

**BILL 53 – STRONGER CITY OF TORONTO FOR STRONGER ONTARIO ACT, 2005
("CITY OF TORONTO ACT, 2005") AND AMENDMENTS TO MUNICIPAL ACT, 2001**

Recommendation

The Intergovernmental Relations Committee recommends that Council endorse the following recommendations contained in the attached report:

- "1. That the following report be received;
2. That Council endorse the City of Vaughan's Recommendations for Amendments to the *Municipal Act, 2001*, attached as Attachment No. 1 to this Report;
3. That copies of this Report, including the City of Vaughan's Summary of Recommendations for Amendments to the *Municipal Act, 2001* (Attachment No. 1 to this Report) and the Summary of Proposed Changes in Bill 53, *Stronger City of Toronto for a Stronger Ontario Act, 2005* and Recommendations for Amendments to *Municipal Act, 2001* (Attachment No. 2 to this Report) be forwarded by the Clerk to the Premier of Ontario, the Honourable Dalton McGuinty, the Minister of Municipal Affairs, John Gerretsen, and to the Association of Municipalities of Ontario.
4. That once Bill 53 receives Second Reading and is referred to a Standing Committee of the Legislature, that the Clerk forward the required number of copies of this Report, including the City of Vaughan's Summary of Recommendations for Amendments to the *Municipal Act, 2001*, and the Summary of Proposed Changes in Bill 53, *Stronger City of Toronto for a Stronger Ontario Act, 2005* and Recommendations for Amendments to *Municipal Act, 2001*."

Economic Impact

There is no economic impact associated with this report.

Purpose

To approve the recommendations in the attached report.

Background - Analysis and Options

The Intergovernmental Relations Committee, at its meeting of April 4, 2006 endorsed the attached report.

Relationship to Vaughan Vision 2007

This report is consistent with the priorities previously set by Council and the necessary resources have been allocated and approved.

Conclusion

The Intergovernmental Relations Committee recommends that Council endorse the above recommendations.

Attachments

Report entitled "*Bill 53 – Stronger City Of Toronto For Stronger Ontario Act, 2005 ("City Of Toronto ACT, 2005") and Amendments To Municipal Act,*" dated April 4, 2006.

Report prepared by:

Adelina Bellisario
Assistant City Clerk

Respectfully submitted,

Councillor Tony Carella,
Chair, Intergovernmental Relations Committee

INTERGOVERNMENTAL RELATIONS COMMITTEE APRIL 4, 2006

BILL 53 – STRONGER CITY OF TORONTO FOR STRONGER ONTARIO ACT, 2005 ('CITY OF TORONTO ACT, 2005') AND AMENDMENTS TO MUNICIPAL ACT, 2001

Recommendation

The Commissioner of Legal and Administrative Services, in consultation with the Solicitor/Special Services, recommends:

1. That the following report be received;
2. That Council endorse the City of Vaughan's Recommendations for Amendments to the *Municipal Act, 2001*, attached as Attachment No. 1 to this Report;
3. That copies of this Report, including the City of Vaughan's Summary of Recommendations for Amendments to the *Municipal Act, 2001* (Attachment No. 1 to this Report) and the Summary of Proposed Changes in Bill 53, *Stronger City of Toronto for a Stronger Ontario Act, 2005* and Recommendations for Amendments to *Municipal Act, 2001* (Attachment No. 2 to this Report) be forwarded by the Clerk to the Premier of Ontario, the Honourable Dalton McGuinty, the Minister of Municipal Affairs, John Gerretsen, and to the Association of Municipalities of Ontario.
4. That once Bill 53 receives Second Reading and is referred to a Standing Committee of the Legislature, that the Clerk forward the required number of copies of this Report, including the City of Vaughan's Summary of Recommendations for Amendments to the *Municipal Act, 2001*, and the Summary of Proposed Changes in Bill 53, *Stronger City of Toronto for a Stronger Ontario Act, 2005* and Recommendations for Amendments to *Municipal Act, 2001*.

Economic Impact

There is no economic impact associated with this report.

Purpose

This report considers Bill 53, the proposed *Stronger City of Toronto of a Stronger Ontario Act, 2005* (to be known as the *City of Toronto Act, 2005*). In light of the stated intention of the Ministry of Municipal Affairs and Housing that amendments to the *Municipal Act 2001* will be introduced as early as April, 2006 and no later than the Fall, the Report also considers the need for appropriate complementary amendments to the *Municipal Act, 2001*.

Background - Analysis and Options

Bill 53, the *Stronger City of Toronto for a Stronger Ontario Act, 2005*, was introduced in the Legislature for First Reading by the Minister of Municipal Affairs and Housing on December 14, 2005. The Bill has not yet received Second Reading and has not yet been referred to a Standing Committee of the Legislature (for public hearings and line by line review). Given the stated intention of the Ministry of Municipal Affairs and Housing that amendments to the *Municipal Act 2001* will also be introduced as early as this April and no later than the Fall of 2006, this Report also considers the need for appropriate complementary amendments to the *Municipal Act, 2001*.

In general the provisions of Bill 53, if enacted in their present form, will substantially broaden the City of Toronto's authority and powers and correspondingly reduce the number of specific restrictions and controls the province has traditionally placed on the exercise of these powers. However, the restrictions and controls will continue in the case of some matters, such as traditional taxing authority (property tax, tax collection and so forth).

There is a reduction in the restrictions on the City of Toronto's ability to establish boards and corporations, as well as in the restrictions that applied to debt and investment powers. These changes are reviewed more fully in the comments under the relevant Parts of the proposed Bill set out in Attachment No. 2 to this Report.

Bill 53 will broaden Toronto's ability to raise revenues through the introduction of "non-traditional taxing authority". The new authority authorizes potential sales tax revenue on certain goods and services (including admission to places of amusement such as theatres, sports events, performances and other entertainment venues, purchase of liquor/tobacco, production of beer/wine at brew-on-premises facility). Difficulties may be encountered should Toronto wish to proceed with sales taxes on certain goods and services, since neighbouring municipalities may not be granted comparable powers. In such a case, goods and services offered in those bordering municipalities could have a competitive price advantage and steer business away from Toronto. Given this, except for goods and services not available elsewhere, the new authority may not hold a great deal of promise.

Bill 53 further eliminates some of the specific restrictions or limitations that have long applied to municipalities related to the provision of goods, delivery of services and other things provided by the municipality, such as specific limitations previously imposed on fees and charges, licensing, etc. It remains difficult to determine at this juncture what impact this may have on the City's ability to recover its costs and receive potential additional revenue.

Some parts of Bill 53 remain subject to the Province's regulation-making authority. Since the regulations are not yet available, it is difficult to determine the overall impact of some of the changes proposed.

Relationship to Vaughan Vision 2007

This report is consistent with the priorities previously set by Council and the necessary resources have been allocated and approved.

Conclusion

As noted above, as a result of the Ministry of Municipal Affairs and Housing's stated intention to bring forward amendments to the *Municipal Act, 2001* as early as this spring and no later than the fall of 2006, it is appropriate to review the differences between the proposed powers and other provisions of Bill 53, the *Stronger City of Toronto for a Stronger Ontario Act, 2005*, and the powers and comparable provisions contained in the existing *Municipal Act, 2001* governing municipalities throughout the province. For a considerable time, municipalities have sought broader general authority and fewer specific restrictions on this general authority. With the recent introduction of Bill 53 and the proposed broadening of general powers and fewer restrictions that will apply to the City of Toronto if the Bill is enacted, it is important once again for the City of Vaughan and other municipalities in the province to take this opportunity to provide comments and recommendations on the need for comparable amendments to the *Municipal Act, 2001*.

In this regard, the City of Vaughan's Recommendations for Amendments to the *Municipal Act, 2001* are summarized in **Attachment No. 1** to this Report. A more detailed Report setting out an explanation of the Bill 53 changes and the reasons for the recommended complementary changes to the *Municipal Act, 2001*, titled City of Vaughan Summary of Proposed Changes – Bill 53, *Stronger City of Toronto for a Stronger Ontario Act, 2005* and Recommendations for Amendments to *Municipal Act, 2001*, appears in **Attachment No. 2** to this Report.

In light of the Ministry of Municipal Affairs and Housing's intention to introduce amendments to the *Municipal Act, 2001* as early as April of this year, it is recommended that a copy of this Report including Attachment No. 1 and Attachment No. 2 be forwarded to the Premier of Ontario, the Minister of Municipal Affairs and Housing and to any Standing Committee of the Ontario Legislature assigned the responsibility to carry out hearings on Bill 53, the *Stronger City of Toronto for a Stronger Ontario Act, 2005* and Standing Committee carrying out future hearings on a Bill to Amend the *Municipal Act, 2001*, once introduced for First and Second Reading in the Ontario Legislature.

In general, the broader legislative drafting approach involving the establishment of broad general grants of authority combined with more specific powers related to traditional taxing authority and subject to fewer restrictions, is the preferred approach to municipal authority. This was the approach most municipalities requested the Minister of Municipal Affairs and Housing to take in the last two rounds of *Municipal Act* review, carried on from 1996 through to 2002. The requests at that time were not met. However, 5 years later there is once again an opportunity for the preferred broader approach currently being proposed in Bill 53 to be incorporated in the *Municipal Act, 2001*. This approach could apply equally to single-tier and two tier municipalities, with appropriate provisions added to the current division of powers section which will ensure no change to the existing division of powers between upper tier and lower tiers.

Attachments

1. City of Vaughan Summary of Recommendations for Amendments to the *Municipal Act, 2001*;
2. City of Vaughan Summary of Proposed Changes in Bill 53, *Stronger City of Toronto for a Stronger Ontario Act, 2005* and Recommendations for Amendments to *Municipal Act, 2001*.

Report prepared by:

Carolyn P. Stobo, Solicitor/Special Services

Respectfully submitted,

Janice Atwood-Petkovski, Commissioner of Legal and Administrative Services

CITY OF VAUGHAN

**SUMMARY OF RECOMMENDATIONS
AMENDMENTS TO THE *MUNICIPAL ACT, 2001***

Schedule A – City of Toronto Act, 2005

Purposes

1. The broader purposes appearing in Part I of the TA should be incorporated into the MA.

General Powers

2. The same "broad authority" set out under Part II of the TA should be incorporated into the MA for municipalities, so that the powers of a municipality are to be interpreted broadly and the general powers or spheres of jurisdiction are broadly framed and will include the additional expanded areas of general authority set out in section 8. For two-tier municipalities, the general powers that are not presently included as general powers under the MA should be treated as non-exclusive to both tiers. In addition, the reduction in limitations on the broad authority contained throughout the proposed TA should be incorporated, wherever possible, into the MA.

General Restrictions – Corporate and Financial Matters

3. The reduced list of restrictions on corporate and financial matters in section 13 of the TA should be incorporated into section 17 of the MA for all municipalities.

Delegation

4. The broadly framed general rules in section 20 respecting delegation of "non-legislative" powers by Council (i.e., to Committees of Council, or to one or more officers or employees of the municipality) should be incorporated in the MA, as should the delegation authority for the issuance of summary suspensions of licenses contained in Part III of the TA at section 86(3). It is not necessary at this juncture to incorporate the section 21 "legislative" powers delegation authority to municipalities not of a size similar to Toronto.

Regulations

5. The section 25 provincial regulation-making authority for "matters of provincial interest" should not be incorporated in the MA, since there is no ability of municipalities to control the exercise of the power and it has the potential to substantially restrict municipal powers without the protections built in to the process involved in the enactment of public statutes.

Notice

6. It should be noted that, while the mandatory requirement for the provision of notice formerly associated with some individual sections has been "dropped" – instead the TA has included a provision at clause 207(1) 4 whereby the City "*shall adopt and maintain policies respecting 'circumstances in which the City shall provide notice' and the 'form, manner and times' of notice*". This policy requirement will probably capture the same types of matters municipalities are currently required to provide notice of, since they all affect accountability to the public, transparency and where property or other rights might be affected by the municipality's decisions.

Licensing

7. All of the changes set out in the TA as noted in the summary giving the municipality broader licensing powers, with fewer conditions on the exercise of

the licensing authority, and improving delegation powers respecting licensing matters should be carried forward into the MA.

Business Closing Hours

8. The broader powers in the TA respecting business establishments' closing hours should be carried forward into the MA. Further, the amount of any "maximum" fines should be the same in the TA and the MA.

Environmental and Health, Safety and Well-Being Powers

9. The proposed legislation has broadened Toronto's general powers to deal with issues related to the environment and environmental well-being of the City, as well as generally to the health, safety and well-being of its residents. Given the inclusion of conflict provisions in both the MA and TA related to provincial and federal legislation and regulations, there appears to be no rational explanation as to why the broader environmental and health, safety and well-being powers should not apply to all municipalities. Under the TA, therefore, in addition to specific powers, Toronto will have the general power under section 8(2) 5 to pass by-laws related to the environmental well-being of the City (limited only in the above-noted respects and by the operation of conflicts with federal, provincial legislation or statutory instruments, etc.). This general power should be incorporated into the MA. There is no rationale for providing broader authority to Toronto than other municipalities with respect to environmental issues, particularly since the same specific limitations above can remain.

Boards

10. The enhanced flexibility that these provisions provide, even despite the potential confusion due to the number of boards, corporations, etc., should be carried forward into the MA.

Corporations

11. The intention to create broader authority to establish corporations and delegate functions to them in the TA, subject only to specific "take-aways" imposed by regulation, is an improvement over the status quo under the MA. The same broad authority should be incorporated into the MA, since the current MA provisions and regulations are overly restrictive.

Accountability and Transparency

12. Some of the new accountability and transparency provisions in the new TA are not appropriate for all municipalities. If similar provisions are to be carried forward into the MA, then the appointment of an Integrity Commissioner, Ombudsman, Auditor General and the creation of a Lobbyist Registry should be "discretionary". In addition, the obligation to have Codes of Conduct could be added to the policies section in Part VI of the TA at section 207(1).

Governance

13. All of the changes reflected in Part VI of the TA should be carried forward into the MA, including:
 - a. Participation in meetings electronically.
 - b. The first four policies the municipality is required to adopt under subsection 207(1) are all currently included in the MA, but in a far more prescriptive manner. Specific procedures and requirements are stipulated for policies in relation to these activities in the MA. In particular the MA prescribes many specific notice periods with which municipalities must comply. Under the TA, Toronto will be able to determine when and if it will give notice and to whom, not only the manner and form of that notice;

Open and Closed Meetings

14. The definition of a "meeting" for the purposes of Part VI of the TA needs to be clarified and a definition for the word "meeting" needs to be added for the purpose of Part VI, section 239 of the MA. The definition in the TA and the lack of definition in the MA is inadequate to foreclose disputes arising, where members of council meet informally for the purpose of a general discussion on a matter but not for a formal meeting to discuss and vote on City business. Further,

the exemptions from open public meetings set out in the TA and section 239 of the MA remain inadequate. The failure to address this issue disregards the ongoing concerns expressed by municipalities that the existing provisions are too restricted. It also flies in the face of the preamble and governing principles of the Act, which recognize that the City is a democratically elected government capable of exercising its powers in an accountable and responsible fashion.

Multi-year Budgets

15. It is recommended that, since many municipalities already engage in multi-year budgeting for both operating and capital budgets, there may be no need for the specific recognition in s. 224(1) of the TA of this authorization or in the MA, but if required this authority should be incorporated in the MA.

Fees and Charges

16. Although any regulations under Part IX of the TA related to fees and charges must first be made available to determine the scope of the new powers and reduction in limitations, there is no rational basis for different provisions related to fees and charges to apply inside Toronto as opposed to outside Toronto. This is particularly the case within the GTA and other large urban centres. Therefore, any changes related to broadening powers to impose fees and charges and lessening restrictions on the types of fees and charges that may be charged in the TA should be incorporated in the MA.

Non-traditional Taxes

17. The TA contains broader permissive authority to impose new forms of taxes, but makes no real inroads on taxing powers. It still excludes sales tax (except for sales tax on entertainment, alcohol, tobacco), income tax or payroll tax, wealth or capital tax, hotel tax, and any occupancy tax for utilities on municipal rights of way. The limited authority to introduce sales tax on entertainment, alcohol and tobacco may provide some assistance to larger municipalities, but any benefits may be outweighed based on the expenses connected with set up of these types of sales taxes. Despite the shortcomings, the authority to introduce limited sales taxes on the above services or products should be incorporated in the MA and the regulations should be limited.

Collection of Property Taxes

18. It is recommended that sections 300 and 303 of the MA are too prescriptive and should be deleted.
19. The changes in sections 316 and 317 of the TA providing greater flexibility regarding minimum tax thresholds and the recovery of unpaid past taxes should be incorporated in the MA.

Penalties and Enforcement

20. It is recommended that the ability to impose "minimum" and "maximum" fines for various categories of offences and the increase in the maximum fine amount should be incorporated in the MA or *Provincial Offences Act* for municipalities generally.
21. It is recommended that Part XV of the MA be amended to include a power to impose "administrative monetary penalties" which is not limited to the enforcement of parking or licensing by-laws as proposed under the TA sections 81 and 86(1)(g) respectively. The ability to establish "administrative monetary penalties" for certain matters is an important tool for municipalities in the enforcement of certain by-laws. It reduces the administrative delays currently besetting the court system and provides the municipality with essentially the same preventative tool for enforcing certain by-laws. To enforce the payment of an administrative penalty, there should be the power to file a certificate (Clerk or Treasurer) with a local registrar of the Superior Court of Justice and to enforce the certificate as an order of the Court. The municipality should also have the power to add the penalty to the tax roll of any property wholly owned by the person(s) against whom the penalty is imposed and collect it in the same manner as taxes. Similar amendments should be made to any other statutes, such as

- the *Building Code Act, 1992*, the *Fire Prevention and Protection Act, 1997* and so forth to authorize administrative penalties.
22. All of the other additional enforcement powers set out in the TA that are not presently included in the MA should be incorporated into the MA.

Schedule B – Public Acts: Repeals and Amendments

Traffic Calming Requirements

23. It is recommended that the *Environmental Assessment Act* at section 1(1) or elsewhere as required be amended to provide that "traffic calming measures" are not undertakings for the purposes of the *Environmental Assessment Act*, as amended, for all municipalities and that any ongoing applications under the Act for traffic calming measures or any ongoing processes related to proposed traffic calming measures under an approved class environmental assessment are discontinued on the day the Bill receives Royal Assent.

Term of Council

24. It is recommended that the *Municipal Elections Act, 1996* at section 6(1) be amended for municipalities throughout the province to vary the term of Council from three 3 (3) to four (4), with such amendment to be effective for the term of office following the November 2006 Municipal Election.

CITY OF VAUGHAN
SUMMARY OF PROPOSED CHANGES IN BILL 53,
STRONGER CITY OF TORONTO FOR A STRONGER ONTARIO ACT, 2005
AND
RECOMMENDATIONS FOR AMENDMENTS TO *MUNICIPAL ACT, 2001*

Purpose:

The following summary provides a detailed comparison of proposed changes incorporated in various parts of the *City of Toronto Act, 2005* (hereafter referred to as the "TA") with the existing comparable provisions in the *Municipal Act, 2001* (hereafter referred to as the "MA") and includes recommendations for *Municipal Act, 2001* amendments.

Schedule A – City of Toronto Act, 2005 ("TA")

TA - Part I – Interpretation

The Preamble and Part I of Bill 53, *City of Toronto Act, 2005* (the "TA") set out governing principles and purposes of the Act in keeping with the broader powers provided to Toronto in the proposed legislation. In the statement of principles there is confirmation of the concepts of cooperation and mutual respect, together with acknowledgment of the requirement for active participation of both provincial and municipal governments working together. There is confirmation at the outset that the City has authority to enter agreements with the federal government. These provisions recognize the need for ongoing dialogue and partnership, to reduce uncertainty and for compatibility of initiatives in shared policy space or areas.

Part I also contains a broader statement of purposes than those appearing in the *Municipal Act, 2001* (the "MA") and they coincide with the broader general powers being provided to the City. They recognize that the City should be able to determine what is in the City's public interest, the appropriate structure for governance of the City, accountability and transparency, the appropriate mechanisms for delivery of services (i.e., city government, local boards, city boards, corporations, etc.) and the appropriate levels of municipal spending and taxation.

Additional definitions included in section 3 of the TA reflect the TA's broader powers and the interpretation provisions included in section 4 reflect its impact on legislation beyond the MA.

Recommendation:

1. The broader purposes appearing in Part I of the TA should be incorporated into the MA.

TA - Part II – General Powers of the City

Sections 6, 7 and 8 of the TA set out the General Powers and Natural Person Powers for the City of Toronto. The changes to the general powers are significant. The TA provides at section 6 that all powers are to be interpreted broadly and at section 8 it replaces the general spheres of jurisdiction currently in section 11 of the MA with broad authority grants. These areas of authority are expanded beyond the existing spheres of jurisdiction or specific powers in the MA to include, *health, safety and well-being of persons, protection of persons and property, including consumer protection, "services and things" the City considers necessary or desirable for the public, and business licensing*. The broad grants of authority include:

1. Governance structure of the City and its local boards (restricted definition). [NEW GENERAL GRANT]

2. Accountability and transparency of the City and its operations and of its local boards (restricted definition) and their operations. [NEW GENERAL GRANT]
3. Financial management of the City and its local boards (restricted definition). [NEW GENERAL GRANT].
4. Public assets of the City acquired for the purpose of exercising its authority under this or any other Act. [NEW GENERAL GRANT]
5. Economic, social and environmental well-being of the City. [NEW GENERAL GRANT].
6. Health, safety and well-being of persons. [NEW GENERAL GRANT]
7. Services and things that the City is authorized to provide under subsection 8(1) [NEW GENERAL GRANT].
8. Protection of persons and property, including consumer protection. [NEW GENERAL GRANT].
9. Animals.
10. Structures including fences and signs.
11. Business licensing. [NEW GENERAL GRANT].

Section 10 of the TA expands the scope of by-law powers to authorize by-laws that apply to specific individuals or groups as the City considers appropriate, as distinct from subsection 10(2) of the MA which permits distinctions only if the persons or businesses constitute different classes of persons or businesses defined in the by-law.

Section 13 of the TA substantially reduces the list of restrictions on corporations and financial matters.

The delegation powers in section 20 (non-legislative powers) and 21 (legislative powers), sections 22, 23 and 24 establish new rules for the scope of powers and duties that may be delegated by Council. The MA contained references only in a few sections of the Act where specific matters could be delegated and was unsatisfactory, given the clear need for some loosening of the rules. For example, there is no explicit authority for the Chief Licensing Officer to summarily suspend a licence, where there is a safety hazard or danger to the public due to the condition of a vehicle or premises, etc. There is often no opportunity to arrange for and convene an immediate hearing by the Licensing Committee of Council, due to notice and other fairness requirements. This authority for summary suspensions has now been included under the Licensing Sections in Part III of the TA.

Section 25 of the TA permits the Lieutenant Governor to make regulations to protect the "provincial interest" for a period of 18 months. To continue the protection or restrictions the province would have to enact legislation.

Recommendation:

2. The same "broad authority" set out under the TA should be incorporated into the MA for municipalities, so that the powers of a municipality are to be interpreted broadly and the general powers or spheres of jurisdiction are broadly framed and will include the additional expanded areas of general authority above-noted. For two-tier municipalities, the general powers that are not presently included as general powers under the MA should be treated as non-exclusive to both tiers. In addition, the reduction in limitations on the broad authority contained throughout the proposed TA should be incorporated, wherever possible, into the MA.

3. The reduced list of restrictions on corporate and financial matters in section 13 of the TA should be incorporated into section 17 of the MA for all municipalities.

4. The broadly framed general rules in section 20 respecting delegation of "non-legislative" powers by Council (i.e., to Committees of Council, or to one or more officers or employees of the municipality) should be incorporated in the MA, as should the delegation authority for the issuance of summary suspensions of licenses contained in Part III of the TA at section 86(3). It is not necessary at this juncture to incorporate the section 21 "legislative" powers delegation authority to municipalities not of a size similar to Toronto.

5. The section 25 provincial regulation-making authority for matters of provincial interest (18 months) should not be incorporated in the MA, since there is no ability of municipalities to control the exercise of the power and it has the potential to substantially restrict municipal powers without the protections built in to the process involved in the enactment of public statutes.

TA - Part III – General Powers: Limits and Additions

Highways (s. 29-55)

Regarding highway closing procedures, section 33 of the MA does not appear in Bill 53. However, it is in any event likely redundant since a highway, once established, may only be closed by by-law. Bill 53 continues the trend toward streamlining highway closing procedures at section 38 by simply requiring registration of the by-law and, if applicable, the consent of the Government of Canada.

Of interest, Bill 53 drops the MA s. 34(7) limit on the power to permanently close or alter a highway that results in a person having no motor vehicle access. The MA further contains additional protections regarding the right of access at subs. (7)-(10).

Bill 53 drops the requirement of notice of intention to pass a by-law naming or changing the name of a highway. Section 47 of the MA provided: "Before passing a by-law naming a highway or changing the name of a highway, a municipality shall give public notice of its intention to pass the by-law."

Bill 53, s. 51 permits removed and impounded objects to be sold and the proceeds retained by the City. Bill 53 clarifies that the power to remove and impound (and the new power to sell and retain the proceeds) does not include motor vehicles on private property. Section 63 of the MA does not contain a similar provision.

Recommendation:

6. It should be noted that, while the mandatory requirement for the provision of notice formerly associated with some individual sections has been "dropped" – instead the TA has included a provision at clause 207(1) 4 whereby the City "*shall adopt and maintain policies respecting 'circumstances in which the City shall provide notice' and the 'form, manner and times' of notice*". This policy requirement will probably capture the same types of matters municipalities are currently required to provide notice of, since they all affect accountability to the public, transparency and where property or other rights might be affected by the municipality's decisions.

Transportation (s. 56-59)

No material changes.

Waste Management (s. 60-61)

No material changes.

Public Utilities (s. 62-73)

No material changes.

Culture, Parks, Recreation and Heritage (s. 74)

No material changes.

Drainage and Flood Control (s. 75-76)

No material changes.

Parking (s. 77-81)

Bill 53 at s. 77(1) includes a common provision for vehicles parked on any land (municipal or private) and at s. 77(2) now provides a right to enter "land" for the purpose of the removal and impounding or restraining and immobilizing of vehicles parked contrary to the by-law.

The parking lot sections are similar, but Bill 53, at s. 80(2), permits Toronto to require owners or operators of parking lots to which the public has access to provide designated disabled parking spaces.

Bill 53, at s. 81 also introduces *administrative monetary penalties* as a means of enforcing by-laws respecting parking, standing or stopping of vehicles, but first a regulation is required to permit such penalties under s. 118. The same power is authorized for business licensing infractions under s. 86(1)(g), subject to a regulation first being filed. See further the Recommendation for a general authorization of administrative monetary penalties under Part XIV – Penalties at the end of this summary.

Economic Development (s. 82-84)

Respecting Small business counselling, Bill 53 s. 84(2)1 drops the requirement for the approval of the Lieutenant Governor in Council respecting the establishment and maintenance of programs to encourage the establishment and initial growth of small businesses in the City.

Further, Bill 53, s. 84 does not regulate as specifically the local board described in paragraph 7 of subsection (3) as does MA01 s. 108(8) in respect of the local board established under clause MA01 108(3)(g).

Licensing of Businesses (s. 85-96)

The authority in the TA for licensing of businesses is derived both from the general powers to pass by-laws set out in section 8(1), para. 11 and the more specific provisions in sections. 86 - 94. Further, the word "licence" is defined at section 3(1) to include "permits, approvals, registrations and other permissions." The regulation-making power of the Province appears at sections 119 and 120.

- Toronto will be given a broader licensing power under the TA than that provided to municipalities in the "MA". A comparison of some of the powers under the TA versus those under the MA is set out below. Without limiting Toronto's general powers under sections 7 and 8 of the TA (including the power to pass by-laws related to Business Licensing set out at section 8(2), para. 11, Toronto will be given the power to provide for a "system of licences" with respect to a (or any) business and it has been given the following specific powers under section 86(1) of the TA, which are less detailed or specific than the list of specific powers given to municipalities under section 150(8) and other sections of the MA. The power to provide for a system of licences, combined with the word "licence" which, as above, is broadly defined in section 3(1), is much less prescriptive than the detailed, specific formulation of powers municipalities are subject to under the MA.
- Combined with the generally worded powers at section 8 and the preamble of section 86(1), the TA contains a reduced list of specific powers in section 86(1), clauses (a) to (g). Toronto has been given the opportunity to impose *administrative monetary penalties* for licensing by-law infractions or offences, under s. 86(1)(g), subject to a regulation first being filed. See comments under Part III – Parking above and the Recommendation under Part XIV – Penalties.

- Of some importance, the proposed TA does not contain specific requirements that Council include an explanation of the reasons why its decision to license a business and/or impose conditions on a licence or class of business licence relate to one or more of the general purposes for licensing. The general purposes for licensing were inserted in section 150(2) of the MA. The requirement to set out the reasons or an explanation of why the licence or conditions to be imposed relate to one of the purposes appears in section 150(3) of the MA. Since municipalities generally license businesses for one or more of the three purposes set out in section 150(2), it may be unduly onerous for municipalities in each case to include an explanation of the reasons for licensing or the reasons for imposing each and every condition on certain types of businesses. For example, in the case of some classes of licences, such as taxi cab licences, there may be 50 to 100 conditions imposed. Further, as a general principle, in the event of a dispute, a municipality will always be required to substantiate that its exercise of any of its powers is within its authority.
- Given the definition of licence, that includes "registrations", as well as the inclusion of the general power to provide for a "system of licences" (described below), Toronto still has the power to provide for a "registry of businesses".
- Toronto has been given a specific administrative power to summarily suspend licences for up to 14 days in certain circumstances (section 86(2)). This specific power was not provided explicitly to municipalities under the MA, leaving municipalities wondering whether the City would have to arrange a full hearing before a Committee of Council or Council prior to suspension a licence (i.e., in circumstances where a licensee on a regular inspection was found to be operating a taxi cab in a dangerous condition such as a faulty rear passenger door or tires in a worn condition or where the driver was operating a taxi cab without a valid driver's license, etc.). These situations demand immediate action and hearings by a Committee and Council s cannot be arranged in such a brief time.
- Additional summary suspension powers have been given under the TA at section 86(3) to suspend businesses from operating on City property for the holding of special events, construction/repair of the property, installation of utilities or services, and for pedestrian, vehicular or public safety.
- Toronto's powers regarding refusals, revocations, suspensions, imposition of conditions on licences, etc. under the TA may be exercised in the discretion of the "City" by section 86(4) rather than in the discretion of the "Council" as provided under section 150(11) of the MA. Unlike other municipalities, members of Toronto Council will not be required to hold hearings on all licensing matters related to revocation, suspension, conditions, etc. This is reflective of Toronto's established licensing structure.
- Toronto's licensing powers are further more broadly framed than those under the MA in that the TA at section 86(5) provides that licensing powers relate "to any activity, matter or thing", along with the provision that the power to pass by-laws licensing businesses includes the power to license businesses under any other section of the Act (section 88). Given this, the TA may not subject Toronto to the same restrictions as municipalities are under the MA where specific types of businesses or activities that may licensed are listed under section 150(6). This broad wording may have been used because the system of licences contemplated under the TA can relate to everything from licenses, permits, registrations or other types of approvals. As with municipalities generally under section 150(7) of the MA though, Toronto will still be restricted by section 89(1) from providing a system of licences for manufacturing/industrial businesses, wholesale sales of goods, natural resource industries or activities.
- It is noteworthy that the proposed TA legislation does not set out the same prescriptive provisions regarding licence "fees" as appear at section 150(9) and (10) of the MA. It may be that this issue is addressed elsewhere in the legislation, but we were unable to locate any relevant provision(s) in this regard. Since other municipalities are restricted to cost recovery regarding license fees, it is unclear why a different formulation of words is to apply to Toronto, particularly given the direction of case law over the past number of years regarding fees.

- A provision has not been included in the TA providing for the automatic 5-year expiry of licensing by-laws. This suggests an unsubstantiated requirement for municipalities outside of Toronto, since it will not apply to Toronto. It is a very costly exercise for municipalities to carry out a complete review of licensing by-laws every 5 years. Therefore, if it cannot be substantiated as necessary for all municipalities to carry out this 5 year review, it should be deleted from the MA as well.
- Similarly, the provision at section 150(4) requiring notice to the public and a public meeting prior to the enactment of a licensing by-law and the additional provision included at section 153 of the MA which authorizes municipalities to consult with the public on proposed licensing by-laws have not been duplicated in the licensing sections of the proposed TA.
- A general policy on notice is contemplated in the TA. By section 207(1) 4, the City "shall adopt and maintain policies with respect to ... circumstances in which the City shall provide notice to the public and...the form, manner and times notice shall be given. Under the MA the notice requirements, which are mandatory for licensing and a number of other matters, are to be established by by-law.
- The provisions included in the TA related to conflicts between provisions in statutes related to licensing, the limitations regarding the location of businesses (except requirements for compliance with land use by-laws), adult entertainment businesses, and reciprocal licensing arrangements remain similar to those in the MA, as do the provisions related to tow trucks and taxi cabs.
- The power of entry provision related to adult entertainment establishments contained in section 151(3) of the MA appears to be the same in section 92(3) although it is required to make reference to the administrative power of entry at s. 371 of the TA.
- The specific offence section in the TA for licensing by-law infractions involving adult entertainment establishments, similar to the provision at section 161 of the MA prescribing higher maximum fines for such offences, does not appear in the licensing sections of the TA. Instead, the specific offences and penalty sections related to adult entertainment establishments and higher maximum fines appear in Part XV of the TA, including the imprisonment provision at section 366.
- In addition to the above-noted differences, the TA does not contain a parallel provision requiring the City to maintain a list of all classes of businesses it licenses and the fees for such licences. This is no doubt a moot point, since the Licensing By-law of necessity contains such a list and the applicable fees.
- Finally the Minister's regulation-making powers regarding licensing and reciprocal licensing arrangements under sections 119 and 120 of the TA are the same as those contained in section 160(1) of the MA.

Recommendation:

7. All of the changes set out in the TA as noted in the summary giving the municipality broader licensing powers, with fewer conditions on the exercise of the licensing authority, and improving delegation powers respecting licensing matters should be carried forward into the MA.

Closing of Business Establishments (s. 97)

The power to pass by-laws regulating closing hours of retail business establishments to be given to Toronto in s. 97(1) of the TA contains less restrictive wording than the correlative power given to municipalities generally under s. 148(1) of the MA. The proposed power for Toronto contains no limit on the hours, whereas s. 148(1) restricts the municipality's power to require closings at

any time between 6 pm of any day and 5 am of the next day and s.148(3) permits the municipality to require closings on a civic holiday. Further, there is no exemption provided under the Toronto Act for the sale of liquor as under s. 148(4)(b) of the MA, although the Minister is given the regulation-making power to prescribe goods and services under s. 97(3)(b).

Once again, it is unclear why the proposed Toronto legislation incorporates broader authority related to this power to pass by-laws than municipalities generally have been given under the MA. Additionally, specific fines have not been prescribed for offences against business closing by-laws under this part, as is included under s. 148(5) of the MA. The specific fines that apply regarding offences under business closing hours by-laws may be set out elsewhere in the penalty sections of the TA.

Recommendation:

8. The broader powers in the TA respecting business establishments' closing hours should be carried forward into the MA. Further, the amount of any "maximum" fines should be the same in the TA and the MA.

Health, Safety and Well-Being (s. 98-103)

Smoking in public places – no material changes.
Emergency Communications systems – entry on land – no material changes.
Pits and Quarries – no material changes.
Repairs or alterations – authorized entry – no changes.
Fortification of Land – no material changes.
Conveyance of Prisoners – no material changes.

Natural Environment (s. 104-105)

At section 8(2), clauses 5 and 6 of the TA Toronto has the general power to pass by-laws related to the economic, social and environmental well-being of the City and health, safety and well-being of persons. Although the MA recognized "fostering the economic, social and environmental well-being of the municipality" as one of the purposes of municipalities, a specific general power over environment was not included as one of the spheres of jurisdiction for municipalities in the General Powers at section 11. Further, the MA at section 130 provides a more specific, limited power over health, safety and well-being, which reads: "A municipality may regulate matters *not specifically provided for by this Act or any other Act* for purposes related to the health, safety and well being of the inhabitants of the municipality."

In terms of more *specific environmental powers* appearing in the TA, there also appears to be some lessening of the restrictions or limits on the powers in the TA compared to those contained in the MA.

Trees: - The relevant provisions are contained in s. 104 of the TA. While the general power to regulate the destruction of trees is essentially the same in the TA and the MA, specific provisions dealing with appeals to the OMB related to tree permit matters as in s. 136 of the MA have not been included in Part III of the TA, nor have limitations on the power of entry as in s. 137 of the MA and specific provisions related to offences and maximum penalty amounts as in s. 138 of the MA been included in Part III of the TA.

Site alteration - fill, topsoil, grading: - The relevant provisions appear in s. 105 of the TA. Again the general power to regulate site alteration is essentially the same in the TA and MA, a much more detailed list of authorized powers appears in s. 142(2) of the MA which appears to be unnecessary. The wording used in the TA at s. 105(1)(a) to (c) is preferred. Similar to the trees provisions above, specific provisions dealing with appeals to the OMB related to site alteration matters as in s. 143 of the MA have not been included in Part III of the TA, nor have limitations on the power of entry or other enforcement remedies as in s. 144 of the MA. The Enforcement Powers are contained in Part XV - which include more general enforcement powers to be discussed by other contributors.

Green Roofs: Toronto's ability to pass by-laws for the construction of green roofs (where vegetation grows over a substantial portion of roof area) includes limitations on the power, which are set out in s.108 of the TA, including an automatic Lieutenant Governor proclamation-repeal section at s.104 (4).

Recommendation:

9. The proposed legislation has broadened Toronto's general powers to deal with issues related to the environment and environmental well-being of the City, as well as generally to the health, safety and well-being of its residents. Given the inclusion of conflict provisions in both the MA and TA related to provincial and federal legislation and regulations, there appears to be no rational explanation as to why the broader environmental and health, safety and well-being powers should not apply to all municipalities. Under the TA, therefore, in addition to specific powers, Toronto will have the general power under section 8(2)5 to pass by-laws related to the environmental well-being of the City (limited only in the above-noted respects and by the operation of conflicts with federal, provincial legislation or statutory instruments, etc.). This general power should be incorporated into the MA. There is no rationale for providing broader authority to Toronto than other municipalities with respect to environmental issues, particularly since the same specific limitations above can remain.

Animals (s. 106-107)

No material changes.

Structures, including Fences and Signs (s. 109 - 110)

Bill 53 s. 110 drops the specific requirement in MA at s. 99, para. 1 for public notice of an intention to pass a sign by-law. However, there is a provision at section 207(1) 4 of the TA requiring the City to enact a policy setting out the circumstances in which notice shall be provided to the public and the form, manner and times of notice for various actions.

Bill 53 does not include a specific power to prohibit and regulate the message, content and nature of adult entertainment establishment signs. The MA specifically provided: at s. 99, para. 2: "The by-law may prohibit and regulate the message, content and nature of signs, advertising and advertising devices, including any printed matter, oral or other communication or thing, promoting adult entertainment establishments, but nothing in this paragraph limits the power to pass by-laws with respect to any other business or person."

More specific provisions respecting costs of removal and disposal of signs are contained in Bill 53, s. 110 (2) and (3), which now include specific lien rights and authorize the recovery of disposal costs as a debt owed by the owner of the sign.

Land Use Planning (s. 111-115) –

Demolition or conversion of residential rental properties' controls: Bill 53, s. 111 permits Toronto to prohibit and regulate the demolition or conversion of *residential rental properties containing at least six dwelling units*. This power is exclusive to Toronto. The *Planning Act* ("PA") only contains provisions for the establishment of a demolition control area in s. 33, where residential dwellings cannot be demolished without prior approval and any permits issued will be subject to conditions, such as construction of replacement dwelling.

Community Improvement Plans: Bill 53, s. 112 contains the community improvement plan provisions, which are essentially the same as those contained in s. 28 of the PA, subject to the following differences:

Zoning By-laws: Bill 53, s. 113 enhances Toronto's zoning powers respecting height and density including the enforcement of prescribed conditions by means of an agreement registered on title

and enforceable against subsequent owners. Note s. 122 – regulations re zoning by-laws. Further, s. 113(1) stipulates that the authority to regulate provided in paragraph 4 of subsection 34 (1) of the PA includes and, despite the decision of any court, is deemed always to have included the authority to regulate the minimum area of the parcel of land mentioned therein and to regulate the minimum and maximum density and the minimum and maximum height of development in the City or in the area or areas defined in the by-law. s. 113(2) confirms that "if the official plan in effect in the City contains policies relating to *zoning with conditions*, the City may, in a by-law passed under section 34 of the PA, permit a use of land or the erection, location or use of buildings or structures and impose one or more prescribed conditions on the use, erection or location" and "when a prescribed condition is imposed under subsection (2), (a) the City may require an owner of land to which the by-law applies to enter into an agreement with the City relating to the condition; (b) the agreement may be registered against the land to which it applies; and (c) the City may enforce the agreement against the owner and any and all subsequent owners of the land." It should also be noted that the Minister under s. 122 may make regulations prescribing conditions for the purposes of subsection 113(2).

Site Plan Control Areas: Approvals under s. 114 of the TA are subject to requirements which are similar to those in the PA, but also include additional matters set out in proposed Bill 51 related to amendments to the PA. These matters relate to, for example, "exterior design, including without limitation the character, scale, appearance and design features of buildings, and their sustainable design, but only to the extent that it is a matter of exterior design, if an official plan and a by-law passed under subsection (2) that both contain provisions relating to such matters are in effect in the City" and the "sustainable design elements on any adjoining highway under the City's jurisdiction, including without limitation trees, shrubs, hedges, plantings or other ground cover, permeable paving materials, street furniture, curb ramps, waste and recycling containers and bicycle parking facilities, if an official plan and a by-law passed under subsection (2) that both contain provisions relating to such matters are in effect in the City."

Local Appeal Bodies: Bill 53, as with proposed Bill 51, at s. 115 permits Toronto to establish an *appeal body for local land use planning matters* including minor variance and land division consent appeals. This section must be compared with the authority given to municipalities in proposed Bill 51.

Note also, as under proposed Bill 51, Bill 53 includes s. 123 which provides that the Minister may make regulations respecting local appeal bodies as follows:

- (a) prescribing a term for the purpose of clause 115 (2) (a) and qualifications for the purpose of clause 115 (2) (b);
- (b) prescribing eligibility criteria for the purpose of subsection 115 (3);
- (c) prescribing classes for the purpose of clause 115 (4) (c);
- (d) prescribing requirements for the purpose of subsection 115 (7);
- (e) respecting appeals that are affected by orders made under subsections 115 (16), (18), (19) and (21).

Comment:

These provisions related to Land Use Planning at ss. 111-115, although embedded in the TA are similar to the currently proposed changes in Bill 51 to amend the *Planning Act* and *Conservation Land Statute Amendment Act, 2005*, which will affect all municipalities. The City of Vaughan has previously provided a report to the Province of Ontario on Bill 51 amending the *Planning Act*. It is unclear why a decision has been made to incorporate them directly into the TA, rather than leaving them in the PA.

TA - Part IV - The City and its Governance

The provisions of the Act relating to changes to council size and manner of election, ward boundaries and the City's name are not substantially changed but the process for changing ward boundaries is streamlined (section 128).

The role of City Council as described in the TA is substantially the same as the reciprocal provisions in the MA. The additions to the role include the requirement to ensure "controllership policies, practices and procedures are in place" and "accountability and transparency of the operations of the City, including the activities of the senior management of the City" (section 131). These new responsibilities have been included to reflect the new requirements related to accountability and transparency, which are included in Part V of the Act (to be reviewed in the following section).

Like the existing legislation the powers of the City must be exercised by city council by by-law, unless the City is specifically authorized to do otherwise.

The role of the Mayor as head of council is unchanged. However, a new section has been added defining the role of the Mayor as *chief executive officer*. The mayor of the City of Toronto, as chief executive officer of the City, shall: (a) uphold and promote the purposes of the City; promote public involvement in the City's activities; act as the representative of the City both within and outside the City, and promote the City locally, nationally and internationally; and participate in and foster activities that enhance the economic, social and environmental well - being of the City and its residents.

Bill 53 provides that the Province may make regulations requiring council to establish a specific governance structure. The Governing Toronto Advisory Panel created in 2005 made numerous recommendations concerning the Council structure in Toronto. The Panel recommended a strong mayor model of governance which included the creation of an executive committee of council and gave the mayor the authority to appoint deputy heads of council, committee chairs and vice chairs, and to appoint a chief administrative officer. The regulation making power in the proposed Act would give the Province the authority to impose the Panel's s if it chooses to do so. This regulation making power is specific to Toronto and is not something that should be or needs to be reflected in the MA.

The MA provides that Council may appoint a chief administrative officer who shall be responsible for exercising general control and management of the affairs of the municipality. The Toronto Act contains no equivalent provision. This is likely an indication that the Province intends to use its regulatory power to require the head of Council in Toronto to nominate or appoint one or more persons who will have the powers and duties of a chief administrative officer. In the absence of such a regulation the broad permissive authority granted to city council and its natural person powers would certainly permit Council to appoint a chief administrative officer and to define his or her duties. Nevertheless most municipal councils would likely prefer that the MA retain the existing authority, which clearly provides that it is to be exercised by Council and which defines the role of the CAO as the administrative head of the municipality.

The description of the role of officers and employees of the municipality, including the statutory officers (the Clerk, Deputy Clerk(s), Treasurer, Deputy Treasurer(s) and Auditor) are unchanged.

Boards: The power to establish "city boards" under the TA (section 140) is broadened from the "municipal service board" provisions in the MA. In comparing the provisions together with the expanded powers of delegation, the TA would give greater autonomy and flexibility to Council to create new boards and to give a city board the control and management of any municipal services and activities that Council considers appropriate. The proposed Act includes the additional provisions that a city board is a corporation, unless the city provides otherwise, and that a city board is an agent of the city, and a local board of the city for all purposes. These new provisions clarify the legal status of city boards, providing a clearer picture of their contractual powers, ability to own real and personal property, procedural requirements, the application of the Municipal Conflict of Interest Act and the Municipal Freedom of Information and Protection of Privacy Act, and the exposure of board members and the city to liability for the activities undertaken by the board.

"City boards" are not to be confused with local boards such as the Police, Library, Conservation Authority and Health Unit Boards which are created and governed by other statutes, not council; or with community development corporations; local housing corporations or municipal electrical utility corporations.

One outcome of these changes is it may add even greater confusion to the existing number of external bodies (boards, commissions, corporations – business and non-share) delivering municipal services. Trying to keep straight the variations in powers, procedures and regulations which apply to each is daunting enough for the legal staff and nearly incomprehensible to the Council members who sit on these bodies.

Recommendation:

10. The enhanced flexibility that these provisions provide, even despite the potential confusion due to the number of boards, corporations, etc., should be carried forward into the MA.

Corporations: Under the existing MA the ability of a municipality to create corporations is significantly restricted. Neither the spheres of jurisdiction nor the natural person powers grant this authority, other than the authority to create community development corporations which can have only very limited objects. Municipalities cannot incorporate corporations, nominate or authorize others to act as incorporators, directors, officers or members of a corporation, exercise any power as a member of a corporation or acquire or hold a security interest in a corporation except in accordance with a regulation made by the Province. That regulation is extremely prescriptive and narrowly limits the purposes for which corporations can be created, how they can operate and imposes significant procedural requirements on municipalities prior to their creation.

The TA purports to give the Toronto the broad authority to establish corporations and to delegate functions to them. However, this power is expressly subject to "such conditions and restrictions as may be prescribed". Therefore, until such time as the Province indicates what regulations it intends to pass for that purpose, it is not clear how broad this authority really.

Recommendation:

11. The intention to create broader authority to establish corporations and delegate functions to them in the TA, subject only to specific "take-aways" imposed by regulation, is an improvement over the status quo under the MA. The same broad authority should be incorporated into the MA, since the current MA provisions and regulations are overly restrictive.

TA - Part V - Accountability and Transparency

This Part of the proposed TA is entirely new, resulting from the broadening of powers in the TA and, presumably, the Bellamy Recommendations arising out of the Toronto Computer Leasing Inquiry. It will create several new requirements to improve accountability and transparency. The City of Toronto would be required to establish Codes of Conduct for Councillors and staff (which are already established in one form or another by most of the large urban municipalities) and some but not all local boards. Toronto, in particular, would be required to appoint an Integrity Commissioner, to establish and maintain a Lobbyist Registry, to appoint an Auditor General and further to appoint an Ombudsman.

(i) Codes of Conduct: It would be mandatory for the city to establish codes of conduct for members of council and members of some but not all local boards created. However, a by-law could not provide that a member who contravenes the Code is guilty of an offence. Given the broad powers of delegation included in the new Act, which could significantly enhance the roles of local boards and corporations, it appears to not be a requirement for all of them to implement codes of conduct. Council, however, could likely impose such a requirement as a condition

attached to the by-law establishing the board or corporation or providing for the delegation of authority.

(ii) Integrity Commissioner: The Integrity Commissioner is to report to Council and perform in an independent manner functions as may be assigned by Council with respect to the application of the city's code of conduct for members of council and the application of any other city by-laws and policies governing the ethical behaviour of members of council. Although the Codes of Conduct established by Council will govern the conduct of members of some local boards, the Integrity Commissioner's authority to investigate extends only to the conduct of members of Council. The Act seems to contemplate both an advisory and an investigatory role for the Commissioner, although it appears to be at the discretion of Council to define the precise scope the Integrity Commissioner's role. If the Commissioner finds and reports to council that, in his or her opinion, a member of council has contravened the Code of Conduct, Council may reprimand the member or suspend that member's remuneration for a period of up to 90 days.

The Act provides that council may request the Commissioner to give an opinion about whether a member has contravened the code, and for that purpose the Commissioner may conduct an inquiry. The Act also contemplates that the Commissioner may conduct an inquiry in respect of a request from a single member of council to give an opinion about whether another member of council has contravened the code. It is not clear if single members of council have the right to request such an opinion or if that would be subject to how city council defines the duties of the Commissioner. What, if any reports the Commissioner is required to provide to council appear to be up to council to define.

The nature of the inquiry and the powers of the Commissioner conducting an inquiry are not specified. The Commissioner may elect to proceed in accordance with the procedures in Parts I and II of the *Public Inquiries Act* but is not required to do so. The Act imposes a duty of confidentiality on the Commissioner and his or her delegates and overrides the disclosure provisions of the *Municipal Freedom of Information and Protection of Privacy Act*. It further provides that any periodic reports to city council by the Commissioner summarizing his or her activities shall not disclose confidential information about identifiable persons. Accordingly, such reports must be made available to the public. However, despite the obligation of the Commissioner and his or her delegates to preserve confidentiality, the information they collect may be disclosed in a criminal proceeding, as required by law. The Commissioner and his or her delegates are not compellable witnesses in a civil proceeding in connection with anything done under this Part.

A multitude of legal issues arise related to the Commissioner's procedures, duties of fairness, opportunities for representation, confidentiality and potential conflicts when the Commissioner has both an advisory and investigatory function. The Act does not specify any procedures. But it is likely better to leave it in the hands of the municipality to design a process incorporating appropriate safeguards.

(iii) Lobbyist Registration: The proposed Act also creates the obligation for the City to establish and maintain a system of registration of persons who lobby public office holders. "Public office holders" includes members of council and their staff, officers and employees of the city, members of a local board, their staff and officers, directors and employees (excluding Boards of Health, Committee of Management for Home for the Aged, Police Services Boards, Library Boards, Children's Aid Society or corporations created under the Act). City council would define "lobby" and specify when and what information would have to be provided by lobbyists. This registry would be available for public inspection.

(iv) Ombudsman: The City of Toronto is also required to appoint an Ombudsman who would report to Council. The Ombudsman's function would be to investigate any decision made or any act done or omitted in the course of the administration of the City, its local boards (excluding certain boards) and such city-controlled corporations as Council may specify. Apart from what

Council may be able to specify, the only decisions, acts or omissions which appear to fall outside of the Ombudsman's potential scope of review are those in respect of which there is a statutory right of appeal or review, on the merits, to a court or tribunal, until that right has been exercised or expired. In addition, the decisions, acts or omissions of a legal advisor or legal counsel in relation to a proceeding also cannot be reviewed by the Ombudsman.

No proceeding or decision of the Ombudsman is reviewable in any court, although the activities of the Ombudsman do not preclude an aggrieved person from pursuing other remedies or other avenues of appeal or review available to them.

As with the Integrity Commissioner, potential legal issues arise related to the Ombudsman's procedures, duties of fairness, rights to be heard, confidentiality, and so forth. As recommended above, it is likely better to leave it in the hands of the municipality to establish appropriate controls and procedures rather than attempting to address these issues in the legislation.

(v) Auditor General: The Act further provides for the appointment of an Auditor General. This position is distinct from the City Auditor appointed under section 139 of the Act to conduct an annual audit of the City's accounts. The new position of Auditor General will report to Council and is responsible for assisting Council in holding itself and city administrators accountable for the quality of stewardship over public funds and for achievement of value for money in City operations.

The specific powers and duties of the Auditor General are to be assigned by Council and can be extended to review the activities of local boards (excluding Boards of Health, Committee of Management for Home for the Aged, Police Services Boards, Library Boards, the Children's Aid Society) and such city-controlled corporations created under the Act and grant recipients as City Council may specify.

The Auditor General has broad powers to access information and records and can examine persons under oath. The Auditor General and his or her staff are obligated to preserve secrecy with respect to the matters that come to their knowledge, with the exception of their reports to city council and in any proceedings under the Criminal Code. That exception however does not apply to information or documents provided to the Auditor General, which are subject to solicitor-client, litigation or settlement privilege. These sections prevail over the Municipal Freedom of Information and Protection of Privacy Act.

(vi) Regulations: The Minister may make regulations prescribing other local boards which are exempted from the accountability and transparency provisions.

Recommendation:

12. Some of the new accountability and transparency provisions in the new TA are not appropriate for all municipalities. If similar provisions are to be carried forward into the MA, then the appointment of an Integrity Commissioner, Ombudsman, Auditor General and the creation of a Lobbyist Registry should be "discretionary". In addition, the obligation to have Codes of Conduct could be added to the policies section in Part VI of the TA at section 207(1).

TA - Part VI - Practices and Procedures

Generally the provisions in this Part of the TA are identical to those in the MA, apart from changes required to reflect the expanded powers to delegate decision-making and by-law passing authority to other bodies.

A new provision would permit Council, with the consent of the head of council, to designate another member other than the head of council to preside at meetings of Council.

Another important addition is the ability to provide for electronic participation in meetings. The City's procedure by-law could establish procedures which would permit a member of council to participate in meetings electronically, with the only statutory restriction being that the member could not be counted in the quorum for the meeting. This would not apply to all boards.

The other significant change in the TA is a requirement at section 207(1) for the City to adopt and maintain policies with respect to:

1. sale and disposition of land;
2. hiring of employees;
3. procurement of goods and services;
4. circumstances in which the City shall provide notice to the public and, if notice is to be provided, the form, manner and times notice shall be given;
5. manner in which the City will try to ensure that it is accountable to the public for its actions and the manner in which the City will try to ensure that its actions are transparent to the public;
6. manner in which the City will try to ensure that the rights, including property and civil rights, of persons affected by its decisions are dealt with fairly;
7. delegation of its powers and duties; and
8. financing of capital works, including the limits on the annual costs associated with the financing.

The policies required under subsection 207(1), paras. 5 and 6 (not 7) above are broad statements of principles addressing fairness and accountability. The last policy set out at para. 8 pertains to financial accountability, specifically as it relates to long-term financing arrangements.

Local boards (excluding Police Services Boards, local housing corporations and others prescribed by Minister) will only be required to adopt policies pertaining to the first three subject areas.

In conjunction with the expanded powers to delegate decision-making authority to other persons and bodies (in Part II of the TA), Toronto is also specifically authorized to provide for a process to conduct a review or appeal of decisions made by delegates. However, this power to review may be limited by regulations made by the Minister.

The open and closed meeting requirements have not been changed in the TA from those in the MA, despite repeated requests of municipalities to broaden the exceptions.

Recommendation:

13. All of the changes reflected in Part VI of the TA should be carried forward into the MA, including:

- a. **Participation in meetings electronically.**
 - b. **The first four policies the municipality is required to adopt under subsection 207(1) are all currently included in the MA, but in a far more prescriptive manner. Specific procedures and requirements are stipulated for policies in relation to all of those activities. In particular the MA prescribes many specific notice periods with which municipalities must comply. Under the TA Toronto will be able to determine when and if it will give notice and to whom, not only the manner and form of that notice.**
- 14. The definition of a "meeting" for the purposes of Part VI of the TA needs to be clarified and a definition for the word "meeting" needs to be added for the purpose of Part VI, section 239 of the MA. The definition in the TA and the lack of**

definition in the MA is inadequate to foreclose disputes arising, where members of council meet informally for the purpose of a general discussion on a matter but not for a formal meeting to discuss and vote on City business. Further, the exemptions from open public meetings set out in the TA and section 239 of the MA remain inadequate. The failure to address this issue disregards the ongoing concerns expressed by municipalities that the existing provisions are too restricted. It also flies in the face of the preamble and governing principles of the Act, which recognize that the City is a democratically elected government capable of exercising its powers in an accountable and responsible fashion.

TA - Part VII – Financial Administration

The TA has greater flexibility regarding the completion of annual budgets. At section 223(2)(a), the TA does not provide that the Minister “may” require any particular detail or format for the setting out of estimated revenues in the *annual budget*. When requiring that local boards submit their budgets to municipalities, the TA provides at section 223(4) that the requirement is to submit by “a date specified by the City”. The MA states the date is March 1st.

Section 223(5) contains a special definition of “taxes”, presumably inserted in the TA because of the expanded taxing powers. There is no corresponding definition in the MA.

Section 224(1) of the TA provides that the City can budget over 1 to 5 years. The same provision is not provided under the MA to authorize “multi-year operating budgets or capital budgets”.

There is no offence in the TA, comparable to section 294(2) in the MA for a Treasurer who fails to provide the Minister with prescribed annual returns of financial information. Further, the Minister does not have to “tabulate” the returns for Toronto nor place them before the assembly as required under section 294(3) of the MA. The MA requirement at section 299(2) to “establish objectives and standards with respect to any matter designated by the Minister related to the efficiency and effectiveness of the municipality's operation” is not in the TA. Section 232 of the TA requires the City to report to the Minister with regard to the efficiency and effectiveness of municipal operations (and the operations of its boards). This is the same as the requirement under section 299 of the MA.

Section 227 of the TA requires the published financial statements to include the taxes provided for under Toronto's expanded taxing authority.

There is no equivalent to the MA requirement at section 300 that the municipality report to the public on improvements in the efficiency and effectiveness of the delivery of services by the municipality and its local boards; and barriers identified by the municipality and its local boards to achieving improvements in the efficiency and effectiveness of the delivery of services. The format of the notice may be stipulated. The elimination of this requirement in the MA is preferred. There is no equivalent to the MA requirement at section 303 that regulations may be made related to “matters of provincial significance,” establishing standards for activities and provision of services. The same section provides for financial sanctions for failing to meet prescribed standards.

Recommendation:

15. It is recommended that, since many municipalities already engage in multi-year budgeting for both operating and capital budgets, there may be no need for the specific recognition in s. 224(1) of the TA of this authorization or in the MA.

16. It is recommended that sections 300 and 303 of the MA are too prescriptive and should be deleted.

TA - Part VIII - Finances

Section 240 of the TA provides that the natural person powers (section 7 of the TA) and the broad authority/powers (section 8 of the TA) apply to financial administration powers including: borrowing and investing; selling debt; incurring debt without borrowing long-term to finance a capital undertaking; entering into financial agreements or using financial instruments to reduce costs or financial risk associated with debt and investment; and engaging in other prescribed financial activities. Section 17 of the MA precludes the use of natural person powers for these purposes. Section 207 of the TA also appears to give the City the ability to set its own debt limit (s. 207(1) 8). Therefore, the City's limits on its powers to borrow or invest remain unclear until regulations are filed by the province. Under the MA, there are prescribed limits for annual debt repayment in the regulations. Additional regulations were filed in late 2005 dealing with debt related financial instruments and Financial Agreements, as well as eligible investments.

Section 242 first provides that all debenture debt issued by the City ranks equally with other debenture holders and permits the City to describe any instruments for long-term borrowing as debentures. Section 243 of the TA, unlike the MA at section 408, then adds the authority for other long term borrowing beyond debentures (i.e., TIF bonds, revenue bonds or other secured bonds) and is therefore not restricted to debenture debt. This could subordinate other debenture holders, given the provision at section 242 of the TA that debenture debt issued by the City ranks equally with other debenture holders and authorizing the City to describe any instruments for long-term borrowing as debentures.

Both statutes (per s. 409(5) in the MA and s. 244(1) of the TA) provide that "no amount raised for a sinking or retirement fund, including earnings or proceeds derived from the investment of those funds, shall be applied towards paying any part of the current or other expenditure of a municipality". The TA provides for an exemption from that prohibition if the auditor authorizes it. There is no equivalent "out" in the MA.

Section 245(6) requirements for debenture by-laws are to be prescribed by regulation in the TA, but in the MA they are set out (in sections 408(3) and (4)).

Rules about municipal capital facilities are largely the same in s. 247-252 of the TA as in s. 110 of the MA.

In the MA, section 407 prescribes the limits that, if exceeded, constitute an offence for a councillor. In the TA, the limits may be prescribed by regulation.

By s. 251 the "freedoms" that Toronto gained from the restrictions in sections 401-424 of the MA can be taken away by regulation.

Comment:

It is not possible to determine with any certainty what differences there may be between the TA and MA related to the proposed expansion of investment and debt powers until the proposed regulations are made available by the province under the TA.

TA - Part IX – Fees and Charges

Under the TA, the power to impose fees and charges is derived from sections 7 and 8 (the natural person powers and the general powers setting out the ability of the City to provide any service or thing the City considers necessary or desirable for the public), whereas under the MA it is derived solely from the Fees and Charges Part of the Act, at s. 391. Therefore, Toronto will have natural person powers to impose fees and charges, whereas municipalities generally do not, and it will be permissible unless prohibited by the legislation or a regulation. In addition, a conflict section is added to the TA (s. 254(5)) providing that the TA fee or charge by-law under s. 254(1) prevails in

the event of a conflict between the by-law and the TA or regulation, or any other Act or regulation under such Act.

There is no material change in the general range of services, activities, costs payable by it for services or activities provided for it, or for the use of its property that the City may impose fees and charges for under the TA, Part IX. However, fees or charges may be stipulated for services, etc. whether or not they are mandatory for the City to provide (s. 254(3) of the TA). There is no requirement similar to s. 392 of the MA for Toronto to maintain a public list of all services, activities or use of its property that are subject to fees or charges and the amount of each fee or charge under the Act. There is also no specific list of the contents of a fees and charges by-law as set out in s. 396 of the MA.

The Province continues to have the same extensive regulation-making authority under Part IX of the TA as it has under the MA.

Recommendation:

17. Although any regulations to be filed under Part IX of the TA related to fees and charges must first be made available to determine the scope of the new powers and reduction in limitations, there is no rational basis for different provisions related to fees and charges to apply inside Toronto as opposed to outside Toronto. This is particularly the case within the GTA and other large urban centres. Therefore, the changes related to the powers to impose fees and charges and restrictions on the types of fees and charges that may be charged in the TA should be incorporated in the MA.

TA - Part X - Power to Impose Taxes ("*Non-traditional Municipal Taxes*")

Part X gives the City of Toronto the power to impose "non-traditional" municipal taxes, i.e. *sales taxes* on certain services/goods, which is not available to municipalities under the MA-. The power may be exercised by by-law, but is limited by three conditions:

- the tax must be a direct tax;
- the implementing by-law must address:
 - the subject of the tax
 - the tax rate or the amount payable
 - the manner of collection of the tax; and
- any prescribed conditions.

The Act includes restrictions on certain types of taxes, including income taxes, manufacturing taxes, hotel taxes, gas, energy or natural resources taxes, poll taxes and wealth and inheritance taxes. Allowable sales taxes are restricted to taxes on purchases of admissions to "places of amusement", which include theatres, sports events, performances and other entertainment, the purchase of liquor and tobacco and the production of beer or wine at a brew on premise facility.

The Act confers some discretion in structuring a tax by-law under this Part, which may include exemptions, rebates, penalties, interest, assessment provisions and mechanisms for enforcement. Enforcement measures allowed for under the by-law do not prevent the City from using other legal remedies for collection. However, taxes under this Part do not receive priority lien status and cannot be added to the tax roll.

The Crown and its agencies, boards, commissions and corporations, as well as school boards, universities, colleges, hospitals, nursing homes and other prescribed people are not subject to taxes created pursuant to this Part. Moreover, this Part does not limit so-called "traditional" municipal taxes.

The City may enter into agreements for the collection of these taxes and for the administration and enforcement of the by-law.

Recommendation:

18. The TA contains broader permissive authority to impose new forms of taxes, but makes no real inroads on taxing powers. It still excludes sales tax (except for sales tax on entertainment, alcohol, tobacco), income tax or payroll tax, wealth or capital tax, hotel tax, and any occupancy tax for utilities on municipal rights of way. The limited authority to introduce sales tax on entertainment, alcohol and tobacco may provide some assistance to larger municipalities, but any benefits may be outweighed based on the expenses connected with set up of these types of sales taxes. Despite the shortcomings, the authority to introduce limited sales taxes on the above services or products should be incorporated in the MA and the regulations should be limited.

TA - Part XI to Part XIII ("Traditional Municipal Taxes")

"Traditional" municipal taxes are *property taxes*. The Parts of the TA that allow for property taxes (Part XI), limit them (Part XII) and provide for their collection (Part XIII) largely mirror the MA, except for deletion of a number of MA sections that do not apply to Toronto. These Parts of the TA continue to be highly prescriptive and the provisions in Parts XI to XIII explicitly do not apply to taxes levied under Part X. The variations from the MA relate in the majority to changes in time lines.

There is some broader authority under the TA related to area rating than under the MA, but it remains to be seen whether regulations will be filed by the province regarding these powers (as under the MA, with the filing of O.Reg 305/02 establishing the services eligible for area rating).

There is no explicit allowance for City Council to delegate to a committee the responsibility to hear applications relating to overcharges for a gross or manifest error in a tax bill. The TA makes it clear that the decision of the Assessment Appeal Board in these cases is final. This is not stated in the MA at section 320.

TA - Part XIV - Sale of Land for Tax Arrears

For the most part the changes from Part XI of the MA are minor, except more flexibility in the TA at section 316 to set thresholds where no taxes payable, reduced taxes or for minimum taxes. In addition, section 317 of the TA removes the two-year time limit where parcels of land have been divided and taxes apportioned. Section 317 provides the municipality with greater flexibility to recover unpaid past taxes than the current year and two preceding years as in section 356(1)(b) of the MA.

Recommendation:

19. The changes in sections 316 and 317 of the TA providing greater flexibility regarding minimum tax thresholds and the recovery of unpaid past taxes should be incorporated in the MA.

TA - Part XV - Enforcement Powers

The power in section 161 of the TA is found in section 326(3) of the MA with respect to Adult Entertainment Establishments offences but not for any offences under any other by-law. The authority is broader in section 161 of the TA.

The ability under section 361(3) of the TA related to holding of directors/officers of a corporation responsible is not in the MA, but should be incorporated in the MA.

The powers related to hindering and obstruction of orders issued under section 373, which are only found in the TA and not the MA, are very similar to the powers in the *Fire Protection & Prevention Act, 1997* ("FPPA").

By section 365 of the TA the City is given powers to establish a "system of fines for offences" – replacing the POA structures, which included set fines and maximum fine amounts of \$5000. The City may establish both *minimum and maximum fines* in various categories of offences: continuing offences, multiple offences, escalating fines for repeated offences & special fines in addition to regular fines for offences designed to eliminate/reduce any economic advantage from contravening the by-law. All fines must not exceed \$100,000, except for the special fines. This power applies except that, if other Acts provide for fines for a contravention of the by-law, Toronto cannot establish this fine structure for the by-laws enacted under those statutes. This same power should be provided under the MA or the *Provincial Offences Act*, or something similar authorizing the municipality to seek higher fines for repeated offences or special fines to eliminate economic advantages through an application to the Court.

As under section 371 of the TA where powers of entry and inspection powers are set out, it is important to ensure inspection powers in the MA are set out clearly and contain required additional or supplementary powers such as the authority to compel documents for production, inspect and remove documents to make copies, and so forth, since the argument can be made that municipalities do not have all the powers to inspect properties to determine compliance with by-laws unless they are specifically set out as in Bill 53. Even if not all the powers are provided in the MA, it should spell out the right of municipalities to enter upon land to carry out an inspection as in section 371(1) of the TA.

Under Section 372 of the TA, the only added exception is to permit entry into a dwelling as if an inspection order under section 373 is obtained.

Under section 373 of the TA, a new power is provided to seek an order from a JP or Provincial Court by way of an application for inspection under a by-law as distinct from a warrant for inspection. One of the requirements is that the inspection must be "reasonably necessary". It is not very clear how a court would interpret this requirement and whether this power is indeed something additional and less onerous than obtaining a warrant under section 374. Also an inspection order through an application to the Court could be time consuming, and again, may be as onerous as seeking a warrant.

Section 374 of the TA contains similar powers to those in section 158 of the *Provincial Offences Act*.

Section 379 of the TA provided a much broader power than the powers under ss. 137 and 144(4) of the MA, which only apply to tree and site alteration by-laws. Section 379 of the TA provides for the issuance of orders to "discontinue an activity" for or under all types of by-laws. Section 380 of the TA is the same broadly framed power as in s. 379, applying to all types of by-law offences, not just site alteration by-law offences.

The same power in section 381 of the TA is found in section 427 of the MA, except that section 381 clarifies the lien requirements. Under section 384 of the TA, unlike section 486 of the MA, it spells out the exclusions respecting the power of entry, orders to discontinue an activity and work orders, where there are by-laws enacted by the City under different legislation.

Recommendations:

20. It is recommended that the ability to impose "minimum" and "maximum" fines for various categories of offences and the increase in the maximum fine amount should be incorporated in the MA or *Provincial Offences Act* for municipalities generally.

21. It is recommended that Part XIV of the MA be amended to include a power to impose administrative monetary penalties which is not limited to the enforcement of parking or licensing by-laws as proposed under the TA sections 81 and 86(1)(g) respectively. The ability to establish "administrative monetary penalties" for certain matters is an important tool for municipalities in the enforcement of certain by-laws. It reduces the administrative delays currently besetting the court system and provides the municipality with essentially the same preventative tool for enforcing certain by-laws. To enforce the payment of an administrative penalty, there should be the power to file a certificate (Clerk or Treasurer) with a local registrar of the Superior Court of Justice and to enforce the certificate as an order of the Court. The municipality should also have the power to add the penalty to the tax roll of any property wholly owned by the person(s) against whom the penalty is imposed and collect it in the same manner as taxes. Similar amendments should be made to any other statutes, such as the *Building Code Act, 1992*, the *Fire Prevention and Protection Act, 1997* and so forth to authorize administrative penalties.

22. It is recommended that all of the other additional enforcement powers set out in the TA that are not presently included in the MA should be incorporated into the MA.

Schedule B – Public Acts: Repeals and Amendments

Recommendations:

Traffic Calming Requirements

23. It is recommended that the *Environmental Assessment Act* at section 1(1) or elsewhere as required be amended to provide that "traffic calming measures" are not undertakings for the purposes of the *Environmental Assessment Act*, as amended, for all municipalities and that any ongoing applications under the Act for traffic calming measures or any ongoing processes related to proposed traffic calming measures under an approved class environmental assessment are discontinued on the day the Bill receives Royal Assent.

Term of Council

24. It is recommended that the *Municipal Elections Act, 1996* at section 6(1) be amended for municipalities throughout the province to vary the term of Council from three 3 (3) to four (4), with such amendment to be effective for the term of office following the November 2006 Municipal Election.