



Clause No. 17 in Report No 1 of the Finance and Administration Committee was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting on January 25, 2007.

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MUNICIPAL ACT AMENDMENTS

The Finance and Administration Committee recommends the adoption of the recommendation contained in the following report, January 4, 2007, from the Regional Solicitor:

1. RECOMMENDATION

It is recommended that this report be received for information.

2. PURPOSE

The purpose of this report is to inform Council of amendments to the *Municipal Act, 2001* and to advise of any implications for the Region's operations and administration.

The report also identifies issues on which staff will seek further direction from Council in order to implement new legislative requirements.

3. BACKGROUND

Bill 130, the *Municipal Statute Law Amendment Act, 2006* (the "Act") was enacted on December 20, 2006 and for the most part was proclaimed in force effective January 1, 2007. The Act represents the first comprehensive amendment to the *Municipal Act, 2001* since it came into force in 2003. The 2003 legislation was widely regarded as failing to deliver on its promise of greater autonomy for municipalities. In the ensuing years, many groups, including the Association of Municipalities of Ontario ("AMO"), have lobbied for a more fundamental reform of the relationship between the provincial and municipal governments. In announcing the enactment of the new legislation, the province has stated that it heralds a new era in which local governments will have new powers and greater autonomy.

4. ANALYSIS AND OPTIONS

The Act contains provisions which do appear to broaden the scope of municipal powers. Many prescriptive provisions have been eliminated in favour of more general permissive

language, continuing the trend of the 2003 legislation. To this extent, it represents a positive step towards greater self-governance. As a corollary, new provisions have been introduced which reflect a concern for ensuring accountability and transparency in municipal administration. In particular, compliance with the new legislation will require adoption of a series of policies by Regional Council on a variety of matters. In addition, there are matters within the discretion of individual councils which Regional Council may elect to implement.

The following summary highlights amendments which are of particular significance to the Region.

4.1 Scope of Powers

The new Act appears to confer broader authority for service delivery. It provides that municipalities “may provide any service or thing that the municipality considers necessary or desirable for the public”. This is potentially an extensive power to address local issues as they arise. Municipalities are also given explicit power to pass by-laws in the following broad categories:

- governance structure;
- accountability and transparency of the municipality and its operations;
- financial management;
- public assets;
- economic, social and environmental well-being;
- health, safety and well-being of persons;
- services and things that the municipality is authorized to provide; and
- protection of persons and property, including consumer protection.

As a result, the Region’s legislative authority will no longer be confined to the “spheres of jurisdiction”. Of particular note is the inclusion of environmental, health and safety issues in the scope of municipal powers. Historically, the Region has at times been frustrated in its inability to respond to safety and environmental concerns because it lacked the legislative authority to govern such matters. These new powers should enable the Region to respond appropriately to matters of public health and safety in the future.

The legislation retains the concept of spheres of jurisdiction as a mechanism to assign authority between upper and lower tiers. For instance, waste management, except waste collection, remains exclusively assigned to the Region. Where there has been an exclusive assignment, a municipality will not be permitted to employ the broader power to circumvent the division of powers. For instance, a local municipality could not use the category of “environmental well-being” to implement a waste diversion program which is currently under Regional jurisdiction. To this extent, the spheres of jurisdiction may act as a significant limitation on the broader powers.

The provisions governing migration of service between upper and lower tiers have not been amended.

4.2 General Restrictions

Many restrictions on municipal powers remain in force, particularly with respect to financial matters. The provisions governing financial administration and tax policy have not been substantively amended. There is, however, expanded scope in corporate matters. Municipalities may now establish corporations, appoint members and hold securities. This is a departure from the 2003 legislation which prohibited these activities unless authorized by regulation. The incorporation of the Region's rapid transit corporation was achieved under the regulation and required adherence to stringent procedures and accountability measures. This broadening of power may prove to be more apparent than real, however. The legislation reserves to the province the ability to make regulations governing the exercise of municipal powers in corporate matters. If the existing regulation is made applicable or re-enacted, the new provision will be effectively neutralised.

A further concern is that the legislation reserves an overriding power for the province to restrict municipal powers by regulation, if it is considered necessary or desirable in the provincial interest. This could suspend the operation of municipal by-laws for up to 18 months. There is no indication of the manner in which provincial interest will be determined. This veto power creates uncertainty and could significantly curtail the exercise of municipal powers.

4.3 Delegation of Powers and Duties

The Act provides a general power for Council to delegate its powers and duties. This includes legislative and quasi-judicial powers, which may be delegated to one or more members of Council or a committee. In order to exercise this power, Council must first adopt a policy setting out the scope of delegation and any appropriate conditions. This new provision could potentially provide for a high level of decision making at the committee level, should Council determine that this is desirable. The legislation also provides that legislative and quasi-judicial powers with respect to minor matters may be delegated to staff. This consolidates provisions which have already been implemented, for instance the delegation permitting the Commissioner of Transportation and Works to approve temporary road closures. Council has also delegated to Commissioners the authority to execute standard forms of documents in order to streamline operations. Staff propose to review the existing delegations approved by Council as the basis for developing a new policy for presentation to Council and seek direction on further potential for delegation.

The legislation also provides for delegation to a municipal services board. There is greater flexibility in the power to establish service boards which may now be formed to govern any services and activities rather than being limited to a prescribed list of services.

4.4 Policies and Procedures

Consistent with the theme of greater autonomy, the Act eliminates many prescriptive procedures. These include those governing the sale of surplus property, hiring of employees, procurement of goods and services, and specific notice provisions. These provisions are replaced with a general requirement that a municipality adopt policies governing such matters. Specifically, it will be mandatory for the Region to adopt policies with respect to the following matters:

- sale and other disposition of land;
- hiring of employees;
- procurement of goods and services;
- circumstances in which the Region shall provide notice to the public, and the form of such notice;
- the manner in which the municipality will try to ensure it is accountable to the public for its actions; and
- the delegation of its powers and duties.

Proclamation of this section has been postponed to enable municipalities to develop these policies. There is no indication as yet of the effective date of these requirements.

The Region is currently well positioned to comply with the implementation of these policies. Formal policies have already been developed and approved by Council for the disposal of surplus property, hiring of employees, procurement of good and services and certain notice provisions. The Regional Clerk's Office, in conjunction with Legal Services, is currently developing a more complete policy on notice provisions for presentation to Council.

With respect to the accountability policy, staff recommend seeking further clarification on the intended scope of such a policy. The existing business plan, budget process, financial reporting and agenda management would appear to fulfil many requirements of such a policy. In addition, the Region's compliance with the efficiency and effectiveness standards mandated under the existing legislation would likely be a component of such a policy. Staff anticipate that development of an accountability policy may be a matter of consolidating and restating procedures that are already in place.

4.5 Accountability and Transparency

Some of the more notable amendments to the legislation concern requirements which are designed to address accountability and transparency. These include the authority to establish a code of conduct for Council, the appointment of an Integrity Commissioner, a Lobbyist Registrar, an Ombudsman and an Auditor General. In addition, the roles of Council and the head of Council have been restated to include a duty to ensure the accountability and transparency of the municipality, including the activities of senior management.

Code of Conduct

The Act provides that municipalities may establish a code of conduct for members of Council and local boards. Council cannot provide, however, that a member that contravenes a code of conduct is guilty of an offence.

Integrity Commissioner

Council may appoint a Integrity Commissioner and assign functions associated with overseeing the conduct of Council members, particularly compliance with the code of conduct and any policies regarding ethical behaviour. The Commissioner may conduct inquiries on the request of members of Council or a member of the public. The Commissioner is given a right of access to all documents and reports necessary to conduct an inquiry and prepare a report to Council. Any report to Council on a member's conduct must be made available to the public. If the Commissioner reports that a member has contravened the code of conduct, Council may either issue a reprimand or suspend remuneration paid to the member for a period up to 90 days.

Lobbyist Registry

Municipalities are permitted to establish a lobbyist registry. There is some guidance on the suggested elements of the Registry, including the power to appoint a Registrar to manage the administration.

Ombudsman

The Act further permits the appointment of an Ombudsman who would report to Council and whose broad function is to investigate any decision, recommendation or act in the course of the administration of the municipality. The Ombudsman is granted broad investigative powers, including the authority to require production of information and documents that relate to the matter under investigation.

Auditor General

Council is also permitted to appoint an Auditor General who would essentially be accountable for financial stewardship and for achieving best value in municipal operations.

Each of the above appointments is permissive rather than mandatory. There is no requirement that any of the incumbents be a municipal employee and accordingly appointments may be made on a temporary or ad hoc basis. The appointment is at the discretion of the municipality and Council may wish to consider any circumstances under which such appointments may be desirable.

4.6 In Camera Meetings

The concern for accountability and transparency is also reflected in the provisions governing in camera meetings. The Act does not make any significant amendments to the criteria for holding closed meetings. There is one new provision which provides that a meeting may be closed to the public for the purpose of educating or training the members, provided that the business or decision making of Council is not materially

advanced in the meeting. This provision sanctions the practice of holding retreats or workshops for the purpose of briefing Council members. A further amendment will also require that a record be kept of all resolutions, decisions and proceedings of a meeting whether it is closed or not. In the case of a meeting of Council, the record must be made by the Clerk. For meetings of local boards or committees, a record shall be made by the appropriate officer.

The Act introduces provisions which allow any person to request an investigation as to whether the municipality has complied with the requirements governing closed meetings. A municipality may appoint an investigator for this purpose. The investigator has the power to conduct an investigation and make recommendations to Council. If the municipality does not appoint an investigator, the investigation is conducted by the provincial Ombudsman appointed under the *Ombudsman Act*.

The provisions providing for investigation of closed meetings have not yet been proclaimed.

4.7 By-law Enforcement

The Act enhances by-law enforcement powers. In particular, municipalities are empowered to establish a system of fines for by-law offences, subject to certain guidelines. Consequently, the specific fines for offences under tree by-laws have been repealed. Staff will report to Council with recommendations as to whether the penalties established under the Region's Forest Conservation By-law should be revisited in light of these amendments.

4.8 Retail Business Holidays Act

A provision yet to be proclaimed would permit the Region to provide by by-law that the *Retail Business Holidays Act* does not apply to any retail businesses in the Region. The by-law would not, however, take effect until a by-law has been passed requiring that one or more classes of retail businesses be closed on a holiday. This in effect would allow the Region to establish the criteria under which businesses may remain open on statutory holidays rather than be limited to the tourism criteria set out in the *Retail Business Holidays Act*.

5. FINANCIAL IMPLICATIONS

There are no direct financial implications associated with this report.

6. LOCAL MUNICIPAL IMPACT

Some amendments to the Act may be of significance to area municipalities, such as business licensing and tax sale provisions, but are not addressed in this report.

7. CONCLUSION

Amendments to the *Municipal Act, 2001* were proclaimed in force effective January 1, 2007. The amendments would appear to confer broader authority on municipalities to govern their affairs and the new legislation continues the trend towards greater flexibility and fewer prescriptive requirements. The Act also introduces provisions designed to foster accountability and transparency. This is particularly evident in the mandatory policies on administrative matters and in the provision for a code of conduct and the appointment of independent monitors.

Staff are currently reviewing the requirements for mandatory policies and will report back to Council with recommendations to ensure compliance with the new legislative requirements.

Proposed Principles for Achieving a Mature Relationship

1. Municipalities are responsible and accountable governments.
2. New legislation shall enhance existing municipal powers.
3. The province shall stop micromanaging municipal governments.
4. Where there is a compelling provincial interest the province shall when regulating municipal government define at the outset that interest.
5. Provincial legislation shall be drafted with the expectation of responsible municipal government behaviour and not as a remedial tool.
6. Accountability means mutual respect between municipal government, the province and other public agencies.
7. Resources for municipal governments shall be sustainable and commensurate with the level of responsibility.
8. The Municipal Act shall include principles that will protect the Municipal Act and municipal powers from all provincial legislation.
9. The province shall commit to increasing the understanding and awareness of municipal government within all ministries and provincial agencies.

The above principles ensure that all legislation empowers the evolution of municipal government.

Summary of Recommendations

1. *Statement of Purpose:* The statement of purpose set out in Section 2 of the *Municipal Act, 2001* should be expanded to include the broader powers set out in Bill 53, supporting the freedom of municipalities to govern within their jurisdiction.
2. *Scope of Jurisdiction:* The specific spheres of jurisdiction set out in Section 11 of the existing legislation should be replaced with broader subject areas as provided in Bill 53. The exclusivity of upper and lower tiers in certain areas would, however, be retained. Furthermore, municipalities should be given the specific power to regulate in the areas of health, safety and environmental matters.
3. *General Restrictions:* The creation of a broader scope of authority, subject to restriction by regulation, is preferable to the current regime whereby specific powers are granted by regulation. This shift in philosophy should be reflected in the *Municipal Act, 2001*.
4. *Delegation of Powers and Duties:* The powers of delegation in Bill 53 should be made applicable to all municipalities, although such powers may not be extensively used.
5. *Provincial Regulatory Powers:* The power retained by the Province to protect the “provincial interest” is too extensive and will potentially create uncertainty. It would be preferable for the Province to identify criteria for determining a provincial interest and limit the scope of its regulatory power.
6. *Municipal Service Boards:* The enhanced flexibility in Bill 53 for municipalities to create boards should be included in the *Municipal Act, 2001*. These boards allow Councils to provide for responsible governance of specific matters and should extend to all activities under municipal jurisdiction.
7. *Licensing:* The procedural aspects and the greater flexibility for cost recovery are recommended for inclusion in the *Municipal Act, 2001*, particularly in so far as they apply to the Region’s Lodging House By-law. There is no objection in principle to the suspension of a licence without a hearing but this may not necessarily be implemented for lodging house licences.

8. *Policies and Procedures:* The elimination of highly prescriptive requirements for municipal policies is a positive trend and supports the notion of municipalities as self-governing and accountable. The need for a policy on accountability measures is acceptable, provided that municipalities are given the flexibility to design policies appropriate to their own constituents.
9. *Accountability and Transparency:* The requirement for appointment of an Integrity Commissioner and Ombudsman and the requirement for a lobbyist registry should be discretionary rather than mandatory for other municipalities.
10. *Procedural Issues:* It is recommended that the in camera provisions of the *Municipal Act, 2001* be extended to include categories of information which are currently protected by MFIPPA. It would also be beneficial to broaden Council's ability to consider commercially sensitive information on strategic issues, which may be independent of RFP processes. Electronic participation in meetings should be supported.
11. *Notice Requirements:* It is recommended that the flexibility given to Toronto to determine notice requirements should be extended to all municipalities.
12. *By-law Enforcement:* It is recommended that the *Municipal Act, 2001* be amended to include a power to impose administrative penalties for the enforcement of parking or licensing by-laws, subject to provision of the right to a hearing.
13. *Retail Business Holidays Act:* It is recommended that the exemption granted to Toronto be extended to the Region. The criteria which the Region may use to grant exemptions are limited by regulation. Accordingly, Regional Council does not always have the ability to grant an exemption to a business even if doing so might be in the best economic interests of the Region.
14. *New Direct Taxes* The creation of a broader scope of taxing authority, subject to restriction by regulation, does represent a positive paradigm shift. It could potentially provide new sources of revenue for the Region and its inclusion in the *Municipal Act, 2001* is supported.
15. *Traditional Municipal Taxation:* The enhanced flexibility of Bill 53 for writing off taxes that are deemed uncollectible, determining the method of tax roll certification and setting minimum tax amounts should be included in the *Municipal Act, 2001*.

16. *Special Area Taxation:* The Region strongly recommends that the Province amend the *Municipal Act, 2001* to expand the powers of all municipalities to determine those services that require the use of special levies for sufficient cost-recovery, reflective of the broad permissive powers proposed for the City.
17. *Fees and Charges:* It is recommended that the enhanced flexibility of the provisions for fees and charges be included in the *Municipal Act, 2001*. The ability to use expanded powers to impose fees and charges will result in an additional revenue stream to pay for costs which are currently recovered largely by property taxes, effectively alleviating some of the pressure on property taxation.
18. *Natural Person Powers:* The enhanced flexibility of the natural person powers in Bill 53 should be extended to all municipalities.
19. *Financial Administration:* The flexibility in Bill 53 with respect to financial administration including multi-year budget provisions and the elimination of the requirement to have municipal performance measures reviewed and audited should be made applicable to all municipalities.
20. *Debt and Investment Instruments:* The additional tools made available through Bill 53 for debt and investment instruments and the ability of the City to set its own limit on annual debt servicing should be extended to all municipalities.
21. *Economic Development Assistance:* The extended powers granted to the City for economic development assistance should be made applicable to all municipalities.
22. *Tax Increment Financing:* The provision for the potential use of revenue bonds should be included in the *Municipal Act, 2001*.
23. *Service Migration:* It is recommended that assumption of a service from a single area municipality should be subject only to the approval of the area Council and Regional Council. It is further recommended that the ability of the Region to assume local infrastructure where required for Regional service planning be reinstated.
24. *Geographic Limitations:* It is recommended that the power of entry on highways for water purposes be extended to other Regional infrastructure.