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OVERVIEW AND IMPLICATIONS OF THE ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES ACT, 2004 (BILL 118)

(Regional Council at its meeting on January 20, 2005 amended this Clause to add Recommendation 11 as follows:

- 11. That Regional staff be directed to provide input to the Province regarding the Accessibility for Ontarians with Disabilities Act, 2004 (Bill 118) during the Standing Committee hearings.)**

The Community Services and Housing Committee recommends adoption of the recommendations contained in the following report, December 16, 2004, from the Commissioner of Community Services and Housing and the Regional Solicitor:

1. RECOMMENDATIONS

It is recommended that:

1. Committee and Regional Council approve the recommendations included in this report regarding actions to be taken by The Regional Municipality of York in the development and implementation of the proposed Accessibility for Ontarians with Disabilities Act, 2004 (AODA).
2. The Province establish a specific municipal sector standard development committee to allow for focused representation of municipal issues and standards.
3. The Province include definition of the terms “accessibility” and “services” in the legislation to clarify the provincial government’s expectations, ensure long-term consistency and guide the development and enforcement of accessibility standards.
4. The Province provide for a resolution process where a person/organization is subject to more than one standard and/or where one organization has more than one class.
5. The Province recognize organizations where work is already underway to enhance accessibility by incorporating flexibility into the initial targets and timelines of the AODA.
6. The Province establish a mechanism and funding source to support municipalities in the ongoing implementation of the AODA.
7. York Region write to the Minister of Citizenship and Immigration requesting that the Province consider recommendations two to six.
8. York Region seek endorsement from the nine local municipalities, and other Ontario municipalities, as well as the endorsement of Mayors and Regional Chairs of Ontario

for the recommendations in this report. It is recommended that these endorsements be sent to the Minister of Citizenship and Immigration for consideration in the further development of the AODA.

9. The Mayors and Regional Chairs of Ontario be asked to take a leadership role in consulting with, representing and bringing forward the perspectives of municipalities.
10. This report be sent by the Regional Clerk's Office to the Association of Municipalities of Ontario for their information.

2. PURPOSE

The purpose of this report is to provide an overview of the proposed Accessibility for Ontarians with Disabilities Act, 2004 (AODA).

This report also provides a preliminary assessment of the implications of the proposed legislation for municipalities and includes recommendations to be sent to the provincial government in the further development of the proposed AODA.

3. BACKGROUND

The Accessibility for Ontarians with Disabilities Act, 2004 was introduced into the Legislative Assembly by the Ontario Minister of Citizenship and Immigration on October 12, 2004. Its introduction fulfils the Government of Ontario's commitment to replace the *Ontarians with Disabilities Act, 2001* (ODA) with stronger legislation. The proposed Act reflects the 11 accessibility principles unanimously adopted by the Ontario Legislature in October 1998. Second Reading of the proposed AODA was completed on December 2, 2004.

The AODA is intended to apply to all public and private organizations. Its purpose is two-fold:

1. To ensure that Ontarians with disabilities have full access to goods, services, facilities, accommodation, employment, buildings, structures and premises. This will be done through specific provincially set one to five-year targets with full access becoming a reality on or before January 1, 2025.
2. To develop, implement, and enforce accessibility standards.

4. ANALYSIS

The proposed AODA is complex, strong, and enforcement-focused legislation. The Minister of Citizenship and Immigration has indicated that the goal of the proposed Act is to provide equity and truly allow persons with disabilities to participate socially and

economically in Ontario. The scope of the AODA is broad – it includes any person or organization that:

- Provides goods, services or facilities to the public.
- Employs persons in Ontario.
- Offers accommodation to the public.
- Owns or occupies a building, structure or premises that is open to the public.
- Is engaged in a business, activity or other undertaking that may be prescribed by regulation.

The legislation provides the legal authority, framework, and processes, under which the Government of Ontario will develop, implement, administer and enforce accessibility standards. The legislation indicates that accessibility standards will be specific to particular sectors, industries, or classes of persons or organizations.

Municipalities are obviously included in the scope of the legislation. However, unlike the ODA, the proposed Act does not include specific requirements for municipalities except in regards to the continuation of the roles and responsibilities of Accessibility Advisory Committees (AACs).

Given the potential impact of the AODA on the Region, the generality of its application, and the reliance on regulatory authority to set accessibility standards, it is recommended that Regional Council prepare a response to be sent to the provincial government for the AODA's legislative and regulatory development and its application to municipal organizations.

4.1 How is the AODA different from the ODA?

The key difference is that the requirement to develop accessibility plans under the ODA allowed organizations covered by the Act to establish their own timelines for identifying and removing barriers based on locally determined priorities and budgets. Under the AODA, the provincial government will now set the agenda for the scope and rate of changes to identify, remove and prevent barriers by establishing mandatory accessibility standards.

The proposed AODA is also different from the existing ODA because:

- Private sector businesses across Ontario must also comply.
- There are provisions for the development, implementation and enforcement of standards.
- Targets to ensure that progress is being made to achieve the level of accessibility set out in the standard are included.
- There are strong, significant compliance, enforcement measures and penalties for individuals and corporations.
- There is a requirement that organizations file accessibility reports annually to a provincially appointed director. These will be used to determine whether the organization has complied with standards.

4.1.1 What is an Accessibility Standard?

The legislation provides a broad definition of standards as “measures, policies, practices or other requirements for the identification and removal of barriers with respect to goods, services, facilities, accommodation, employment, buildings, structures, premises or such things as may be prescribed, and for the prevention of the erection of such barriers”. Each standard will name or describe the persons or organizations to which it applies. Persons or organizations named in the standard are required to implement these measures, policies, or practices within the timeframe specified within each standard.

4.1.2 How Will Standards Be Developed?

The AODA gives the Minister the authority to establish standard development committees that will include persons with disabilities, provincial government ministries and representatives from the industries/sectors that will be required to implement the standard. Representation on each committee will be at the invitation of the Minister. The Minister will also set the terms of reference and deadlines for these committees to complete their work.

The initial responsibility of a standard development committee will be to set out long-term accessibility objectives by identifying the various actions to be implemented by 2025. The legislation proposes that the standards be implemented in stages and include five year targets or less to ensure ongoing progress to meet all of the requirements in the standard. The Minister has indicated that the first sets of standards are expected to be in place prior to the end of 2005.

The standard development committees will also:

- Consider the range of disabilities, nature of barriers, and any technical or economic considerations related to the measures proposed under the standard to determine target dates.
- Further define the persons or organizations that will be part of any accessibility standard.
- Submit a proposed standard to the Minister within the time frame set out in their terms of reference.
- Have the authority to revisit the long-term accessibility objectives for a standard and to revise or develop a new standard within five years after a standard is adopted by regulation.

There will be opportunity for public comment on proposed standards for 45 days after each is posted by the Minister. The committee can then make any changes it considers advisable prior to providing the proposed standard to the Minister for a final decision. The standard would then be enacted as a regulation.

4.1.3 Compliance and Enforcement

4.1.3.1 Compliance

Any organization named in an accessibility standard is expected to comply with the relevant standard within the time frame set out in the standard. Compliance requirements set out in the legislation include:

- Filing an accessibility report annually or at other times for review by the director – content to be prescribed.
- Making the report available to the public.
- Certifying the information in the report.
- Providing other compliance reports or information requested by the director.
- Producing documents or records on request by an inspector.

The AODA also includes mention of incentive agreements for persons and organizations to exceed the minimum standards, including an exemption from filing and reporting of accessibility reports.

Accessibility Advisory Committees will be required to advise the municipal council about the requirements and implementation of accessibility standards and the preparation of accessibility reports.

4.1.3.2 Enforcement

In regard to enforcement, the proposed AODA uses a similar approach found in other enforcement driven pieces of legislation such as environmental protection and Human Rights legislation.

The AODA would give Provincial Directors the authority to issue administrative penalties (monetary fines) from the first day of a violation of the legislation or statute without the process of laying charges and securing a conviction.

Enforcement of the AODA will be through a process of reporting, inspection, investigation, compliance orders, and administrative penalties. Directors will be appointed by the Minister to administer the Act, who in turn will have the authority to delegate authority to inspectors. Enforcement measures in the AODA include:

- Inspections and spot audits.
- Compliance orders.
- Administrative penalties that can be ordered without the involvement of a Tribunal.
- Fines of not more than \$100,000 for corporations and \$50,000 for its directors or officers for *each day* in which the offence occurs upon conviction related to the following:
 - Obstructing inspections;
 - Providing false or misleading information in the accessibility report or to the director;
 - Non-compliance with any order made by a director or the Tribunal;
 - Undertaking any retaliating actions against persons who have sought enforcement of the Act, co-operated with inspectors, or provided information in the course of an inspection.

4.2 Implications for Regional and Municipal Governments

The experience of other jurisdictions shows that there are many benefits to be gained from enhancing accessibility for people with disabilities. A 2001 study published by the

Conference Board of Canada indicated that people with disabilities in Canada have an estimated annual spending power of \$25 billion. This is supported by results from the United States which show revenue has increased by 12 per cent in the tourism and recreation businesses directly as a result of improved accessibility for people with disabilities.

Municipalities could be impacted in several ways by the new AODA once passed. The implementation of a standard (or multiple standards) will require additional financial and human resources to ensure that municipalities can implement all of the necessary requirements and comply with the timelines outlined by the standard and avoid fines and penalties.

The proposed AODA does not identify who the inspectors of the accessibility standards will be. As such it is possible that the existing municipal health and building inspectors may be directed to undertake the enforcement of the standards. Local municipalities may be further impacted should the provincial government determine that the enforcement responsibility should be added to their role in issuing business licences.

Municipalities may be responsible for implementing one or more standards simultaneously because the AODA does not mention the creation of a specific municipal standard. As such municipalities that provide a range of services such as York Region could be responsible for implementing multiple standards in areas related to health, transit, housing, employment, construction and/or purchasing. This may result in municipalities having to implement the requirements and costs of different standards simultaneously on a timeframe set by the Province. Additional costs to train staff to ensure that they have the expertise to implement the standard(s) may also be incurred.

The status of the ODA as it pertains to municipalities is unclear. The proposed legislation allows for the repeal of whole or parts of the ODA by proclamation. These proclamations may be issued at different times, so municipalities may have to balance existing ODA requirements with the new AODA requirements. This also could have additional human and financial resource impacts to maintain consistency in the implementation of two different pieces of legislation so that the Region continues to meet all of the legislated requirements.

4.3 Recommendations and Rationale

York Region has already successfully begun the work of enhancing accessibility to its programs and services for people with disabilities and Regional Council remains committed to identifying, removing and preventing different types of barriers. However in order to be able to fully implement the new requirements of the AODA, the provincial government should be made aware of the following issues that may impact on the Region's ability to implement the new legislation.

- 1) It is recommended that the province establish a municipal standard development committee to allow for a knowledgeable and focused discussion of the different issues

that will impact on municipalities in the development of various accessibility standards.

Rationale: Municipalities are unique organizations that reflect the size and scope of the communities that they serve. The time lines for implementing a standard will need to include the fiscal capacity of different sized municipalities in complying with standards. Therefore as standards are developed, consideration must be given to how different municipalities will be impacted by the requirements in the standard as one size will not fit all. A standard development committee that focuses on municipalities and is made up of municipal representative as well as persons with disabilities, the organizations that represent them and the appropriate ministries will be in the best position to effectively and efficiently address issues and ensure that implementation is successful.

- 2) It is recommended that the province include a definition of the terms “accessibility” and “services” in the legislation.

Rationale: Part of the difficulty in implementing the existing ODA is that there is not a consistent definition of what is meant by these terms. In order to set clear expectations and to ensure a consistent approach across Ontario, these terms should be clearly defined in the proposed AODA legislation.

- 3) It is recommended that the province establish a resolution process when a person/organization is subject to more than one standard.

Rationale: Given the broad scope of programs and services administered by municipalities, it is likely that a municipality will be subject to multiple accessibility standards, particularly if the municipality is classified as belonging to multiple sectors rather than a single municipal sector. A resolution process would provide flexibility for persons or organizations to meet the requirements of the standards in an effective and efficient manner that would take into consideration competing priorities and budget constraints.

- 4) It is recommended that the provincial government recognize the work underway by organizations to enhance accessibility by incorporating flexibility into the initial targets included in any standards that impact on those organizations.

Rationale: The AODA contemplates that the ODA would be phased out and replaced by the AODA in stages. Unlike the private sector, municipalities are currently subject to the ODA and as a result have already started to meet the objectives of enhanced accessibility. As such, the provincial government must make a distinction in the implementation of the new AODA to give credit to the work that has already been accomplished under the existing ODA.

- 5) It is recommended that the provincial government establish a mechanism and funding source to support municipalities in the ongoing implementation of the AODA.

Rationale: Each accessibility standard may have costs associated with it that municipalities will be responsible for to ensure that the standards are met. In order for municipalities to be able to consistently meet their requirements over the long-term, the province should be asked to support AODA implementation by providing a source of funding that recognizes the financial pressures on the municipal sector.

4.4 Relationship to Vision 2026

The implementation of ODA in York Region has been guided by the principles and goals outlined in Vision 2026. As a strong supporter of ODA, the Region has taken many steps to identify, remove and prevent barriers in regional programs and services that impact on people with disabilities. The Region will examine how best to balance the new requirements with other regional priorities and budgets.

5. FINANCIAL IMPLICATIONS

This report has no immediate financial impacts but the AODA could result in significant administrative and program costs to the Region. In the absence of standards and details from the provincial government, the exact figure is unknown. Each accessibility standard may have costs associated with it in order to achieve the desired results of change and revisions in the delivery of goods, services, employment and accommodation.

Additional human and financial resources are undoubtedly needed in order to implement and possibly enforce the new accessibility standards in the Region. Additional costs may also be incurred if municipalities are requested to undertake the enforcement function of AODA as additional inspectors may be required to perform this task or the workload of existing inspectors will be increased. There may also be costs related to the training of inspectors so that they are able to enforce the accessibility standards.

With the change of accessibility legislation, the manner in which implementation is to occur will impact the Region's ability to balance stakeholder priorities and achieve accessibility targets over time within regional priorities and budgeted resources.

No funding from the provincial government is anticipated to support the implementation of the AODA.

6. LOCAL MUNICIPAL IMPACT

York Region's local municipalities will also be impacted by the development of accessibility standards with provincially determined requirements and time lines. Under the existing ODA, each municipal Council had the ability to choose the initiatives to be included in their accessibility plans. This will not be the case under the AODA as the standards will set not only the requirements but specific one to five-year targets for implementation.

Local municipalities may be further impacted if they are required to administer the enforcement components of the proposed legislation. The AODA does not include any detail as to who the inspectors will be. As such, existing municipal health and building inspectors may be directed to undertake the enforcement of accessibility standards. Local municipalities may also be impacted through their responsibility for issuing business licences, should the province direct that this function should now also include an accessibility component.

7. CONCLUSION

York Regional Council has been and continues to be proactive in removing barriers for people with disabilities in the Region. The creation and implementation of *Understanding Barriers: York Region's First Annual Accessibility Plan* has demonstrated the Region's clear commitment to enhancing accessibility in the services, programs and facilities administered by the Region.

In its long-term strategic plan, York Region made a commitment that, by 2026, all its "residents will live, work, play and learn in healthy, accessible and safe neighbourhoods". York Region will continue to work closely with the Provincial government, local municipalities, York Region Accessibility Advisory Committee and other stakeholder groups to meet its legal requirements and enhance the accessibility in the Region.

However in order to effectively meet the requirements of the proposed AODA legislation it is important to understand its implications and work with the province as the AODA legislation moves towards proclamation to address issues that will impact on the ability to make lasting, manageable change.

The Senior Management Group has reviewed this report.