

## **SPECIAL COUNCIL – NOVEMBER 19, 2001**

### **MUNICIPAL ACT, 2001 (Bill 111)**

#### **Recommendations**

The Deputy City Manager and City Solicitor and the Solicitor/Special Services, in consultation with the City Clerk, Deputy City Clerk, the Director of Finance and Deputy City Treasurer, and the Tax Manager recommend:

- (1) That this report be received;
- (2) And that Council endorse the recommendations contained in the **Summary of Recommendations** attached as **Appendix I** to this report.

#### **Purpose**

This report provides a summary of the provisions of the proposed Ontario *Municipal Act, 2001* (Bill 111), highlights some of the more important initiatives and changes related to municipal powers and provides a general comparison with the current *Municipal Act*. Once a Bill receives Second Reading, it is referred to a legislative committee for further consideration. This Bill has been referred to the Standing Committee on General Government for public hearings between November 13 and 24, 2001 and clause-by-clause review. City officials are also seeking authority to make a submission to the legislative committee reviewing the Bill.

#### **Background – Analysis and Recommendations**

On October 18<sup>th</sup>, 2001 the Ontario legislature gave First Reading to Bill 111, the *Municipal Act, 2001*. The Bill received Second Reading on November 7<sup>th</sup>, 2001 and was referred to the Standing Committee on General Government for clause-by-clause review. The Committee has scheduled public hearings on the Bill. Given the Ministry of Municipal Affairs and Housing's ("MMAH") proposal to expedite the enactment of the legislation prior to the end of the current Session in December, 2001, it is not possible to provide a full section-by-section comparison of the proposed and current *Municipal Act*. The following analysis summarizes a number of the provisions of the proposed Act, highlights some of the more important changes and initiatives and includes general comparisons with the current *Municipal Act*.

The Ontario *Municipal Act* has been in existence for over 150 years. In 1997, the province released a Consultation Paper, *A Proposed Legislative Framework: Outline of the Proposed New Municipal Act*, including partial draft legislation. In 1998, a Draft Municipal Act was released for further consultation. The draft legislation was widely criticized by municipalities, the Association of Municipalities of Ontario ("AMO") and other municipal associations, given the retention of many of the restrictions contained in the existing Act, the significant increase in the Minister's regulatory powers and various other shortcomings. The province did not introduce a Bill in the Ontario Legislature later in the year 1998, as originally proposed, or in the year 1999.

Prior to the introduction of the proposed Act on October 18<sup>th</sup>, 2001, a consultation process with municipal representatives occurred late in the year 2000, after an announcement by the Minister of Municipal Affairs and Housing at the AMO Annual Conference in August, 2000. Some consultation with municipal representatives through AMO and the business sector, the banking industry, and the development and building industry occurred in the fall and winter of 2000. Additional consultation also took place this year with the same parties, prior to the introduction of Bill 111.

Staff in various City departments are reviewing and assessing the impact of the proposed legislation on various service areas within their responsibilities. A request should and will be made by appropriate City staff for MMAH officials to arrange briefing sessions for members of council and staff in upper and lower tier municipalities in the 905 Regions, dealing with interpretation and implementation questions, along with any other general or specific matters that arise in the course of this review.

**Recommendation 1:** It is recommended that the City of Vaughan authorize staff to appear before the Ontario Standing Committee on General Government to make an oral submission on behalf of The Corporation of the City of Vaughan, in keeping with the recommendations contained in the **Summary of Recommendations** attached to this report as **Appendix I**.

**Recommendation 2:** It is recommended, given time constraints and since all written submissions on the Bill must be received by the Clerk of the Committee shortly, that copies of this report including the **Summary of Recommendations** attached as **Appendix I** be sent to the Premier of Ontario, the Minister of Municipal Affairs and Housing, the Clerk of the Legislative Committee (Douglas Arnott, Clerk pro tem., Standing Committee on General Government, Room 1405, Whitney Block, Queen's Park, Toronto, Ontario M7A 1A2), and the Association of Municipalities of Ontario.

The MMAH published a News Release, Backgrounders and the Minister of Municipal Affairs' Statement to the Legislature on the introduction of Bill 111. This information includes a general summary of some of the main features of the proposed legislation and is attached in **Appendix II** to this report.

### **Preliminary Analysis**

The following comments provide a preliminary analysis of some of the more important provisions included in the proposed *Municipal Act, 2001*.

#### **Statement of Principles:**

##### **a. General Purposes of Municipalities:**

Section 2 of the proposed Act provides that municipalities are created by the Province to "be responsible and accountable levels of governments with respect to matters within their jurisdiction and each municipality is given powers and duties under this Act and many other Acts for purposes which include,

- (a) providing the services and other things that the municipality considers are necessary or desirable for the municipality;
- (b) managing and preserving the public assets of the municipality;
- (c) fostering the current and future economic, social and environmental well being of the municipality; and
- (d) delivering and participating in provincial programs and initiatives."

The inclusion of section 2 provides recognition of the concept that municipalities are a responsible and accountable level of government. The hope is that this type of provision, when viewed in light of other provisions included in the proposed Act related to municipal powers, will enable Courts to interpret the purposes section as a signal that municipal powers are to be given a broader or liberal interpretation. The natural person powers (section 8), the spheres of jurisdiction (section 11) and section 9, which mandates a broad interpretation of the natural person powers and the spheres of jurisdiction, may give further weight to this interpretation. However, the existence in the proposed Act of

numerous provisions retaining extensive provincial powers over municipal affairs by granting broad Ministerial regulation making powers and the continuation of specific provisions related to a variety of areas or matters, appears to contradict the broadly stated principles of municipal autonomy and an intent to encourage a liberal interpretation of these principles.

It should also be noted that the purpose of municipalities included at clause 2(d) - "delivering and participating in provincial programs and initiatives," was not one of the general purposes requested for inclusion in the eventual legislation in a number of the submissions forwarded by local municipalities or municipal associations in response to the 1998 Draft Legislation. The precise intent behind the inclusion of this purpose is unclear.

One concern arises respecting the effect the stated purposes will have in the event a municipality fails to achieve one or more of them. This consideration, for example, may arise in attempts by Courts to determine whether a municipal by-law should be quashed for illegality under the proposed section 273. The exception contained in section 272 related to unreasonableness where there is good faith may now be susceptible to different considerations than those applying in the past as a result of the inclusion of specific purposes.

**Recommendation 3:** As a result, it is recommended that the words appearing in the last line of the preamble to section 2 be amended to include the additional words as follows: "...for purposes which include, **but are not necessarily limited to,**...".

**b. Consultation:**

Section 3 of the proposed Act provides that "The Province of Ontario endorses the principle of ongoing consultation between the Province and municipalities in relation to matters of mutual interest."

While such a principle of consultation does not exist in the existing *Municipal Act* it is unclear what, if anything, the codification of this principle will achieve. The mere acknowledgement of the principle, without imposing a mandatory consultation framework, does not impose an enforceable obligation on the provincial government and even the subsequent entry into a Memorandum of Understanding may not impose an enforceable obligation on the province, whereby municipalities could compel consultation. The principle also appears contrary to the approach taken in the proposed Act itself whereby the Minister retains considerable powers over municipalities which may be exercised by the mere filing of a regulation or which may be affected by an "order, licence or approval" issued under a provincial or federal Act or regulation.

During the press conference announcing the introduction of the new Act, the Minister suggested his openness to a Memorandum of Understanding between the government and AMO, which could set out guiding principles for consultation. There is a precedent for such a memorandum in British Columbia. In that province, the principles appear to have been influential in guiding the development of subsequent legislation.

**Recommendation 4:** It is recommended that, at a minimum, section 3 be amended to reconsider the reference to a Memorandum of Understanding and instead require the Minister to file a regulation setting out the specific parameters, process and timing for consultation between the province and municipalities which will be undertaken in relation to matters of mutual interest and that this regulation be developed in consultation with municipalities, prior to the development of any additional companion or amending legislation to be

introduced and prior to the development and finalization of any regulations required to accompany or give effect to any provisions contained in the proposed Act.

### **General Municipal Powers:**

The proposed Act takes the same approach with respect to municipal powers as the draft legislation released in 1998. While the existing Act provides specific prescriptive authority for each power a municipality can exercise, the proposed Act seeks to provide general powers to municipalities, through the inclusion of ten general spheres of jurisdiction (Part II, sections 11 and 12 - see further in the paragraphs to follow) subject to general limitations. The Act also provides other regulatory powers set out in specific provisions dealing with various specific municipal matters such as powers of entry, procedures for closing highways, economic development powers and limits related to bonusing, grants, municipal capital facilities, etc. and dealing with health, safety and nuisance, and the natural environment (Part III – sections 24 to 149) and dealing with licensing, municipal reorganization, practices and procedures, financial administration, taxation, tax collection, fees and charges, debt and investment and the like (Parts IV-XV), which are supplementary to the general spheres of jurisdiction.

#### **a. Natural Person Powers:**

The general powers are achieved by the granting of natural person powers and spheres of jurisdiction. Section 8 of the proposed Act provides that a municipality has “the capacity, rights, powers and privileges of a natural person”. This gives municipalities natural person powers which are essentially the powers of a business corporation, such as the ability to enter into contracts; purchase, own and dispose of property; hire, pay and dismiss employees; delegate administrative responsibilities; provide and charge for goods and services; and dispose of assets. The proposed Act, however, limits these powers for municipalities to the purpose of exercising their authority under this Act or any other Act, thereby limiting the power to acting within the spheres of jurisdiction or the specific powers provided by the proposed Act or another Act. Further limitations on these powers are contained in Section 17, reviewed in the Limitations on a Municipality's General Powers section below.

#### **b. General Spheres of Jurisdiction:**

Section 11 of the proposed Act provides municipalities with the powers to pass by-laws respecting matters within the following ten spheres of jurisdiction:

- (i) highways, including parking and traffic on highways;
- (ii) transportation systems, other than highways;
- (iii) waste management;
- (iv) public utilities;
- (v) culture, parks, recreation and heritage;
- (vi) drainage and flood control, except storm sewers;
- (vii) structures, including fences and signs;
- (viii) parking, except on highways;
- (ix) animals; and
- (x) economic development services.

In the last general sphere, the title economic development has been changed to economic development services. This is defined as “the promotion of the municipality for any purpose by the dissemination of information and the acquisition, development and disposal of sites by the municipality for industrial, commercial and institutional uses”. The powers with respect to the acquisition, development and disposal of sites within the

economic development services sphere, in addition to general limitations, remain limited by and subject to the bonusing prohibition retained in the new Act, and any other relevant provisions and limitations contained in Part III, together with specific requirements related to the disposition of municipal property.

Section 9 of the proposed Act deals with interpretation. Subsection 9(c) provides that a by-law made pursuant to a sphere of jurisdiction may regulate or prohibit a matter, which includes requiring a person to do things respecting the matter, providing for a system of licenses, permits, approvals or registrations, and imposing conditions as a requirement for obtaining, holding or renewing licenses, permits, approvals or registration. This section also requires a Court to interpret a municipality's natural person powers and its spheres of jurisdiction broadly to confer broad authority on municipalities so as to enable them to govern their affairs as they consider appropriate and to enhance their ability to respond to municipal issues, and so as not to exclude any municipal powers that existed prior to the coming into force of the proposed Act.

Despite sections 8, 9 and 11, due to a number of express restrictions imposed on both the natural person powers and the spheres of jurisdiction in the proposed Act, the effect of the interpretation provision set out in section 9 may be limited or questionable. Although the proposed Act provides at section 9 that natural person powers and spheres of jurisdiction are to be interpreted broadly so as to confer broad authority on municipalities to enable them to govern their affairs as they consider appropriate and to enhance their ability to respond to municipal issues and although the intent behind the granting of natural person powers and general spheres of jurisdiction is to provide greater flexibility to municipalities to meet changing circumstances without the need to fit within express or incidental statutory provisions or language, the proposed Act imposes a number of significant limitations on the broad use of these powers at, for example, sections 15, 16 and, more importantly, 17, and 19. As a result, it may be that such limitations will be interpreted as having the effect of establishing a much narrower or restricted jurisdiction. If such an interpretation is adopted by the Courts over time, although the proposed Act appears to represent an attempt to adopt and foster a new approach by granting broad powers to municipalities, the limits imposed on such powers may well result in inflexible legislation similar to the existing Act.

**c. Specific, Itemized Powers:**

The draft 1998 Act included thirteen spheres of jurisdiction. Specific itemized powers relating to matters falling within the spheres which have been removed, as noted above, and related to other powers are set out in detail in Parts III through to XV of the Act. The general spheres which have been removed include:

- (i) health, safety, protection and well-being of people and the protection of property;
- (ii) natural environment; and
- (iii) nuisance, noise, odour, vibration, illumination and dust.

These powers are dealt with in Part III. The other powers contained in Parts IV to XV, again as noted above, deal with matters related to licensing, municipal reorganization, practices and procedures, financial administration, taxation, tax collection, fees and charges, debt and investment, etc.

**Limitations on General Powers:**

A number of the significant limitations imposed on the general powers granted to municipalities by the proposed Act are highlighted below.

Section 17 restricts natural person powers. A municipality is not permitted to do any of the following:

- (a) incorporate a corporation or nominate or authorize a person to act as an incorporator, director, officer or member of a corporation;
- (b) exercise any power as a member of a corporation;
- (c) acquire any interest in, or guarantee or exercise any power as a holder of, a security of a corporation;
- (d) impose taxes, fees or charges;
- (e) incur debt or make investments;
- (f) enter into agreements for the purpose of minimizing costs or financial risk associated with the incurring of debt;
- (g) make a grant or a loan;
- (h) provide or make contributions for pensions;
- (i) become a bankrupt under the *Bankruptcy and Insolvency Act (Canada)*; and
- (j) as an insolvent person, make an assignment for the general benefit of creditors or make a proposal under the *Bankruptcy and Insolvency Act (Canada)*.

Although the Minister may allow activities related to corporations under paragraphs (a) to (c) by making a regulation, a municipality's powers may be limited to acting in accordance with the regulation. Until such regulations are filed prescribing the types and purposes for which municipalities may establish corporations, municipalities continue to have no general power to incorporate. An exemption, however, has been included at section 203(4) for corporations established by municipalities pursuant to the *Electricity Act, 1998*, for corporations established for small business programs under section 108 or for community development corporations under section 109 of the *Municipal Act, 2001*. Similarly, an exemption is included for corporations incorporated under the *Housing Development Act* or local housing corporations under the *Social Housing Reform Act*.

Specific powers rather than natural person powers or broad powers within a sphere of jurisdiction apply to matters or activities listed in paragraphs (d) – (h).

Section 15 requires that the powers to pass by-laws under the natural person powers and the spheres of jurisdiction will be subject to any procedural requirements, including conditions, appeals, approvals, and limits contained in relevant specific provisions of the proposed Act. There is greater flexibility due to the elimination of a number of procedural requirements and specific notice requirements that no longer apply. Where there are procedural notice requirements, municipalities have more flexibility in establishing the type of notice to be provided for some activities.

The specific municipal powers contained in Part III of the proposed Act include authority to act with respect to matters which, but for their inclusion as a specific power, may also fall within a particular sphere. This circumstance may give rise to concerns related to the limits of different spheres of jurisdiction. If specific authority is definitively included elsewhere in the legislation, there may be a presumption that a proposed action lies outside the relevant sphere or spheres. Further, this may be interpreted to include similar or analogous matters as also being beyond a sphere's scope. Consequently, where a matter does not fall within a sphere or within a specific power, a municipality may have difficulty determining with any degree of certainty whether it has the power to act or not and subject to what, if any, restrictions or conditions.

Further, many specific powers and powers falling within a general sphere of jurisdiction remain subject to broad Ministerial regulation making powers contained in the proposed Act.

Section 14 provides that municipal by-laws have no effect if they conflict with provincial or federal Acts, regulations, orders, licenses or approvals.

Section 19 restricts municipalities in general to using their powers within the geographic limits of the municipality and section 16 provides that, with respect to most of the spheres of jurisdiction, a municipality may not exercise powers over systems other than its own.

**Municipal Governance:**

**a. Restructuring:**

As in the previous amendments to the existing *Municipal Act*, the restructuring provisions do not apply to regional municipalities, including the Region of York. The one exception is related to minor adjustments arising out of annexations and subject to the Minister's approval.

**b. Composition of Council:**

The composition of the council of every municipality as it was on the day before the proposed Act comes into force will be continued. Subsection 218(2) of the proposed Act contains expanded provisions for changing the size and composition of upper-tier councils at subsection 218(2). Subsection 218(3) includes a provision for changing the number of votes to assigned to each member. However, subsection 218(5) stipulates that these provisions do not apply to regional municipalities, including the Region of York, until a formal request for a regulation has been made by the regional municipality and a regulation is made authorizing the regional municipality to permit the change related to the request. After a regulation is made, prior to enacting a by-law to effect a change to the size, composition or number of votes on regional council, the regional municipality would be required to comply with notice requirements and hold at least one public meeting under subsection 219(1). Prior to a by-law becoming valid, the triple majority requirements once again apply, by subsection 219(2).

The changes in these provisions could be of assistance to the City of Vaughan in a number of ways. The City of Vaughan has sought an adjustment to its representation on regional council for a number of years. As at September 30<sup>th</sup>, 2001 the City of Vaughan's population is now estimated to exceed of 202,000. The City of Vaughan is the most under-represented area municipality in the Region of York, although it has over 25% of the total regional population and has the second highest population count. Vaughan has the highest percentage levy apportionment at the region at 29.70 %, yet it has only 15.8 % of the regional representation. The Town of Markham with an approximate population of 217,000, maintains a lesser 28.6 % apportionment of the regional levy but is accorded 26.2 % of the regional representation. For further comparison, the Town of Richmond Hill with an approximate population of 138,000 maintains only a 17.7 % share of the levy apportionment, but has the same 15.8 % of the regional representation as accorded to Vaughan.

Vaughan recently once again sought an increase in its representation to 3 or 4 members plus the Mayor. In light of the new provisions expanding the types of changes that might be made to the composition of upper-tier councils and the number of votes that can be accorded to any member, it would be possible to increase Vaughan's representation on regional council without the need for increased costs associated with additional members being added to regional council and/or Vaughan council and without the need for a reduction in the representation of another area municipality on regional council. A change in the number of votes accorded to two of Vaughan's existing three regional representatives, by increasing the votes of two of the members respectively from one

vote to two votes would be one means of addressing the current deficiency in representation.

As it is vital to ensure that an increase in the City of Vaughan's representation on regional council, and that Vaughan has adequate and fair representation on the upper tier council, in time for or prior to the 2003 municipal election, the City of Vaughan reiterates its request to the Region of York and the Minister of Municipal Affairs and Housing that a regulation be made immediately upon the enactment of the *Municipal Act, 2001* (Bill 111), to authorize the Region of York to exercise its powers under this section, and further that a regulation also be made under the current *Municipal Act* to cover the interim period until Bill 111 is enacted and sections 218 and 219 come into force.

**Recommendation 5:** that the Minister of Municipal Affairs and Housing, exempt the Regional Municipality of York from subsection 218(5) of the proposed *Municipal Act, 2001* so that the provisions related to changes to the composition of upper-tier councils apply to the Region of York or, alternatively, that the Minister ensure a regulation is made under subsection 218(6) of the proposed *Municipal Act, 2001* immediately upon the enactment of Bill 111, to authorize an increase in the City of Vaughan's representation on the Region of York council, and further that the Minister ensure a regulation is also made respecting the application of section 27 of the current *Municipal Act* to the Regional Municipality of York to cover the interim period until Bill 111 is enacted and sections 218 and 219 come into force.

The current provisions regarding changes to the size, composition, titles and wards applicable to lower-tier councils are continued in the proposed Act.

#### **Specific Changes:**

While the proposed Act generally does not represent a drastic change from the existing Act, the proposed Act contains a number of changes to the existing Act.

- changes exhibiting a significant departure from the existing Act.

Such changes, for example, relate to the delineation of general spheres of jurisdiction and the provision of natural person powers.

- changes regarding procedural and/or administrative requirements.

Such changes are evidenced in requirements related to public notice of intention to pass an annual budget (section 290), public notice of intention to pass a procedural by-law (subsection 238(2)), public meeting before passing a licensing by-law (subsection 150(4)), publication of lists of classes of businesses subject to business licensing and business licensing fees (section 158), and publication of a list of all fees and charges (section 392). In addition, many notice and public hearing requirements contained in the existing Act have been abolished.

- changes providing clarification of confusing existing legislative provisions or common law.

Such changes are reflected in provisions that deal with matters such as a provision that all charges can be added to the tax roll and which have priority lien status are included in the cancellation price for the purposes of a tax sale (subsection 1(3)), land becomes a highway only by virtue of a by-law (section 31), municipalities may name or rename private roads (section 48), a municipality must supply water or

sewage services to a building under certain conditions (section 86); and taxes may only be written off as uncollectable after an unsuccessful tax sale (section 354).

- Changes consolidating legislation or modernizing language.

Such changes are reflected in the consolidation of a variety of other statutes into the proposed *Municipal Act*, such as the *Municipal Tax Sales Act*, *Regional Municipalities Act*, individual Regional statutes, etc. These changes are further reflected in revised wording dealing with, for example, tax collection provisions.

- provisions addressing specific issues identified by municipalities in the past.

Such changes appear, for example, in provisions allowing municipalities to regulate the fortification of property to address biker gang issues (subsection 477(5)).

### **Miscellaneous Changes:**

#### **a. One-third Tax Exemption for Council Remuneration:**

Section 283 gives municipalities the option of retaining the one third tax exemption for the remuneration paid to council members. If a municipality passes a resolution prior to January 1, 2003, stating its intention that one third of the remuneration paid to members of council shall continue as expenses, the resolution is deemed to be a by-law on January 1, 2003. Such a by-law must be reviewed at a public meeting at least once every three years. If no such resolution is passed, and no bylaw is deemed enacted, then no part of the remuneration of council members is deemed expenses that are exempt from income tax.

#### **b. Municipal Liability:**

Section 448 limits municipal liability by providing that no proceeding for damages or otherwise shall be commenced against a member of council, officer, employee or agent of a municipality for any act done in good faith or for any alleged neglect or default in the performance in good faith of a duty or authority under the proposed Act. Accordingly, in order to succeed, the plaintiff would have to prove that the parties acted in bad faith in the performance or intended performance of a duty or authority under the Act.

#### **c. Transitional:**

Section 457(a) requires that a municipality review every by-law, determine whether it is a by-law which will continue to be permitted under the proposed Act, and if it is determined not to be permitted under the proposed Act, earmark such by-law as ineligible for amendment. Such a by-law, however, continues in force until the earlier of its repeal or January 1, 2006.

Highlights of additional changes are attached as **Appendix III** to this Report (to be delivered at the Meeting).

These highlights though should not be construed as an exhaustive list of all of the changes contained in the proposed *Municipal Act, 2001*.

## Conclusions

Ontario municipalities, particularly urban centers, do not stand alone in requesting new powers to match their responsibilities. Cities throughout Canada have sought changes to equip them with appropriate and less cumbersome powers or tools to enable them to carry out the increased responsibilities placed upon the municipal level of government. The increased responsibilities are a result of substantial population growth over the past fifty years, as well as changes initiated by the province in more recent years reflected in significant down-loading, amalgamations, and so forth.

The Association of Municipalities of Ontario and some municipalities have confirmed that the proposed *Municipal Act, 2001* represents a good beginning. The proposed Act itself illustrates a substantial effort by the Minister and staff at MMAH. It particularly provides evidence that the Ontario government is becoming more responsive to municipal empowerment, similar to the greater sensitivity reflected in municipal reform initiatives in some other provinces. Empowerment requires the clear recognition of municipal government as a responsible and accountable order of government, natural person powers for municipalities, recognition of broad spheres of municipal jurisdiction, and recognition of the need for ongoing consultation by the province and its municipal governments. The extent to which the *Municipal Act, 2001* can give effect to these principles remains to be seen. Movement in the right direction is certainly visible, despite some immediate concerns which have arisen as a result of the City's brief three-week window of opportunity to complete a review and provide comments on the current version of the long proposed Act.

In particular, given the express restrictions imposed on both the natural person powers and the spheres of jurisdiction by the proposed Act, the effect of the interpretation provision at section 9, namely, that natural person powers and spheres of jurisdiction are to be interpreted broadly so as to confer broad authority on municipalities to enable them to govern their affairs as they consider appropriate and to enhance their ability to respond to municipal issues, will remain somewhat unclear. While the granting of natural person powers and general spheres of jurisdiction clearly is intended to provide greater flexibility to meet changing circumstances without the need to fall within express or incidental statutory language, the proposed Act nonetheless imposes a number of limitations on the broad use of these powers. One argument or interpretation might be that such limitations have the effect of establishing a narrowly restricted jurisdiction for municipalities. If this interpretation is favoured, it may be that over time, although the proposed Act has attempted to adopt and foster a new approach by granting broad powers to municipalities, the limits imposed on such powers result in the same inflexible, prescriptive or unwieldy legislation that characterizes the existing Act.

Copies of this report and the recommendations summarized in **Appendix I** should be sent to the Premier of Ontario, the Minister of Municipal Affairs and Housing, the Clerk of the Legislative Committee, and the Association of Municipalities of Ontario.

**Report prepared by:**

Carolyn P. Stobo  
Solicitor/Special Services

Respectfully submitted,

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Theresa A. Caron  
Deputy City Manager and City Solicitor

TAC:CPS

**Attachments:**

1. Appendix I - Summary of Recommendations
2. Appendix II - MMAH News Releases, Backgrounders, Statement to the Legislature
3. Appendix III - Additional Changes introduced by Bill 111 (to be distributed at meeting)

## APPENDIX I

### SUMMARY OF RECOMMENDATIONS

1. It is recommended that City of Vaughan staff appear before the Legislature of Ontario's Standing Committee on General Government to make an oral submission on behalf of The Corporation of the City of Vaughan in keeping with the recommendations set out herein.
2. It is recommended that copies of this report and the recommendations be sent to the Premier of Ontario, the Minister of Municipal Affairs and Housing, the Clerk of the Legislative Committee (Douglas Arnott, Clerk pro tem., Standing Committee on General Government, Room 1405, Whitney Block, Queen's Park, Toronto, Ontario M7A 1A2), and the Association of Municipalities of Ontario.
3. It is recommended that the words appearing in the last line of the preamble to section 2 be amended to include the additional words as follows: "...for purposes which include, **but are not necessarily limited to,...**".
4. It is recommended that, at a minimum, section 3 be amended to reconsider the reference to a Memorandum of Understanding and instead require the Minister to file a regulation setting out the specific parameters, process and timing for consultation between the province and municipalities which will be undertaken in relation to matters of mutual interest and that this regulation be developed in consultation with municipalities, prior to the development of any additional companion or amending legislation to be introduced and prior to the development and finalization of any regulations required to accompany or give effect to any provisions contained in the proposed Act.
5. It is recommended that the Minister of Municipal Affairs and Housing, exempt the Regional Municipality of York from subsection 218(5) of the proposed *Municipal Act, 2001* so that the provisions related to changes to the composition of upper-tier councils apply to the Region of York or, alternatively, that the Minister ensure a regulation is made under subsection 218(6) of the proposed *Municipal Act, 2001* immediately upon the enactment of Bill 111, to authorize an increase in the City of Vaughan's representation on the Region of York council, and further that the Minister ensure a regulation is also made respecting the application of section 27 of the current *Municipal Act* to the Regional Municipality of York to cover the interim period until Bill 111 is enacted and sections 218 and 219 come into force.

**APPENDIX II****BILL 111 - MMAH NEWS RELEASES, BACKGROUNDERS AND  
STATEMENT TO THE LEGISLATURE**

Release: October 18, 2001

**Harris Government Delivers Promised *Municipal Act***

TORONTO - A new *Municipal Act* to be introduced today by Municipal Affairs and Housing Minister Chris Hodgson would, if passed by the Legislature, be the cornerstone of a better, more constructive relationship between the province and municipalities.

"Municipalities have asked for a modern, streamlined *Municipal Act* that gives them new flexibility to react quickly to local economic, environmental or social changes," Hodgson said. "We've consulted extensively. We've worked hard with municipal and business groups to find the right balance between municipal flexibility and strong accountability to taxpayers. The proposed new Act reflects that balance."

"The government is committed to a new, stronger relationship with municipalities," Hodgson said. "One reflection of that commitment is a recognition in the legislation of the importance of prior consultation with municipalities on matters that directly affect them. If the legislation is passed, I'll be talking with the Association of Municipalities of Ontario and other municipal associations about a memorandum of understanding on how this process would work."

"We are pleased to see the reference to consultation in this legislation. In fact, the development of this Act is reflective of what this kind of consultation can achieve. We've seen definite improvements to the 1998 draft," said Ann Mulvale, president of the Association of Municipalities of Ontario.

The proposed Act, which would come into effect on January 1, 2003, would give municipalities broader authority to deliver services. For example, it would contribute to Smart Growth by giving municipalities more authority to set up corporations and involve private sector partners in the financing and undertaking of public projects.

Municipalities are currently subject to a number of measures intended to ensure accountability to taxpayers. The proposed new Act would continue those measures, and add several new ones. For example, the proposed Act would make municipalities more accountable to taxpayers for their purchasing practices. It would expand limits on municipalities' ability to regulate business and impose user fees. It would also require municipalities to publicly disclose improvements in service delivery.

The proposed new *Municipal Act* would also give municipalities more authority to make communities safer. Specifically, it would give them new power to ask the courts to close crack houses as public nuisances, as promised in the Blueprint, and to deal with heavily fortified buildings such as those used by motorcycle gangs as clubhouses.

"This proposed new *Municipal Act* would be a huge step forward for municipalities in Ontario, and for the taxpayers they serve," Hodgson said.

**Backgrounders:**

- [A New \*Municipal Act\* for Ontario](#)
- [New Act Would Boost Community Safety Powers](#)
- [Accountability Measures to Balance New Municipal Flexibility](#)
- [Statement to the Legislature on Introduction of a \*New Municipal Act\*](#)

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Release: October 18, 2001

## **A New *Municipal Act* for Ontario**

### **Strengthening the provincial-municipal relationship**

The proposed *Municipal Act* would, if approved by the Legislature, recognize municipalities as responsible and accountable governments operating within the jurisdiction set out for them in law.

It would also recognize the importance of ongoing consultation with the municipal sector on matters that affect municipalities. The government intends to enter into a memorandum of understanding with the Association of Municipalities of Ontario and the municipal sector on how that process would work.

### **Proposed *Municipal Act* means new flexibility for municipalities**

The proposed *Municipal Act* would, if passed by the Legislature, enhance flexibility for innovative municipal service delivery, improve accountability to the public, and promote safe, well-administered, economically healthy municipalities.

The proposed Act would give municipalities broad authority in a number of "spheres of jurisdiction" - generally matters of local interest. Municipalities would have more closely defined and narrower authority in other areas of jurisdiction in which the province has a greater interest.

### **General municipal powers**

The proposed new Act would give municipalities broad authority within 10 spheres of jurisdiction:

- Public utilities
- Waste management
- Public highways
- Transportation systems
- Culture, parks, recreation and heritage
- Drainage and flood control
- Parking
- Economic development services
- Structures not covered by the Building Code Act, including fences and signs
- Animals

The proposed Act would give municipalities other general powers in addition to those associated with the 10 spheres of jurisdiction.

For example, it would give municipalities what are known in law as natural person powers - the same powers a person has to conduct day-to-day business without the need for specific legislative authority. For example, they could enter into agreements, buy land and equipment, and hire employees. They would also have limited powers to establish corporations in accordance with regulations. Municipalities would only be able to use these natural person powers in the areas in which they have legislative authority to act.

Municipalities would also have certain governmental powers such as the authority to tax, or to regulate or license certain activities.

The legislation proposes some limits to these general municipal powers. For example, a municipal bylaw would not be permitted if it conflicts with provincial law. Generally, a municipality would only be able to use its spheres of jurisdiction to regulate systems it owns, and to pass bylaws that apply only within its own boundaries. Municipal bylaws made according to these general powers would also be subject to any specific limits set out in the *Municipal Act* or other acts.

### **Specific municipal powers**

Some matters are of significant provincial as well as local interest. They include the natural environment; health, safety, and nuisance. In these areas, municipal powers would be set out in more detail in the proposed Act, as they are in the current Act. Provisions governing these powers would be streamlined.

A number of other specific powers would be set out in the proposed Act. These include, for example, the power to require landowners to clear refuse and debris from their land, and powers with respect to the relationship between the local and county or regional levels of government in Ontario's two-tier, county and regional systems. The proposed Act would maintain the existing division of powers between upper and lower tier governments.

### **Business licensing and registration**

The proposed *Municipal Act* would continue to allow municipalities to license businesses, but would specify that municipalities could only exercise their licensing powers, including imposing conditions on licences, for one or more of the following purposes: health and safety, nuisance control and consumer protection.

Certain businesses would continue to be exempt from municipal licensing, and the Minister would have the authority to exempt others, including self-regulated businesses, by regulation. The Minister could also by regulation provide that municipalities would not be permitted to test trades or occupations that are already subject to provincial certification.

In the proposed Act, licensing fees would not be permitted to exceed the costs of administration and enforcement. Public notification would be required when a municipality wants to establish a bylaw or change fees or the classes of businesses that are to be licensed. Municipalities would also have the option of establishing a business registry for information-gathering purposes for businesses that do not need to be licensed.

### **Municipal councils, practices and procedures**

The proposed Act would streamline the rules on councils and their practices and procedures. For example, it would give county councils more authority to change their size or composition. It would designate the head of council as the municipality's chief executive officer. The proposed Act would confirm the current rules on open meetings, but it would add "sale of land" to the list of items that can now be discussed in a closed meeting.

### **Municipal finance**

The proposed legislation would continue many of the financial reporting provisions and audit requirements of the current *Municipal Act*. It would incorporate current requirements for the preparation of a municipal budget. The proposed Act would also allow municipalities to keep or eliminate the tax-free allowance councillors currently must receive. The proposed Act would set out rules governing municipal taxation and tax collection.

The proposed Act would also update and clarify the rules on municipal debt and investment. It would give municipalities access to a broader range of investment instruments, thereby increasing their returns on their investments, and reducing the need to raise revenues through taxes and user fees. Small municipalities that would otherwise be unable to take advantage of some of these new instruments, would be able to do so through investment pooling agencies such as the ONE fund, sponsored by the Association of Municipalities of Ontario and the Municipal Finance Officers Association.

### **User Fees**

The proposed Act would introduce new accountability measures with respect to user fees. It would require municipalities to provide a public list of user fees.

To ensure accountability, fairness and public input, regulatory power would be provided to permit the Minister to divide user fees into categories with different rules applying to each category. Fees that are often disputed would be in a category subject to more criteria while other fees would be subject to fewer criteria. Criteria may include varying notification requirements, links to the budget process, sunset provisions and cost recovery limitations.

### **Consolidation of municipal legislation**

The proposed legislation would be more comprehensive, understandable, and better organized than the body of legislation that currently applies to municipalities. It would incorporate not only the current *Municipal Act*, but other municipal legislation as well. For example, it would replace the current Regional Municipalities Act, current acts that apply to individual regions and counties, the Municipal Tax Sales Act, and the Municipal Boundary Negotiations Act. Some 1100 pages of legislation governing municipalities would be reduced to 350.

The government plans to amend a number of other acts in the spring to make them consistent with the proposed new *Municipal Act*. For example, many pieces of legislation that refer to regional municipalities and counties would have to be amended to reflect the fact that the proposed *Municipal Act* would recognize only three categories of municipality - upper, lower and single-tier.

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Release: October 18, 2001

### **New Act Would Boost Community Safety Powers**

The proposed new *Municipal Act* would deliver on the government's Blueprint commitment to give municipalities the power to ask the courts to shut down crack houses as a public nuisance.

It would respond to municipal requests by enhancing municipal powers to deal with crack houses, body rub and adult entertainment parlours and other problem properties as public nuisances by:

- Passing bylaws on matters that in the council's opinion are or could become nuisances;
- Asking the courts to close down these problem properties. Such a request would have to be made after giving notice to the Attorney General and with the agreement of the police in order to avoid the possibility of jeopardizing an on-going police investigation related to the property.

The proposed new *Municipal Act* would give municipalities authority to better manage raves and body rub and adult entertainment parlours by clarifying that municipalities can seek community views before making related licensing decisions. This could be done in order to identify conditions to attach to a license, and to determine whether conditions are being met.

The proposed Act would also help municipalities deal with heavily fortified buildings used by motorcycle gangs as clubhouses, or by others, by allowing municipalities to enact bylaws to address excessive fortification of buildings.

Although the proposed new *Municipal Act* would take effect on January 1, 2003, the community safety measures would take effect when the legislation receives Royal Assent.

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### **Accountability Measures to Balance New Municipal Flexibility**

The increased municipal flexibility in the proposed new *Municipal Act* would be balanced by a strong accountability framework, including existing and proposed new requirements in the *Municipal Act* and other legislation affecting municipalities.

That accountability framework begins with municipal elections every three years, at which the public can hold municipal councillors directly accountable for their actions. In addition to that fundamental accountability mechanism, municipalities are subject to a number of other accountability measures. Many of these measures are already standard practice for most municipalities.

Municipalities are accountable for the way councils do business.

- The *Municipal Act* requires all meetings to be open to the public, except under limited circumstances such as discussions on labour relations, security of municipal property, or information that is subject to solicitor-client privilege.
- The proposed new *Municipal Act* would require municipalities to pass bylaws on their procurement procedures within two years.
- Municipalities are required to have procedural bylaws to set out how council operates and the process by which the public can express their views to council.
- Municipal documents are subject to the Municipal Freedom of Information and Protection of Privacy Act.
- The proposed new *Municipal Act* would require municipalities to pass bylaws with respect to the hiring of employees, including policies on the hiring of relatives of members of council and local boards, and relatives of current municipal employees.

Municipalities are accountable for their budget processes.

- Municipalities are required to prepare a balanced budget each year, and to provide for any surplus or deficit of the previous year.
- Municipal budgets set out major activities, service levels, related costs, and how best to deliver services. Municipalities are required to discuss and approve their annual budgets in public meetings. Budget documents and staff reports are routinely made public before the political decision-making process begins.
- Municipalities are required to submit an annual Financial Information Return to the Ministry of Municipal Affairs and Housing. The return also includes all local boards within the municipality's jurisdiction.
- The proposed new *Municipal Act* would also require municipalities to publish their annual audited financial statements 90 days after the audit is completed.

Municipalities are accountable for the way they deliver services.

- The Municipal Performance Measurement Program requires municipalities to collect data on 35 measures and, as of September 2001, they were required to report to the public on 16 of those measures. The program will be expanded in the future.
- The *Municipal Act* requires a municipality to provide the Minister of Municipal Affairs and Housing with designated information related to the efficiency and effectiveness of the municipality's operations. The Minister can require municipalities to report these results to taxpayers. A new provision in the proposed Act would require municipalities to report to

taxpayers annually on any service delivery improvements, and on any identified barriers to improving service delivery.

Municipalities are accountable for their user fees and licensing activities.

- The proposed new *Municipal Act* would require municipalities to provide a public list of user fees.
- The proposed new *Municipal Act* would require that licensing be used for reasons of health and safety concerns, nuisance control and consumer protection. License fees would be based on directly related costs, and public notice would be required for proposed changes in license fees.

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**Statement to the Legislature by The Honourable Chris Hodgson, Minister of Municipal Affairs and Housing, on Introduction of a New *Municipal Act***

October 18, 2001

Mr. Speaker:

I am very pleased today to introduce a new *Municipal Act* for Ontario.

This has been a long time coming.

The legislation governing Ontario's municipalities is more than 150 years old. It has been changed, amended and added to, but it has never had the comprehensive overhaul it so badly needed.

Municipal politicians and staff work hard to deliver important services that most people take for granted. They pick up the garbage, and provide police protection. They take care of the streetlights, sidewalks and parks we use every day.

Over the last century and a half people's needs have changed. People used to dispose of their own garbage. They didn't need the services we have come to rely on. And as those needs have changed, municipalities have grown and become more sophisticated. They deliver more services, and more complicated services.

In fact, today's municipalities are doing things their predecessors in the mid-nineteenth century never dreamed of.

And each time municipalities took on some new responsibility, the *Municipal Act* was added to or amended to reflect the change. The result is a body of municipal legislation that is very long and very complicated.

For many years, municipalities have been asking for comprehensive reform. When this government took office, Mr. Speaker, we announced our commitment to a new, modern, more streamlined, easier-to-use *Municipal Act*.

The members will realize that overhauling such a long and complicated piece of legislation has been a monumental task.

We have consulted extensively with municipalities, the business community, and others with an interest in municipal government. We needed to make sure that a new Act wouldn't upset the delicate balance that had been achieved over the years among the various competing interests.

Now, after a century of promises, this government has found a way to maintain the essential balance between good municipal government and service delivery, and the need to ensure a dynamic, barrier-free Ontario economy, in which Ontario towns and cities can maintain their competitive position.

I'd like to take a moment to thank my colleagues who have worked so hard to build a consensus on this since 1995 - former Ministers Al Leach, Steve Gilchrist and Tony Clement . . . and former parliamentary assistants Ernie Hardeman and Brian Coburn.

I'd like to recognize the important contribution of the many municipal associations and employees who gave their time to bring this new Act together. We will continue to rely on them as we work on the regulations.

I'd also like to thank Premier Mike Harris, who has been instrumental in building a new, stronger relationship with the municipal sector. And I'd like to thank Ministry staff who have been committed to *Municipal Act* reform over the past several years.

Let me briefly outline the thrust of this new *Municipal Act*.

If it is passed by the Legislature, the new *Municipal Act* would give municipalities the tools they need to tackle the challenges of governing in the 21st century.

It would allow municipalities to organize and deliver their services as they see fit - involving the private sector where appropriate - in keeping with local needs.

It would give municipalities broad, flexible authority in 10 spheres of jurisdiction.

It would give them what we call "natural person powers," to be used in areas in which they have authority to act.

This broader authority would be balanced by a substantial accountability framework. Municipalities are already subject to a great many accountability measures. The proposed legislation would add a few more. For example:

- Licensing and user fee processes would be made tighter and more transparent.
- Municipalities would be required to report to taxpayers on improvements in the efficiency and effectiveness of their service delivery.
- They would be required to pass bylaws setting out procurement procedures.

These measures are already standard procedure in many municipalities.

The proposed new Act also includes measures to give municipalities more authority to make their communities safer.

It would deliver on our Blueprint commitment to give municipalities new power to ask the courts to close crack houses as public nuisances. And it would help municipalities deal with fortified buildings used by motorcycle gangs as clubhouses, or by others, by allowing municipalities to enact bylaws to address excessive fortification of buildings.

The proposed Act would also contribute to Smart Growth by giving municipalities more authority to set up corporations and involve private sector partners in the financing and undertaking of public projects.

Mr. Speaker, there's one more thing the proposed new Act would do.

For the first time, it would acknowledge, right in the introduction, that municipalities are responsible, accountable governments. It would formally recognize the importance of prior consultation between the province and municipalities on matters that directly affect them.

This new *Municipal Act* - if it is approved by the Legislature - would become the cornerstone for a new, more mature and more productive relationship between Ontario's municipalities and the provincial government.

That's a big step forward for municipalities, and for the people they serve.

Thank you Mr. Speaker.