

COUNCIL

SEPTEMBER 25, 2006

BILL 130 – MUNICIPAL STATUTE LAW AMENDMENT ACT, 2006 – AMENDMENTS TO MUNICIPAL ACT, 2001 AND RELATED STATUTES

(Referred from the Intergovernmental Relations Committee meeting of September 19, 2006)

The Intergovernmental Relations Committee, at its meeting of September 19, 2006, recommended the following:

That this matter be referred to the Council meeting of September 25, 2006.

Report of Commissioner of Legal and Administrative Services and City Solicitor dated September 19, 2006

Recommendation

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

1. That the following Report be received;
2. That Council endorse the City of Vaughan – Summary of Recommendations – Bill 130, the *Municipal Statute Law Amendment Act, 2006* set out in Attachment No. 1 to this Report, requesting additional amendments to the *Municipal Act, 2001*;
3. That the Clerk forward copies of this Report, including the City of Vaughan – Summary of Recommendations – Bill 130, the *Municipal Statute Law Amendment Act, 2006* (Attachment No. 1), to the Honourable Dalton McGuinty, Premier of Ontario, John Gerretsen, the Minister of Municipal Affairs and Housing, and to the Association of Municipalities of Ontario;
4. That once Bill 130 receives Second Reading and is referred to a Standing Committee of the Legislature, the Clerk forward the required number of copies of this Report, including the City of Vaughan – Summary of Recommendations – Bill 130, the *Municipal Statute Law Amendment Act, 2006* to the Clerk of the relevant Standing Committee.

Economic Impact

There is no economic impact associated with this report.

Purpose

This report considers the proposed amendments to the *Municipal Act, 2001* and related statutes, set out in Bill 130, the *Municipal Statute Law Amendment Act, 2006*.

Background

On June 26, 2006 Council directed that staff review the proposed amendments to the *Municipal Act, 2001* and provide written comments on how such amendments impact the City, for presentation and discussion at the Intergovernmental Relations Committee meeting in September 2006.

Bill 130, the *Municipal Statute Law Amendment Act, 2006*, was introduced in the Legislature for First Reading by the Minister of Municipal Affairs and Housing on June 16, 2006. The Bill has not yet received Second Reading and has not been referred to a Standing Committee of the Legislature for public hearings. It is anticipated that Second Reading and referral will occur when

the Legislature reconvenes this Fall. Ministry staff have advised that it is hoped Bill 130 will come into force at the same time as Bill 53, the *City of Toronto Act, 2006*, which is scheduled to come into force on or before January 1, 2007.

Analysis

In general, the amendments proposed in Bill 130 include many of the amendments requested in Vaughan's earlier Report dated April 4, 2006, titled "Bill 53, the *Stronger City of Toronto for a Stronger Ontario, 2005* (*City of Toronto Act, 2005*") and Amendments to the *Municipal Act, 2001*", which commented on the proposed City of Toronto legislation by seeking similar amendments to the general legislation governing all municipalities. Many of the amendments that Vaughan and other municipalities requested be incorporated into the *Municipal Act, 2001* in their responses on Bill 53, were incorporated in Bill 130, with three primary differences:

- new taxing powers – authority of Toronto to introduce sales taxes on limited entertainment, alcohol and tobacco items not provided to municipalities generally;
- accountability and transparency – discretionary authority for municipalities to appoint an integrity commissioner, ombudsman, auditor general and establish a lobbyist registry, unlike the mandatory requirement for Toronto to take such measures;
- green roofs – authority of Toronto to provide for the construction of green roofs has not been provided to municipalities generally.

Bill 130 proposes to broaden the authority and powers of municipalities and to correspondingly reduce the number of specific restrictions and controls the province has traditionally placed on the exercise of these powers. The Ministry of Municipal Affairs and Housing ("MMAH") states the amendments will provide municipal governments with more flexibility in meeting their communities' expectations and fulfilling their responsibilities. The broader general authority, as under Bill 53, includes the following list of broad permissive powers:

1. Governance Structure of the Municipality and its Local Boards
2. Accountability and Transparency of the Municipality and its Local Boards and their Operations
3. Financial Management of the Municipality and its Local Boards
4. Public Assets acquired by the Municipality for the purpose of exercising its Authority
5. Economic, Social and Environmental Well-being of the Municipality
6. Health, Safety and Well-being of Persons
7. Services and Items the Municipality is authorized to provide
8. Protection of Persons and Property, including Consumer Protection
9. Animals
10. Structures, including Fences and Signs
11. Business Licensing.

MMAH, in a summary of the proposed Bill, notes the following areas of municipal responsibilities that would be affected by the proposed legislation:

- *Accountability* — To promote accountability and transparency, municipal councils would have the power to establish codes of conduct for members of council and members of certain local boards. They could also, *at their discretion*, appoint an integrity commissioner, an ombudsman, an auditor general and a lobbyist registrar.
- *Local Boards* — Municipalities would have broad permissive powers to establish, dissolve, change or impose requirements on certain local boards and would have the power to establish a municipal service board for any municipal service or activity.

- *Delegation* — Municipalities would have expanded authority to delegate their powers and duties to a person or body subject to certain restrictions. There would be some specific powers and duties that a municipality would not be able to delegate, such as zoning by-laws and imposing taxes.
- *Roles of Council and Head-of-Council* — The role and responsibilities of the head-of-council and council would be strengthened to provide for greater oversight in the operations of municipalities.
- *Open Meetings* — Municipal councils and local boards will be required to give public notice of upcoming meetings. Minutes would be recorded at all meetings including closed meetings. Municipalities would have the authority to appoint a person to investigate and provide a report when it is suspected that these requirements have not been fulfilled. The provincial Ombudsman would be able to undertake the investigation if a municipality has not appointed its own investigator. The current legislation would be clarified to clearly state that a meeting might be closed to the public if the meeting does not *advance decision-making*, where it involves informal discussions .
- *Business Regulation (Licensing)* — Municipalities would have broad powers to license businesses, subject to certain limits. Municipalities will have clear authority to *administratively suspend* a licence prior to a hearing where there is a danger to health or safety. Municipalities will also be able to require the payment of an *administrative penalty* for failure to comply with licensing requirements.
- *Enforcement* — Municipalities will have broader enforcement abilities, including administrative penalties for licensing and parking by-law requirements, the authority to set fines for by-law offences and an administrative power of entry to determine if there is compliance with a by-law, subject to special provisions respecting dwelling units.
- *General Policies to Replace Specific Provisions* — Municipalities would be required to adopt policies for:
 - a. The sale and other disposition of land
 - b. Hiring
 - c. Procurement
 - d. When and under what circumstances notice is given
 - e. Accountability and transparency of municipal operations
 - f. Ensuring the rights of persons affected by Council's decisions
 - g. Delegation of municipal powers and duties.
- *Electronic Meetings* — Municipal councils would have the authority to allow electronic participation in meetings. Electronic participation would not apply to closed meetings of council.
- *Economic Development* — Municipalities would have the authority to offer financial incentives within a community improvement plan. In addition, Ministerial approval, rather than existing Cabinet approval, would be required for a municipality to establish a small business incubator program.
- *Business Improvement Areas (BIAs)* — Municipalities would have the authority to establish by-laws for their own rules and conditions for BIAs within their jurisdictions. The current BIA rules and conditions in the Municipal Act, 2001 would continue if a municipality did not determine its own rules and conditions.

- *Housing* — Municipalities would have the authority to prohibit and regulate the demolition or conversion of residential rental properties with six or more dwelling units.”

- **Other Relevant Legislation Affected by Bill 130:**
 1. *Highway Traffic Act* — Municipalities will have the authority to set speed limits up to 100 km/h in *any increments* chosen by the municipality on local roads. Municipalities at present can only set speed limits in increments of 10 km/h.
 2. *Retail Business Holidays Act* – Municipalities will be able to enact by-laws that the Act does not apply to them, provided a municipality enacts a by-law under section 148 of the *Municipal Act, 2001* requiring one or more classes of retail business establishments remain be closed on a holiday.
 3. *Ontario Heritage Act* — Municipalities will be able to determine the manner in which public notice is to be given when they intend to designate properties as being of cultural heritage value or interest.
 4. *Housing Development Act* — The Minister’s consent will not be required for municipalities to provide *emergency temporary housing*.
 5. *Social Housing Reform Act, 2000* — Ministerial approval will not be required for municipalities to transfer, lease, dispose of or offer, list, advertise or hold out for transfer, lease or other disposal all or part of a housing project.

As in Bill 53, the restrictions and controls will continue in the case of some matters under Bill 130, such as traditional taxing authority (property tax, tax collection and so forth). Non-traditional taxing authority, such as the authority given to Toronto in Bill 53 to levy sales taxes 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), will not be established for municipalities in general. Similarly, the authority given to Toronto in Bill 53 to establish, for example, Community Councils, will not be authorized for municipalities in general. Arguably, given the size of the City, and the history and nature of the various former boroughs and certain neighbourhoods in Toronto, and the smaller Cities and Council sizes operating in other large urban municipalities, this additional authority is not necessary at this point in time.

The primary concerns with Bill 130 relate to the following issues and specific recommendations are made regarding each area of concern in the Summary of Recommendations in Attachment No. 1 to this Report:

1. Two-tier Municipalities and Impact on Broader Authority and Powers:

The retention of the division of powers and spheres under Bill 130 in the case of two-tier municipalities, such as Vaughan and the Region of York, will not be the case for single-tier municipalities, such as London and Ottawa. For single-tier municipalities, broad permissive powers are proposed that would enable a municipality to pass by-laws in respect of the 11 areas set out above. Upper-tier municipalities and lower-tier municipalities will also have access to the broad powers, but powers that are exclusive to the upper-tier or lower-tier under the existing *Municipal Act, 2001* would remain exclusive.

2. Regulation-making Authority:

There is a potential for unnecessary, prescriptive restrictions and controls continuing, if the proposed regulation-making authority remains in its currently proposed form. Part XVI of Bill 130

proposes to incorporate additional controls on the Province's existing broad, open-ended regulation-making authority. At section 451.1 the Bill reserves extensive power to the province to temporarily suspend a municipality's powers for a period of up to 18 months by enacting a regulation, if deemed necessary in the "provincial interest".

Along with the continuing general authority to make regulations, a significant number of regulations continue to be authorized for specific areas of authority. Many of the existing regulations would continue to apply and any new regulations proposed are not yet available for review. Consequently, it is difficult to determine the overall impact of the regulation-making authority proposed in Bill 130. For example, administrative penalties for parking by-law offences are subject to an enabling regulation in subsection 102.1(3). Under Part IV – Licensing, subsection 158(1) sets out broad regulation authority to impose conditions and limitations on municipalities' powers and under subsection (2) permits the Province to make such regulations retroactive for up to one year, to require the municipality to return licence fees collected during that period and to require the municipality to use the licence fees in a prescribed manner. The latter represent unnecessary controls on this municipal power and the regulation should be made available for review and comment prior to the amendments in Bill 130 coming into force.

3. New Revenue Sources and Tax Pooling:

New forms of taxes have not been authorized for municipalities generally, unlike the new sales tax authority set out in the *City of Toronto Act, 2006* related to entertainment, alcohol and tobacco. Given these new revenue sources for the City of Toronto, Vaughan's Mayor and Members of Council have taken the position that the Province should complete its review of GTA tax pooling and funding for social services, housing and health to bring forward a plan for discussion with the GTA by no later than 2007. This is particularly important since the Region of York's analysis concluded that York Region sent more than \$87 million to Toronto this past year for social services.

4. Penalties and Enforcement:

As in Vaughan's prior submission on Bill 53, related to the *City of Toronto Act, 2006*, Part XV of the *Municipal Act, 2001* should be amended to include a power to impose *administrative monetary penalties* which is not limited to failure to comply with parking by-laws or licensing by-laws. The ability to establish these types of penalties for by-law infractions generally would be an important tool for municipalities in the enforcement of certain by-laws. It would reduce the administrative delays currently besetting the court system and provide municipalities with essentially the same preventative tool for enforcing certain by-laws.

It is unclear whether the ability to enforce the payment of administrative monetary penalties, will include 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 have this power as well as the power to add any unpaid administrative monetary penalty(s) 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. As in Vaughan's earlier submission on Bill 53, once again, 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 monetary penalties.

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

For a considerable time, municipalities have sought a broadening of their general authority and powers, with fewer restrictions and controls on the exercise of these powers. With the introduction of Bill 130, the broad permissive authority and powers sought for a number of years has finally been recognized by the Province.

While the Province has moved substantially toward providing the broader authority and powers sought by municipalities from the commencement of the earlier *Municipal Act* review process in 1997, some additional amendments are still recommended respecting the proposed Bill 130. These are set out in the City of Vaughan's Summary of Recommendations – Bill 130, *Municipal Statute Law Amendment Act, 2006*, in Attachment No. 1 to this Report. For a more detailed Report setting out an explanation of the proposed changes in Bill 53 for the City of Toronto and the need for complementary changes to the *Municipal Act, 2001*, reference can be made to the earlier report of the Commissioner of Legal and Administrative Services titled "Bill 53, the *Stronger City of Toronto for a Stronger Ontario, 2005* ("City of Toronto Act, 2005") and Amendments to the *Municipal Act, 2001*".

It is recommended that a copy of this Report including the Summary of Recommendations in Attachment No. 1 be forwarded to the Premier of Ontario, the Minister of Municipal Affairs and Housing and to the Standing Committee of the Ontario Legislature assigned the responsibility to carry out hearings on Bill 130, the *Municipal Statute Law Amendment Act, 2006*, once Bill 130 is given Second Reading this Fall in the Ontario Legislature and referred to a Standing Committee.

Attachments

1. City of Vaughan – Summary of Recommendations – Bill 130, *Municipal Statute Law Amendment Act, 2006*.

Report prepared by:

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**CITY OF VAUGHAN - SUMMARY OF RECOMMENDATIONS
Bill 130, *Municipal Statute Law Amendment Act, 2006***

General Powers

1. The broad permissive general authority and powers to be incorporated in Part II, section 11 of the *Municipal Act, 2001*, in the case of two-tier municipalities should be treated as "non-exclusive" to both tiers (except powers currently designated as exclusive to one tier and except previous lawful migrations of a power from one tier to another tier). For example, water production, treatment and storage, as well as waste management, except waste collection, under the existing *Municipal Act, 2001* would remain exclusive to the upper tier, but the new broad permissive powers related to economic, social and environmental well-being and health, safety and well-being of persons, should be treated as "non-exclusive" to both tiers.
2. The rules at Part II, clauses 11(4) 4 and 5, may result over time in a dilution of the broad permissive powers available to a lower tier, in the event of future amendments to individual sections of the *Municipal Act, 2001* or other legislation respecting specific municipal authority. It is appropriate that all existing powers assigned to one tier to the exclusion of the other tier be set out in section 11 and any future assignment of powers between lower and upper tiers be subject to the service migration and triple majority provisions of the Act.

Regulations

3. The proposed Part XVI, section 451.1 regulation-making authority for "matters of provincial interest" to impose limits and conditions on the general powers of a municipality should be deleted. This regulation-making power is capable of without notice removing the broad, permissive authority being given to municipalities, and again could make the Act a prescriptive regime.
4. Proposed new regulations related to licensing, administrative monetary penalties respecting parking offences and any other matters should first be made available for review and comment prior to Bill 130 coming into force.

Open and Closed Meetings

5. The definition of a "meeting" in section 238(1) of the *Municipal Act, 2001* has not been materially amended. However, a new subsection 238(3.1) has been added which confirms a meeting may be closed to the public if no member discusses or otherwise deals with a matter in a way that materially advances the business or decision-making of the Council. It is recommended that this new provision be added at a minimum, so that where two or more 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 or for a retreat for general discussions, the open meeting requirements will not be subject to allegations related to contraventions of the open public meeting requirements.

New Revenue Sources and Tax Pooling

6. No broad new forms of taxes have been authorized for municipalities as with new sales tax authority set out in the *City of Toronto Act, 2006* related to entertainment, alcohol and tobacco. Given these new revenue sources for the City of Toronto, it is recommended that the Province at its earliest opportunity this upcoming year complete its review of GTA tax pooling and funding for social services, housing and health to bring forward a plan for discussion with the GTA by no later than 2007. This is particularly important since the Region of York's analysis concluded that York Region sent more than \$87 million to Toronto this past year for social services.

Penalties and Enforcement

7. As in Vaughan's prior submission on Bill 53, now the *City of Toronto Act, 2006*, it is recommended that Part XV of the *Municipal Act, 2001* 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 Bill 130. 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. 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.
8. It is further recommended that, if not already proposed to be added by regulations to be promulgated under the amendments, in order to enforce the payment of administrative monetary penalties, municipalities require clear authority to file a certificate (Clerk or Treasurer) with a local registrar of the Superior Court of Justice and enforce the certificate as an order of the Court. The municipality should also have the power to add an unpaid administrative monetary 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.