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MUNICIPAL ACT REVIEW

The Finance and Administration Committee recommends the adoption of the recommendations contained in the following report, May 29, 2006, from the Regional Solicitor and the Commissioner of Finance:

1. RECOMMENDATIONS

It is recommended that:

1. Regional Council endorse the recommendations for amendments to the *Municipal Act, 2001* as set out in this report.

2. This report be submitted to the Ministry of Municipal Affairs and Housing (the "Ministry") with a request to incorporate these recommendations in the amending legislation.

2. PURPOSE

The purpose of this report is to inform Council of the current status of the Ministry's review of the *Municipal Act, 2001,* and to propose recommendations for submission to the Ministry.

3. BACKGROUND

The *Municipal Act, 2001* has been in force since January 1, 2003. Its enactment represented a significant step towards the recognition of municipalities as autonomous and accountable levels of government. The highly prescriptive approach of earlier legislation was relaxed in favour of broad spheres of jurisdiction and municipalities were granted natural person powers. Since 2003, the Association of Municipalities of Ontario ("AMO") and other interested groups have lobbied for more extensive reform. Although the *Municipal Act, 2001* was seen as a positive first step, there was continuing concern for the broad regulatory power retained by the Province. On October 21, 2004, Regional Council endorsed the nine principles proposed by AMO as a framework for amendments to the *Municipal Act, 2001*. A copy of these principles is attached as Attachment 1.

On December 14, 2005, Bill 53, the *Stronger City of Toronto for a Stronger Ontario Act, 2005* was introduced in the legislature ("Bill 53"). Bill 53 consolidates and amends the legislative framework governing the City of Toronto. Although Bill 53 is specific to Toronto, the Ministry has invited all municipalities to refer to this draft legislation as a basis for submitting comments on municipal reform.

Bill 53 has now received second reading and is to be before the standing committee during May. It is anticipated that the legislation will come into force effective January 1, 2007. As yet, no draft legislation has been released on amendments to the *Municipal Act, 2001*. The Ministry has indicated, however, that the target date for these amendments will also be January 1, 2007.

A working group from the Municipal Law Departments Association of Ontario has undertaken a detailed analysis of Bill 53 and has developed commentary and recommendations for submission to the Ministry on behalf of the Association. This report highlights the recommendations arising from that review which would be applicable to the Region. The report also includes supplementary comments provided by Regional staff. Minor technical or housekeeping amendments are not included in this report but will be submitted by the Association.

4. ANALYSIS AND OPTIONS

Many of the provisions of Bill 53 are substantially the same as those in the *Municipal Act, 2001* and do not represent any dramatic change. As well, many amendments are applicable to single tier or lower tier municipalities and are of limited relevance to the Region. Examples of these are the tax collection and tax sales provisions. The following summary identifies those provisions of Bill 53 which are directly relevant to the Region and which represent a change in philosophy or a new concept.

The legislative review currently underway is also an opportunity to comment more broadly on reform of the *Municipal Act, 2001*. Accordingly, areas in which Bill 53 does not respond adequately to certain concerns are also identified.

4.1 Statement of Purpose

The introductory sections of Bill 53 set out a framework of broad powers which recognize the City as a responsible and accountable government. This broad range of powers includes:

- determining what is in the best public interest;
- determining the appropriate structure for governing the City;
- determining the appropriate mechanisms for service delivery; and
- determining the appropriate levels of spending and taxation.

The corresponding provisions of the *Municipal Act, 2001* are more limited in scope and emphasize service delivery rather than broader self-governance. Although such a statement of purpose does not confer specific powers, it represents a shift in philosophy which may be of assistance in interpreting substantive provisions.

Recommendation 1: That the statement of purpose in the *Municipal Act, 2001* be expanded to include the broader powers set out in Bill 53, supporting the freedom of municipalities to govern within their jurisdiction.

4.2 Scope of Jurisdiction

The scope within which the City can exercise its powers is more broadly stated than in the *Municipal Act, 2001*. The existing legislation enumerates "spheres of jurisdiction" within which municipalities are empowered to act. Rather than being limited to the spheres of jurisdiction, the City will be empowered to provide "any service or thing" within broad subject areas. These subject areas include governance structure, financial management and public assets. Bill 53 also includes the authority to pass by-laws respecting "the health, safety and well-being of persons" and the "economic, social and environmental well-being of the City". These are broader powers than those currently included in the existing legislation. In particular, the omission of environmental matters from the sphere has been an issue of continuing concern.

The spheres of jurisdiction in the *Municipal Act, 2001*, serve both to set the scope of municipal powers and to assign jurisdiction as between upper and lower tier municipalities. In a two-tier system, therefore, it will still be necessary to set out the areas over which the Region would retain exclusive jurisdiction. Subject to this requirement, however, municipalities would enjoy greater freedom to govern if the scope of jurisdiction is not limited to functional service areas.

Recommendation 2: That the broader powers conferred on the City be made applicable to all municipalities, subject to an appropriate mechanism to assign jurisdiction between upper and lower tiers, where appropriate.

4.3 General Restrictions

Currently the *Municipal Act, 2001* significantly curtails a municipality's power with respect to corporate and financial matters. There is a general prohibition against incorporating a corporation, holding securities or entering into financing arrangements unless permitted by regulation. The Regulation enacted to permit municipal corporations remains highly prescriptive.

On its face, Bill 53 provides fewer restrictions on corporate activities. There is no restriction on the ability to incorporate a corporation or hold securities. Additionally, the City is not limited in its ability to appoint directors, officers or members of a corporation, incur debt or borrow or invest money. The Bill does, however, reserve the right to the Province to pass regulations to limit the powers conferred on the City. It remains to be seen, therefore, whether this apparent broadening of scope is a change in substance or form.

Recommendation 3: The creation of a broader scope of authority subject to restriction by regulation does represent a shift in philosophy. It is preferable to the current regime where specific powers are granted by regulation and should be made applicable to all municipalities.

4.4 Delegation of Powers and Duties

Bill 53 specifically permits City Council to delegate its powers and duties, including legislative and quasi-judicial powers. The delegation may be to a single member of Council, or to a Committee. Minor matters may also be delegated to staff. This provision would permit standing committees to be more autonomous and make final decisions without Council approval, and could greatly enhance the timeliness of municipal decision making.

Recommendation 4: This power of delegation may be more appropriate for the City of Toronto and alleviate the pressures on City Council. It is not anticipated that the power to delegate would be exercised by the Region extensively since it is preferable that most matters receive full consideration by Regional Council.

4.5 Provincial Regulatory Powers

Bill 53 reserves to the Province an extensive power to suspend the City's powers for a period of 18 months by enacting a regulation, if deemed necessary in the provincial interest. The extent of "provincial interest" is not defined. This is a potentially far-reaching restriction on municipal powers which significantly undermines the principles of autonomy and self-government.

Recommendation 5: It is recommended that the reservation of broad regulatory authority 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.

4.6 Municipal Service Boards

Under Bill 53, the City would have a more extensive power to create boards than the corresponding provision in the *Municipal Act, 2001*. The existing legislation limits the powers of service boards to a prescribed list of services. Bill 53 does not contain any similar restrictions. The City may delegate any service or activity it considers appropriate.

Recommendation 6: It is recommended that the enhanced flexibility of these provisions 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 the jurisdiction of a municipality.

4.7 Licensing

The City will be given far broader licensing powers under Bill 53. These are of limited application to the Region but may be relevant to the Lodging House By-law. Bill 53 would eliminate certain procedures such as the need to provide a rationale for licensing a business or imposing conditions. The scope of permitted fees would also be broader and not limited to cost recovery. There will be no automatic expiry of licensing by-laws after five years. Furthermore, City Council will have the ability to suspend a licence temporarily without the requirement for a hearing. These provisions will be of particular interest to the area municipalities which have more extensive licensing powers.

Recommendation 7: 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. Staff do not object to the ability to temporarily suspend a licence without a hearing but would not recommend that this necessarily be implemented for lodging house licences.

4.8 Policies and Procedures

Bill 53 will require the City to adopt policies with respect to:

- sale or disposition of land;
- hiring of employees;
- procurement of goods and services;
- notice requirements;
- accountability and transparency;
- the manner in which the City will ensure that persons affected by its decisions are dealt with fairly;
- delegation of powers and duties; and
- financing of capital works, including limits on the annual costs associated with financing.

The requirement to report on efficiency and effectiveness has been eliminated from Bill 53. The requirement for policies on disposal of land, hiring and procurement are already included in the *Municipal Act, 2001* but are subject to far more prescriptive requirements. The remainder of the policies are new.

Recommendation 8: 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.

4.9 Accountability and Transparency

Several new requirements are created under Bill 53 which are designed to enhance accountability and transparency. These include the appointment of an integrity commissioner, an ombudsman and the requirement for a lobbyist registry. These new requirements may be appropriate for issues specific to the City of Toronto but are not necessarily applicable to all municipalities.

Recommendation 9: It is recommended that the new accountability and transparency measures in Bill 53 should be discretionary rather than mandatory for other municipalities.

4.10 Procedural Issues

Bill 53 does not amend the criteria for in camera meetings. The limited scope of permitted in camera meetings has consistently been an area of concern. In particular, staff have previously suggested that the provisions of the *Municipal Act, 2001* should correspond more closely to the concepts in the *Municipal Freedom of Information and Protection of Privacy Act* ("MFIPPA"). This is of particular concern in dealing with business or financial proposals presented by the private sector during an RFP process. Generally, these materials are protected from disclosure by MFIPPA but there is no corresponding provision for Council to consider the material in camera.

Bill 53 also provides for electronic participation in meetings.

Recommendation 10: 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.

4.11 Notice Requirements

The *Municipal Act, 2001* contains far fewer specific notice provisions than its predecessor. Generally, municipalities are given the flexibility to determine the manner of notice appropriate to each activity. The legislation does, however, continue to prescribe the circumstances under which some form of notice is required. Bill 53 takes this process a step further and permits the City to determine the circumstances under which notice will be given, as well as the form of such notice.

Recommendation 11: It is recommended that the flexibility given to the City to determine notice requirements should be extended to all municipalities.

4.12 By-law Enforcement

Bill 53 introduces the concept of administrative penalties as a means of enforcing parking by-laws and licensing by-laws. This would provide for greater efficiencies in handling parking infractions and could greatly reduce the burden on court resources. In order to preserve the right to a hearing, however, it is recommended that an administrative tribunal be established to deal with dispute resolution.

Recommendation 12: 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.

4.13 Retail Business Holidays Act

Bill 53 would exempt the City from the *Retail Business Holidays Act* (the "RBHA") and allow City Council the freedom to regulate business hours on statutory holidays.

Recommendation 13: It is recommended that this exemption be extended to the Region. The Region is periodically required to consider requests from businesses wishing to open on statutory holidays since the Region has the jurisdiction under the RBHA to grant exemptions. The criteria which the Region may use to grant exemptions are, however, 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.

4.14 Taxation and User Fees

New Direct Taxes

Bill 53 provides the City with new expanded taxing authority subject to certain restrictions and limited by provincial regulatory powers. This new taxing authority grants the City broad and permissive powers to levy its own new direct taxes, such as a sales tax on entertainment, liquor and tobacco. Taxes on income, capital, wealth, hotels or gas are prohibited.

Recommendation 14: 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 staff support its inclusion.

Traditional Municipal Taxation

Bill 53 carries forward provisions from the current *Municipal Act, 2001*, governing the current conventions for property taxation, including the distribution of tax burdens, and the mitigation of tax impacts through capping. The Bill will, however, put into effect minor housekeeping amendments which will provide more flexibility to the City for such purposes as writing off taxes it deems uncollectible, determining method of tax roll certification, and setting minimum tax amounts.

Recommendation 15: It is recommended that the enhanced flexibility of these provisions should be included in the *Municipal Act, 2001.*

Special Area Taxation

Unlike the limitation on special area levies by the current legislation, Bill 53 provides broader powers to allow the City to collect special levies on any municipal services the City deems eligible.

Recommendation 16: Staff are of the opinion that the list of special services, as prescribed by the regulation, fails to capture all municipal services which may be effectively funded through a special area levy. 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.

Fees and Charges

Bill 53 carries forward provisions governing the application of user fees from the *Municipal Act, 2001*, with some additional clarifications. Bill 53 provides that the City can impose fees and charges to recover any municipal costs for any services provided, including costs related to administration, enforcement and acquisition and replacement of capital assets, as well as fees and charges for mandated services. In addition, unlike the existing provisions under the Act, the City may impose a fee or charge for capital costs related to sewage or water services on the basis of a "deferred benefit", where the affected persons are not receiving a benefit from these services, but will receive a benefit in the future. Further, the City's authority to impose fees and charges is given precedence over all other provincial legislation related to municipalities.

Recommendation 17: It is recommended that the enhanced flexibility of these provisions be included in the *Municipal Act, 2001.* The ability to use expanded powers to impose fees and charges for the services and expenditures captured under Bill 53, will result in providing an additional revenue stream that will be available to pay for costs which are currently recovered largely by property taxes, effectively alleviating some of the pressure on property taxation.

4.15 Financing Tools

Natural Person Powers

Bill 53, if passed, will provide the City with natural person powers within its jurisdiction. The *Municipal Act, 2001*, by comparison, excludes from municipal natural person powers of municipalities, the power to borrow money, invest and exercise related financial powers.

Recommendation 18: It is recommended that the enhanced flexibility of these provisions be included in the *Municipal Act, 2001.*

Financial Administration

New multi-year budget provisions would permit the City to in any year prepare and adopt a budget covering a period of up to five years, including the year in which it is prepared and adopted. If the City chooses a multi-year budget, the City would have to prepare and adopt a balanced budget for the first year of the multi-year budget. In subsequent years, the City must account for any operating deficit of any previous year. Unlike the current provisions of the *Municipal Act, 2001*, the City would not have to provide for an operating surplus. In addition, under the proposed changes in Bill 53, there is no requirement of the City to have its municipal performance measurement program results reviewed and audited.

Recommendation 19: It is recommended that the extended powers conferred on the City under these provisions be made applicable to all municipalities.

Debt and Investment Instruments

Bill 53 carries forward provisions from the *Municipal Act, 2001*, governing the debt and investment instruments currently available to all municipalities. In addition, however, the City may be enabled to use some additional new tools, to be prescribed by regulation, which may include revenue bonds that go beyond existing provisions of the Act. The authorized financial activities of the City include borrowing or investing money, selling debt, and incurring debt without borrowing money for the purpose of obtaining long term financing of any capital undertaking. Further, Bill 53 includes provisions for the City to set its own limit on annual debt servicing.

Recommendation 20: It is strongly recommended that the extended authority granted to the City under these provisions be made applicable to all municipalities.

Economic Development Assistance "Bonusing" Provisions

Bill 53 carries forward provisions from the *Municipal Act, 2001*, governing the economic development assistance and the power to make grants often referred to as "bonusing". In addition, however, the City would be enabled to approve financial incentives without provincial approval to commercial enterprises in the context of Community Improvement Plans (CIPs) under section 28 of the *Planning Act*, and the Business Incubator Program, as specified in Bill 53, aimed at facilitating the start-up and growth of small and medium sized businesses, without the existing limitations and without prior Cabinet approval.

Recommendation 21: It is strongly recommended that the extended powers granted to the City under these provisions be made applicable to all municipalities.

Tax Increment Financing

Unlike the current provision under the *Municipal Act, 2001*, Bill 53 would permit the City, or its corporations, the potential use of revenue bonds (project or asset backed financing), giving it the capacity to utilize its own source revenues for the purposes of Tax Increment Financing (TIF).

Recommendation 22: It is strongly recommended that the extended authority granted to the City under these provisions be made applicable to all municipalities.

4.16 Service Migration

Bill 53 does not address service migration provisions since the City is a single tier municipality. The service migration provisions of the *Municipal Act, 2001* permit the realignment of services between the Region and local municipalities through the "triple majority" provisions. These provisions have been in force since 1996 but were significantly broadened in 2003 to permit part of a service to be assumed and to permit assumption from only one local municipality. This process could be further streamlined by requiring that, where a service is assumed from only one local municipality, only the consent of that municipality is required.

The 2003 legislation also eliminated the Region's power to assume local infrastructure from area municipalities where the infrastructure was deemed necessary for Regional purposes. It would enhance service delivery options if this provision for assumption of local services be reinstated.

Recommendation 23: It is recommended that assumption of a service from a single area municipality 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.

4.17 Geographic Limitations

Generally, a municipality is restricted to the exercise of its power within its boundaries. The 2003 legislation afforded greater flexibility in allowing service to be provided in another municipality under certain circumstances. For instance, municipalities were empowered to enter onto highways outside their jurisdiction to install watermains without the consent of the entity having jurisdiction over the highway. This does not, however, apply to sewage facilities and can cause conflict where sewage infrastructure extends beyond Regional boundaries.

Recommendation 24: It is recommended that the power of entry on highways for water purposes be extended to other Regional infrastructure.

5. FINANCIAL IMPLICATIONS

There are no direct financial implications associated with this report.

6. LOCAL MUNICIPAL IMPACT

Local municipalities will be governed by amendments to the *Municipal Act, 2001*. This report does not, however, address in detail all matters that will be of local rather than Regional significance, such as tax sales and collection.

7. CONCLUSION

Bill 53 has received second reading and is now proceeding through the legislature. If enacted, the legislation will introduce a broader framework and enhanced flexibility for the City in governing its affairs. The Ministry has invited other municipalities to comment on the legislation with a view to broader legislative reform. This report identifies those elements of Bill 53 which are recommended for inclusion in the *Municipal Act, 2001* and also identifies further enhancements that are recommended for inclusion in the amending legislation. A summary of recommendations is attached as Attachment 2.

With respect to the nine principles endorsed by AMO, Bill 53 responds to some extent to the concern that municipalities be recognized as responsible and accountable levels of government. There is, however, continuing concern for the extensive regulatory control which could potentially impede municipal self governance.

The Senior Management Group has reviewed this report.

(The attachments referred to in this clause were included in the agenda for the June 8, 2006 Committee meeting.)