
CITY OF KELOWNA

MEMORANDUM

Date: September 10, 2002
File No.: 0135-20/Community Charter Consultation
To: City Manager
From: City Clerk
Subject: PROPOSED COMMUNITY CHARTER LEGISLATION

RECOMMENDATION:

THAT Kelowna City Council request that the Minister of State for the Community Charter provide clarification on, and support appropriate related amendments as outlined below, to the existing proposed Community Charter legislation prior to its introduction in the Legislative Assembly as a first reading bill:

- a) Provide clarification by amending the proposed subsection 2(2)(c) of the Charter, such that the implicit prohibition against downloading is clarified so as to specifically include a prohibition against passive downloading, and it is ensured that local governments will have the tools necessary to deal with the resultant increased regulatory, administrative and financial burdens;
- b) Delete section 8 of the proposed Division 1 (Purposes and Fundamental Powers) of Part 2 (Municipal Purposes and Powers) of the Charter, and simply leave the four areas of concurrent authority outlined under section 8 within the fundamental powers under section 7. The paramountcy of the Provincial regulatory powers over the same areas should be ensured via the operation of constitutional law and not via unnecessary bureaucratic approval processes built into the Charter;
- c) Amend the proposed Division 5 (Highways) of Part 3 (Additional Powers and Limits on General Powers) of the Charter, to provide specifically for legislated protection for local governments against liability associated with existing contamination of highway property being vested in those local governments under the Charter;
- d) Add specific provisions to Part 7 (Municipal Revenue) of the Charter to permit the use of new stable and consistent revenue sources for local governments, which would not increase the overall tax burden on the average taxpayer, and which could be implemented without imposing disproportionate implementation and/or collection costs on local government;
- e) Delete the proposed section 209 (Tax exemption for certain industrial enterprises);
- f) Add specific provision to the Charter for protection of local governments against joint and several liability in legal matters;

AND THAT a copy of this resolution be forwarded to the Honourable Ted Nebbling, Minister of State for the Community Charter, Deputy Minister Bob DeFay, Ministry of Community, Aboriginal and Women's Services, Assistant Deputy Minister Dale Wall, Ministry of Community, Aboriginal and Women's Services, the Union of B.C. Municipalities, and Kelowna Members of the Legislative Assembly.

BACKGROUND:

In May 2002, the Provincial Ministry of Community, Aboriginal and Women's Services tabled the draft Community Charter legislation, which is intended to eventually replace the existing *Local Government Act* in its entirety. Since that time, various stakeholders have provided, and no doubt will continue to provide, input to the Province on the proposed legislation, with the hope of encouraging some meaningful changes and improvements to it, prior to it being introduced in the Legislative Assembly as a first reading bill.

Another opportunity for some of the most significant stakeholders to again provide input will present itself at the upcoming Union of B.C. Municipalities annual convention during the week of September 23rd – 27th, 2002.

The following is a brief outline of the structure of the draft legislation, along with comments on some of the more significant provisions in, and in some instances omissions from, the draft.

PART 1 - Principles and Interpretation

Part 1 of the Charter establishes the principles of municipal governance and municipal-provincial relations. This part contains a provision that "*before new responsibilities are assigned to a municipality, there must be provision for resources required to fulfil the responsibilities*" (subsection 2(2)(C)). This has been put forward by the Province as the measure intended to meet its commitment not to "download" responsibilities to local government.

However, the actual impact on local governments is not clear, as there is no definition of "*new responsibilities*" or of "*assigned*" or of "*provision for resources*". There are many instances where "passive" downloading would, or could, occur under the Charter without specific provision of any resources to offset the costs of new responsibilities. For example, the presently proposed wording of subsection 2(2)(c) would not apply where new responsibilities for services required by the public become the burden of local government, simply because the Province ceases to act, as opposed to actually "assigning" them to a municipality.

PART 2 – Municipal Purposes and Powers

Part 2 of the Charter outlines broad fundamental powers, and sets out "spheres" of regulatory authority within which local governments may provide virtually any service deemed appropriate. However, the practical exercise of four of those "spheres" of regulatory authority (public health, protection of natural environment, buildings and other structures, and removal and deposit of soil and other material) is hindered by the operation of section 8 of the proposed Charter. Section 8 designates these as "concurrent" powers, and requires that any bylaw under one of those authorities receive the approval of the Province.

This requirement as written will create a backlog of bylaws waiting for provincial approvals, because the particular spheres involved would have such broad application. There are numerous examples of local governments waiting a number of months for provincial approvals on particular bylaws (including the recently adopted City of Kelowna Traffic Bylaw No. 8120 which was in the hands of the Ministry of Transportation [originally the Ministry of Transportation and Highways] for almost a year). Furthermore, under the present *Local Government Act*, municipalities have the ability to regulate to some of these areas of proposed “concurrent” authority, without provincial approval; for example, they may regulate to certain extents to protect land and natural features in relation to development. It is not clear how the conflict between the Charter and the *Local Government Act* development provisions (which would initially remain in force after the enactment of the Charter) would be resolved.

Finally, the proposed section 10 of the Charter, in fact provides that a “*provision of a bylaw has no effect if it is inconsistent with this or another Provincial enactment*” and further that “*a municipal bylaw is not inconsistent with another enactment if a person who complies with the bylaw does not, by this, contravene the other enactment*”. These provisions are based on the principles of constitutional law and division of powers set down by the Supreme Court of Canada in the recently decided case of *Spraytech v. Town of Hudson* and are sufficient to protect the paramount authority of the Province. Provincial approval of bylaws that meet this test is not necessary and should be deleted from the Charter.

PART 3 – Additional Powers and Limits on General Powers

Division 5 of Part 3 of the draft Charter vests full ownership of most highways within municipal boundaries to the municipal government. This will enable municipalities to regulate its highways as a service, and will greatly simplify or eliminate present procedures such as road closures and road exchanges in many instances. However, the draft Charter is silent on the issue of environmental contaminants that may be present in a roadbed when ownership of a highway is transferred to a municipality. This omission must be corrected, with protection from liability for such contamination specifically provided for in the legislation.

PART 4 – Public Participation and Council Accountability

There are number of new provisions and/or changes from what is presently required under the *Local Government Act*, related to public participation and council accountability, in Part 4 of the draft Charter. Most of these changes will have a relatively small impact on larger municipalities like Kelowna. For example:

- the counter-petition process has been replaced by an “alternate approval” process, the main difference between them being a requirement that signatures from 10% of the electorate be obtained as opposed to the current 5%;
- the subject areas which may be discussed in a closed meeting have been somewhat expanded under the draft Charter;
- the requirement to produce an “annual report” each year has been added to the legislation; and
- the conflict of interest guidelines applying to Council members have been clarified.

PART 5 – Municipal Government and Procedure

Part 5 of the draft Charter sets out the operational and procedural requirements for a municipal government. It is similar in many respects to the *Local Government Act*, though for the first time the responsibilities of Councillors (and not just the Mayor) are clearly set out.

PART 6 – Financial Management

The provisions found in Part 6 of the draft Charter are also similar to the corresponding financial management provisions of the *Local Government Act*. Government finance professionals such as the GFOA (Government Finance Officers' Association) have submitted input and made suggestions for improvements where applicable. The main aim in the drafting of Part 6 must be the protection of the high regard in which local governments in B.C., and the MIA (Municipal Finance Authority), are held amongst the international finance community.

PART 7 – Municipal Revenue

There are a number of different revenue sources under consideration at the moment for inclusion in Part 7: road tolls, hotel room tax, fuel tax, local entertainment tax, resort tax and fees as a tax (ie. having the ability to set fees which are higher than the actual cost of the service being provided). There is also a proposal by the Province to share 75% of traffic fine revenue with municipalities. However, as drafted at this time, there are no new potential revenue sources provided for in the Charter.

Whichever revenue sources are chosen for inclusion in the Charter, they should not cause an additional tax burden on the average taxpayer. They should simply be a revised share of the existing overall tax burden, and should be easily able to be implemented by local governments without requiring a disproportionate investment in administration and collection of the revenue.

Part 7 of the draft Charter also includes a provision under section 209, allowing tax exemptions for certain classes of industrial property. The dangers in allowing what will become inter-municipal “tax break shopping” have been discussed at fair length in a number of stakeholder forums, yet the provision is still included in the draft legislation. This is contrary to the Provincial government's platform of no subsidies to business, and in fact requires a specific exemption from another provision in the draft Charter which is also presently found in the *Local Government Act*: the prohibition against assistance to business. Section 209 should be deleted.

PART 8 – Legal Proceedings and Bylaw Enforcement

There is no reference, yet at least, in the Charter to local government liability, as relates to legal matters involving additional parties in defence. The subject is presently under review by the Ministry of the Attorney General, however, it would be appropriate to include a provision in the Charter limiting the liability of a local government to a proportional basis, and prohibiting recovery from municipalities on a joint and several basis as related to other defendants.

PART 9 – Governmental Relations

Part 9 of the draft Charter contains some provisions which are entirely new to the provincial-municipal realm in B.C. For the first time, the Province will be required to consult with the U.B.C.M. before amending or repealing the Charter or other local government related legislation. The Charter also explicitly prohibits forced amalgamation of existing local governments, without consent. There have been concerns already expressed to the Province

by various stakeholders as to the mechanisms laid out in Part 9 which are to be used to manage governmental relations. However, the inclusion of this Part will hopefully be a step towards an increasingly constructive relationship.

CONCLUSION:

The Community Charter will establish a level of autonomy for local governments in British Columbia, which has not been seen in the past. The positive aspects of the draft legislation which combine to result in this level of autonomy are too numerous to outline in a short report such as this.

However, there are some crucial elements of the draft legislation which must be clarified and/or amended from what is presently being suggested, as outlined above. With that in mind, it is recommended that Council consider and adopt the recommended resolution such that the suggestions made can be submitted to the Province as Kelowna City Council's input in the public participation process now underway.

Respectfully Submitted

David Shipclark, City Clerk