



City of Richmond

Report to Committee

To: General Purposes Committee **Date:** May 14, 2019
From: Peter Russell, Senior Manager, Sustainability and District Energy **File:** 10-6125-07-02/2019-Vol 01

Tony Capuccinello Iraci, City Solicitor

Re: Recovering Costs for Local Climate Change Impacts

Staff Recommendation

1. That the draft letter to the Premier of British Columbia attached to the report titled "Recovering Costs for Local Climate Change Impacts" from the Senior Manager, Sustainability and District Energy dated May 14, 2019, be endorsed; and
2. That the draft Union of British Columbia Municipalities resolution attached to the report titled "Recovering Costs for Local Climate Change Impacts" from the Senior Manager, Sustainability and District Energy dated May 14, 2019, be endorsed.

Peter Russell MCIP RPP
Senior Manager, Sustainability
and District Energy
(604-276-4130)

Tony Capuccinello Iraci
City Solicitor
(604-247-4636)

Att. 2

REPORT CONCURRENCE		
ROUTED TO: Engineering	CONCURRENCE <input checked="" type="checkbox"/>	CONCURRENCE OF GENERAL MANAGER
REVIEWED BY STAFF REPORT / AGENDA REVIEW SUBCOMMITTEE	INITIALS: CS	APPROVED BY CAO

Staff Report

Origin

At the Regular Council meeting held on April 23, 2019, West Coast Environmental Law delegated on their effort to encourage the Province of BC to enable local governments to recover costs by cities for addressing climate change. Following the presentation and discussion, Council endorsed the following resolution:

That the presentation titled “Recovering Climate Costs” by Gordon Cornwall be referred to staff to:

- (1) examine how it aligns with City policies and strategies;*
- (2) provide an analysis of the impacts of any proposed legislation*
- (3) prepare a draft letter to the Province of BC; and*
- (4) prepare a draft resolution to UBCM.*

Background

West Coast Environmental Law presented their ‘Climate Law in our Hands’ campaign and requested that Richmond “*take action to hold the fossil fuel industry accountable for its role in causing climate change and in the climate costs being caused by fossil fuel pollution*” by:

1. Preparing a letter to 20 of the world’s fossil fuel companies asking them to pay for climate costs incurred by the City; and
2. Signing on to the letter to Premier Horgan requesting climate liability legislation.

This report responds to the referral by identifying City’s climate-related programs as it relates to West Coast Environmental Law’s campaign and discussing legal aspects for consideration. A draft letter for distribution to the Premier (Attachment 1) and a draft resolution for the Union of BC Municipalities (Attachment 2) are included in this report.

Analysis

Alignment with City Policies and Strategies

The City has policies and strategies that respond to climate change induced impacts. City assessments and provincial report that the average annual temperature across the province has risen by 1.4 °C since 1900 and that temperatures are expected to increase between 1.3 °C to 2.7 °C by 2050. Average annual rainfall amounts in the winter are expected to increase between 2% to 12% by 2050 but longer periods of drought are predicted in the summer months. Local impacts from these weather variations including longer growing seasons; more frequent and severe heat waves; increased frequency and intensity of storms; and new infectious diseases and pests continue to be recorded in the region. Richmond has made significant investments in response to these climate related concerns including:

- **Sea-level Rise and Flood Protection** – Richmond’s drainage and flood protection system is comprised of 581 km of drainage pipes, 61 km of culverts, 165 km of watercourses, 39 pump

stations and is currently valued at approximately \$1.5 billion. Richmond's dikes are currently at an average elevation of 3.5 m above mean sea level. Climate change studies predict up to a 1 m rise in sea level and 0.2 m of ground settlement by 2100. Predictions also indicate an increase in the frequency and intensity of storms in the region that can lead to extreme flooding and infrastructure loss.

The Council endorsed 2008-2031 Richmond Flood Protection Strategy provides the City with a framework for developing appropriate adaptation responses. The strategy identified the need to address climate change implications specific to Richmond relating to flood protection and called on the City to implement a comprehensive dike improvement program. The Dike Master Plan identifies a long-term upgrade strategy for the City's dikes. The plan sets a goal of increasing the height of Richmond's dike system to a minimum elevation of 4.7 m and further requires that dike upgrades to be able to facilitate a further raising to 5.5 m to accommodate possible additional sea level rise in future years.

The estimated dike upgrade costs to address the predicted 2100 sea level rise scenario is estimated to be hundreds of millions. As dike master planning continues and projects are completed, more information and financial requirements will be available to update costs. The Flood Protection Strategy indicates that the City should pursue a minimum of 50% funding for dike raising from senior government to assist with this program.

The City has prioritized investments for the continued maintenance and improvement of the drainage and flood protection system. Council endorsed the introduction of the Drainage and Diking Utility in 2003 as a dedicated source of funding for drainage and diking improvements. The utility currently generates approximately \$11 million each year. Funds are invested annually into Capital projects to address the effects of infrastructure age, population growth and climate change.

- **Richmond's Invasive Species Action Plan** – Endorsed in 2016 to reduce the economic and environmental risks of invasive species that are influenced, in part, by climate change. The Invasive Species Action Plan has secured \$845,000 in Capital funding since 2015 and \$225,000 provincial funding in 2018.

Analysis of the Impacts of any Proposed Legislation

There is currently limited ability for governments and class action groups to sue fossil fuel producers in nuisance, trespass, and/or negligence for compensation costs incurred as a result of climate change based on current Canadian law. There are currently a number of U.S. cities and states seeking compensation for climate-related infrastructure costs through the federal U.S. court system (under U.S. nuisance and negligence law, similar to that in Canada). Three of these cases in San Francisco, Oakland and New York have recently been dismissed through federal decisions and are awaiting appeal. There are currently no Canadian court cases involving municipalities or provinces, although the City of Victoria (endorsement of a class action suit), and City of Port Moody (sent a letter to 20 fossil fuel companies as requested by West Coast Environmental Law) have initiated courses of action against the fossil fuel industry.

West Coast Environmental Law is seeking provincial legislation for BC that targets large scale fossil fuel producers whose global operations, and use of their products, result in globally detectable levels of emissions. The legislation is modeled on Ontario's tobacco damages and health care cost-recovery legislation and is similar to the climate change legislation bill introduced and defeated in Ontario. Legislation in BC is intended to improve the likelihood of successful court decisions and awards for the Province and municipalities. Establishing causation and attributing the degree of responsibility to a specific group of companies may, however, prove to be an insurmountable evidentiary hurdle in such litigation.

A former member of the Ontario Provincial Parliament put forward a private member's bill (Bill 37) for the enactment of the *Liability for Climate-Related Harms Act* in 2018, which introduced the strict liability standard for climate-related claims. The bill was carried at 2nd reading in April 2018 and was sent to the relevant standing committee, prior to the 2018 Ontario election. It was reintroduced to parliament in October 2018 and was defeated at 2nd reading. It is unlikely that the legislation will be enacted under the current Ontario government. Had the legislation been successfully enacted by the Province of Ontario it would have:

- Reduced the burden of proving causation by setting out a number of criteria for strict liability and various assumptions that create lower evidentiary standards than would normally apply in court without the legislation;
- Applied the legal concept of 'strict liability' to all producers (exploration, recovery, refining, sale) of fossil fuels where globally detectable levels of greenhouse gas emissions can be attributed to their actions/product; and
- Enabled those in Ontario who suffer harms related to climate change impacts to prosecute the fossil fuel industry and seek compensation.

If the Province of BC enacted a similar statute (and accompanying regulations) potential lawsuits would be similar to the Canadian tobacco related health costs recovery lawsuits that are still before the courts. Various private class actions have settled or concluded; including an award of \$15-billion in Quebec. Two big tobacco companies subsequently filed for creditor protection in 2019 however. Even with the evidentiary challenges, the legislation may nevertheless be a useful tool for local governments to pursue compensation for climate change-related costs and harms from the fossil fuel industry if enacted. Although, lengthy, expensive lawsuits would be expected; partnering with the Province and other municipalities in joint litigation may be a solution to reduce legal costs and improve the likelihood of a successful ruling against the fossil fuel industry. In the event such claims are held to be fatally flawed on an evidentiary basis, then this may motivate the Province to enact more effective cost recovery legislation for the benefit of government, including municipalities.

Province of BC and the Union of British Columbia Municipalities

Two municipalities in BC have put forward separate motions that consider legal action against the fossil fuel industry to recover climate change-related costs and that the Province should consider enacting supporting legislation. At the Association of Vancouver Island and Coastal Communities meeting held in April 2019, the City of Victoria resolved:

1. *That UBCM explore the initiation of a class action lawsuit on behalf of member local governments to recover costs arising from climate change from major fossil fuel corporations; and*
2. *That the Province of British Columbia consider legislation to support local governments in recovering costs arising from climate change from fossil fuel corporations.*

The resolution was defeated during the meeting.

The City of Port Moody forwarded similar resolutions to the Union of BC Municipalities and the Federation of Canadian Municipalities in April 2019 that call upon the provincial and federal governments to enact legislation that holds fossil fuel companies financially liable for harms caused by their contributions to climate change. Both resolutions are currently awaiting consideration.

A draft letter to the Premier of BC is included in Attachment 1; it conveys the scale of the impact the City must address related to a changing climate. A draft UBCM resolution from the City of Richmond is also included as Attachment 2 for Council consideration for bringing forward to the 2019 UBCM conference for consideration by voting delegates.

Financial Impact

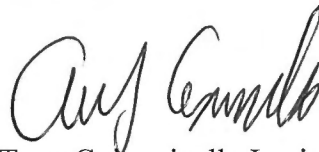
None.

Conclusion

West Coast Environmental Law is promoting their 'Climate Law in our Hands' campaign with a goal to protect taxpayers, the Province, and municipalities from incurring the rising costs of climate change related investments in BC. New provincial legislation would be required to assist in holding fossil fuel companies financially liable. A draft letter to the Premier of BC and draft a UBCM resolution are included in the report.



Peter Russell
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- Att. 1: Draft Letter to Premier Horgan
2: Draft Union of BC Municipalities Resolution

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REGISTERED

Premier John Horgan
P.P. Box 9041 STN PROV GOVT
Victoria, BC
V8W 9E1

Dear Premier Horgan:

Re: Liability for Climate-related Harms Act and Climate Leadership

The City of Richmond commends the government for its actions in 2018 to update the greenhouse gas emissions reduction targets and release CleanBC, which will serve both as a climate action strategy and an economic development plan. Within recent years, Council has provided input to the development of the 2015 BC Climate Leadership Plan and the Province's CleanBC plan, and has successfully championed resolutions on building energy benchmarking and the right to a clean environment through the Union of BC Municipalities.

Climate change is currently the greatest threat facing the Province of BC. As Mayor and Council of the City of Richmond, we write to request that government take immediate action to hold global fossil fuel companies accountable for climate change-related harm and costs that occur in BC, through enactment of a *Liability for Climate-related Harms Act* that establishes clear legal rules of liability for harm caused by climate change. This statute is essential both to protect BC taxpayers against rising costs from climate-related impacts and to give global fossil fuel companies incentives to transition from fossil fuels and join the fight against climate change.

Richmond's location in southwestern BC, where the Fraser River converges with the Pacific Ocean, is adjacent to some of the most productive ecosystems in the world. The mixing of saline ocean water with the Fraser River's freshwater creates an estuary environment that supports a rich and diverse community of aquatic and terrestrial life. Richmond recognizes the importance of creating a sustainable community. Our vision of a healthy, safe and enriched island community with an innovative and prosperous economy and thriving natural systems, sustained for current and future generations is at risk from climate change.

Richmond has invested significantly in the establishment and maintenance of a world-class drainage and flood protection system comprised of 581 km of drainage pipes, 61 km of culverts, 165 km of watercourses, 39 pump stations that is currently valued at approximately \$1.5 billion. The system utilizes the natural and built environment to provide ecosystem services such as drainage, water filtration, green space, and wildlife habitat needed to support the overall connectivity and resiliency of our community.

Richmond has had to invest significant resources to protect the City against against the threats of the climate change. The Province of BC reports that the average annual temperature across the province has risen by 1.4 °C since 1900 and that temperatures are expected to increase from 1.3 °C to 2.7 °C by 2050. Local rainfall patterns are also projected to change. Average annual rainfall amounts in the winter are expected to increase from 2% to 12% by 2050 but longer periods of drought are predicted in the summer months. Local impacts from these weather variations including longer growing seasons; more frequent and severe heat waves; and new infectious diseases and pests continue to be recorded in the region. Richmond has been taking strong action on climate change for over a decade and can demonstrate meaningful achievements. The City reduced its overall greenhouse gas emissions by eight per cent between 2007 and 2010, and by a further four per cent between 2010 and 2015, despite 12 per cent growth in population over that entire period.

Richmond has joined hundreds of cities around the world, representing more than 20 million citizens, who have declared a climate emergency. The movement is a response to the Intergovernmental Panel in Climate Change Report (2018) that listed the areas that drastic actions were needed to offset the risks of accelerating global warming.

Fossil fuel companies have profited by selling products that contribute to climate change. West Coast Environmental Law advised the City that ninety fossil fuel producers are responsible (through operations and products) for about two-thirds of greenhouse gases in the global atmosphere today. Richmond taxpayers have to bear the cost of the impacts of fossil fuel pollution. We are calling on the Province of BC to enact a *Liability for Climate-related Harms Act* to protect the BC taxpayer and send a global message to the fossil fuel industry that they are liable for their actions.

Yours truly,

Malcolm D. Brodie
Mayor

RECOVERY COST FOR LOCAL CLIMATE CHANGE

City of Richmond

WHEREAS local governments have incurred significant costs in response to the real and projected threats of climate change including flooding, sea-level rise and weather variations;

AND WHEREAS fossil fuel corporations profit without sharing the costs of the pollution caused by their operations and their products:

THEREFORE BE IT RESOLVED that the Province enact legislation to hold the fossil fuel industry responsible for its role in causing climate change by making it accountable for costs incurred by governments to adapt to climate change.