advertisement campaign was seen as misleading the consumer to believe that the packaging could be placed in the Green Bin, when it was not accepted in any municipal Green Bin Organics Program.



This joint municipal action subsequently resulted in the brand owner removing their product packaging from store shelves.

More recently, manufacturers of single-serve coffee pods have placed misleading advertisements in the Toronto market with claims of the recyclability of their product. As detailed in the April 2018 report to the Public Works and Infrastructure Committee entitled "Review of Single-Serve Coffee Pods in the City of Toronto's Blue Bin Program", consumers influenced by the misleading claims may place their pods in the Blue Bin, further adding to contamination levels and costing the City millions of dollars annually. To mitigate and undo the potential harm to the City's Blue Bin Recycling Program, staff have implemented a work plan to address the misleading advertisements, including tracking changes in contamination levels and preparing correspondences to the manufacturers.

### *Litigation*

A further step beyond complaints to regulatory bodies would be for the City to consider litigating directly against those producers responsible for the false, misleading, or deceptive advertisements in Toronto or to Toronto consumers that is causing harm to the City's waste diversion efforts. City staff will work with the Legal Services Division on a case-by-case basis to consider whether such course of action would be appropriate and effective.

### **Raising Awareness on Reduction and Disposal of Textile Waste**

Contamination in the City's Blue Bin Recycling Program has been steadily increasing and may increase beyond 27% by the end of 2018. As outlined in the April 2018 "State of the Blue Bin Recycling Program" report to Council, this increasing contamination shrinks the number of available markets for material recovered through the Blue Bin Program, and could cost the City an additional \$4 million in processing fees in 2018.

Textiles are one of the common contaminants found in the Blue Bin recycling program. Solid Waste Management Services conducts regular audits of inbound Blue Bin recycling material at the City's contracted material recovery facility. Recent audits indicate that there are approximately 6,000 tonnes of textiles and shoes improperly placed into Blue Bins annually. Textiles are generated by all customer types - residential, multi-residential, commercial, and institutional. The potential diversion impact of recovering textiles from the waste stream is less than 1%. However, textiles have a negative impact when placed incorrectly in the Blue Bin, as clothing and other textile items can get caught and damage sorting equipment at the material recovery facility resulting in lost time and increased costs.

At present, the City does not offer a curbside textile diversion program but has partnered with a non-profit organization to accept textiles brought to the City's Community Environment Day events. Staff are currently developing a collection and reuse strategy for textiles with planned implementation to begin in 2019.

### *Requirement for Retailers to Post Information*

The City has two options to implement a textile diversion awareness campaign through posting of information at the point of purchase: voluntary or mandatory.

### *Voluntary Approaches*

The City will ask retailers to voluntarily place signage to indicate reuse, donation, or proper disposal options for textile materials at the point of purchase. As well, incentive programs could be developed such as reductions to waste fees or commercial licensing fees, to encourage retailers to voluntarily post information.

### *Mandatory Approaches*

Alternatively, City Council could enact a By-law requiring Toronto retailers to post information in their retail establishments. Similar to the By-law discussion in connection with banning certain target material, City staff will need to report back on the climate change, local environmental, economic, health and/or public welfare benefits of such a measure, as well as provide notice and opportunity for public input.

Prior to the implementation of either a voluntary or mandatory approach to requiring retailers to post information on disposal options for textiles, staff will engage textile stakeholder groups (both retailers of new clothing and handlers of used clothing) to discuss textile handling best practices and signage requirements.

### **Next Steps**

As part of the Long Term Waste Management Strategy, Solid Waste Management Services will start a work plan to consult with stakeholders on voluntary and mandatory approaches to single-use or takeaway products and packaging, misleading advertising, and informing residents on textile waste disposal options in late 2018. Staff will also seek collaborative opportunities to address misleading advertising by sending letters to the manufacturers that have placed the advertisements.

Actions to be undertaken by staff will include undertaking pre-consultation with the general public and stakeholders on items to target for reduction, as well as to seek feedback on preliminary policy tools to reduce the use of these items in the City. Staff will report back to Committee and Council in 2019, on which regulatory approaches to reduce the targeted items were supported by the consultation process along with any By-law options requiring further consultation. Staff will also continue to seek opportunities to educate on disposal options for textile waste, such as reuse, donation or return to retailer, to further help reduce contamination in the City's Blue Bin Recycling Program.

### **CONTACT**

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## **SIGNATURE**

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Jim McKay  
General Manager  
Solid Waste Management Services

## **ATTACHMENTS**

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Attachment 1 - Background Information - Provincial Legislation and Jurisdiction Scan

Attachment 2 - Background Information - Addressing Single-use Products and Packaging in Toronto