

Prohibiting Distribution of Plastic Manufactured Items

Date: April 17, 2024
To: Infrastructure and Environment Committee
From: City Solicitor
Wards: All

REASON FOR CONFIDENTIAL INFORMATION

The attachment to this report contains advice or communications that are subject to solicitor-client privilege.

SUMMARY

On December 13-15, 2023, City Council adopted IE9.3 – Update and Action Plan on Single-Use and Takeaway Items Reduction Strategy, including the Circular Food Innovators Fund. Among other things, the Council resolution requests the City Solicitor to report to the Infrastructure and Environment Committee on the legal feasibility of enacting and enforcing, pursuant to the City of Toronto Act, 2006, a by-law that would prohibit retail business establishments in Toronto from providing their customers with the same plastic manufactured items that the federal government prohibits in the Single-use Plastics Prohibition Regulations.

This supplementary report to the report from the General Manager, Solid Waste Management Services entitled Update on Stage 2 of the Single-Use and Takeaway Items Reduction Strategy (the “SWMS Report”) responds to Council’s direction.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council direct that the confidential information contained in Confidential Attachment 1 remain confidential in its entirety, as it contains advice which is subject to solicitor-client privilege.

FINANCIAL IMPACT

There is no financial impact resulting from the adoption of the recommendations in the report.

DECISION HISTORY

At its meeting on December 13, 14, and 15, 2023, City Council adopted item IE9.3 entitled “Update and Action Plan on Single-Use and Takeaway Items Reduction Strategy, including the Circular Food Innovators Fund” with amendments, that adopted the new City of Toronto Municipal Code Chapter 702, Single-Use and Takeaway Items and directed the City Solicitor to report back to the Infrastructure and Environment Committee, by or before the end of the first quarter of 2024, on the City’s legal feasibility to enact and enforce by-laws that would prohibit certain retail business establishments in Toronto from providing their customers with the plastic manufactured items indicated in the Government of Canada’s Single-use Plastics Prohibition Regulations.

The City Council document can be viewed at:

<https://secure.toronto.ca/council/agenda-item.do?item=2023.IE9.3>

COMMENTS

The comments below provide background information about the federal government’s Single-use Plastics Prohibition Regulations and related litigation relevant to the analysis in Confidential Attachment 1.

The Single-use Plastics Prohibition Regulations promulgated under Canadian Environmental Protection Act (CEPA) prohibits a person’s ability to sell and distribute for free, with some exceptions, six types of plastic manufactured items. These items include (i) single-use plastic ring carriers, (ii) single-use plastic straws (with exceptions for single-use plastic flexible straws), (iii) single-use plastic checkout bags, (iv) single-use plastic cutlery, (v) single-use plastic foodservice ware (made from or containing problematic plastics), and (vi) single-use plastic stir sticks (the “six plastic manufactured items”). The Single-use Plastics Prohibition Regulations results from the federal government having first added “plastic manufactured items” to the List of Toxic Substances to Schedule 1 to CEPA.

An application was brought seeking judicial review of the federal government’s designation of “plastic manufactured items’ as toxic. On November 16, 2023, the Federal Court found that the addition of plastic manufactured items to the List of Toxic Substances in Schedule 1 of CEPA was unreasonable and unconstitutional (the “Decision”). The federal government is appealing the Decision. During the appeals process, the Single-use Plastics Prohibition Regulations remains in effect and enforceable because the Federal Court of Appeal paused the Decision from taking effect until the appeal is heard in June 2024 and a judgement is rendered. It is possible

the Federal Court of Appeal's decision could be appealed to the Supreme Court of Canada.

When Solid Waste Management Services was developing Municipal Code Chapter 702, Single-Use and Takeaway Items (the "SUTI Bylaw"), they took into consideration that the Single-use Plastics Prohibition Regulations already regulated the sale and distribution for free the six plastic manufactured items.

Consequently, the SUTI Bylaw only imposes additional requirements on retail business establishments, such as having them ask or having their customers ask for a single-use accessory food item and paper shopping bags before those items are distributed, or allowing customers to use their reusable shopping bags and beverage cups, as well as prohibiting the distribution of paper shopping bags that are incompatible with the City's waste system.

Council is now requesting the City Solicitor to assess the legal feasibility of Council enacting by-laws similar to the Single-use Plastics Prohibition Regulations that would prohibit a retail business establishment operator in Toronto from distributing, for free or at a cost, to their customers the six plastic manufactured items (the "Potential Bylaw"). The Potential Bylaw would be an addition to the SUTI Bylaw.

Confidential Attachment 1 contains advice subject to solicitor-client privilege that responds to City Council's direction in 2023.IE9.3 regarding the feasibility of a City bylaw prohibiting such plastic manufactured items. This report and accompanying Confidential Attachment 1 should be considered in conjunction with the SWMS Report.

CONTACT

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SIGNATURE

Wendy E. Walberg
City Solicitor

ATTACHMENTS

1. Confidential Attachment 1 - Confidential Information