

October 23, 2002

To: Policy and Finance Committee
From: Chief Administrative Officer
Subject: *Municipal Act, 2001* Implementation

Purpose:

This report describes the status of activities to prepare the City for implementation of the *Municipal Act, 2001*. The report recommends actions to be taken by Council and staff to satisfy the requirements of the new Act when it comes into force January 1, 2003.

Financial Implications and Impact Statement:

There are no direct financial implications resulting from the recommendations of this report.

Recommendations:

It is recommended that:

- (1)
 - (a) Council approve the minimum notice requirements identified in this report and in the attached draft by-law;
 - (b) Council adopt as its notice by-law, Municipal Code Chapter 162, Notice, Public, substantially in the form of the draft by-law attached to this report as Appendix A; and
 - (c) for the purpose of providing public notice of budget amendments, the minimum notice requirements of the notice by-law, Municipal Code Chapter 162, Notice, Public, apply only to amendments to the budget that would result in a change to the total tax-supported net levy, or a change to any property tax rate, and that notice of the schedule of Council meetings serve as adequate minimum notice of any other budget amendments which may be approved at any such Council meeting;
- (2) Departments be advised of the requirements of the notice by-law, Municipal Code Chapter 162, Notice, Public, once enacted, and prepare procedures for addressing related operational and budget issues arising from the notice by-law, including provisions for giving notice in an extended manner beyond the minimum requirements and providing consistent notice for those actions which are not specifically mentioned in the new Act and, therefore, not subject to the Notice Bylaw;

- (3) the CAO, in consultation with the City Solicitor and the CFO, prepare a by-law to amend the Municipal Code, as necessary, to consolidate the City's fees and charges in a new Chapter 441, Fees with the by-law to be submitted to Council prior to December 31, 2003;
- (4) City Solicitor, in consultation with the CAO and departments, undertake a review of City by-laws for compliance with the *Municipal Act, 2001* to be completed by early 2005; and
- (5) the appropriate City Officials be authorized and directed to take the necessary action to give effect hereto and that leave be granted for the introduction of any necessary bills in Council to give effect hereto.

Background:

Bill 111, the *Municipal Act, 2001* (the new Act) received Royal Assent on December 12, 2001. The new Act will come into effect on January 1, 2003 and replace the existing *Municipal Act* (the old Act).

In August 2002 regulations under the *Municipal Act, 2001* regarding business licensing exemptions and fees and charges were released by the Ministry of Municipal Affairs and Housing. Regulations regarding municipal financing were released in September.

On September 24 2002, Bill 177, the *Municipal Statute Law Amendment Act, 2002* was introduced (News Release and Backgrounder attached as Appendix B). This Bill amends existing provincial legislation to ensure consistency with the new Act and amends the new Act to provide clarifications and "housekeeping" changes. In addition to amendments to the *Municipal Election Act* which are beyond the scope of this report, Bill 177 amends numerous statutes to update references to reflect the terminology and section numbering of the new Act. Bill 177 also amends the new Act itself to include recent amendments to the old *Municipal Act* which were not reflected in the new Act and to correct and clarify technical oversights and ambiguities arising from the language of the new Act. Legal staff are currently reviewing Bill 177 and will report further, if necessary, on its implications.

In May and June 2002 training on the *Municipal Act, 2001* was provided by the Association of Municipalities of Ontario (AMO) and the Association of Municipal Managers, Clerks and Treasurers of Ontario (AMCTO). A number of City staff from various departments attended the training. In addition, City staff participated in reference groups, established by the Ministry of Municipal Affairs and Housing, to provide input to the regulations on municipal licensing, fees and charges, municipal finance, and corporations.

In its response to Bill 111, Council adopted the position that the new Act, while incorporating more modern language and concepts, still does not go far enough to meet the needs of the City of Toronto. The new Act does not rectify:

- the limitations on municipal power and inadequacy of resources to fulfil municipal responsibilities;

- the limitations on municipal authority to raise funds locally; and
- too much provincial involvement in municipal decision-making.

Council has taken the position that the City will continue its advocacy for special charter legislation that meets the specific needs of Toronto.

The focus of the present report is the actions that must be undertaken to satisfy the requirements of the *Municipal Act, 2001* when it comes into effect on January 1, 2003.

Comments:

In May 2002 an inter-departmental Municipal Act Implementation Team was established under the CAO's lead to determine actions required to prepare the City to be in compliance with the new Municipal Act when it comes into effect on January 1, 2003. The Team included representatives from all departments including the offices of the City Clerk and City Solicitor. The Team conducted a review of the sections of the new Act that were identified as needing attention. In addition a comprehensive review of the new Act was conducted by departmental and legal staff.

It should be noted that, although the *Municipal Act, 2001* defines 10 "spheres of jurisdiction" for municipalities, many of the services, activities and functions of the City are carried out under other legislation such as the *Homes for the Aged and Rest Homes Act, Social Housing Reform Act, Public Libraries Act, Day Nurseries Act, Health Protection and Promotion Act, Ontario Works Act, the Planning Act, the Highway Traffic Act, Police Services Act, the City of Toronto Act, etc.* The programs, services and activities carried out under other Acts are in no way lesser functions of the City and they are not affected by the *Municipal Act, 2001*. Most of the City's ways of doing business will be unchanged under the *Municipal Act, 2001*.

The new Act largely continues many of the provisions of the old *Municipal Act* that affect day to day municipal business. Many of the new provisions of the new Act are intended to increase the transparency and accountability of municipal decisions. The following specific sections of the new Act require action by the City to ensure compliance with the legislation:

- Notice of Certain Action by Council
- List of Licensed Businesses
- List of Fees and Charges
- Repeal of Tax Collector Appointments
- Councillor Salaries
- By-law Compliance

The status of these activities is discussed below.

Giving Notice of Certain Actions by Council

Like the old Act, the new Act requires that Council give public notice of intent to pass a by-law for a number of actions and to provide other information to the public. However, unlike the old Act, the form, manner and number of notices are in most cases not prescribed by the new Act but

rather are left to the discretion of Council to determine what is adequate to give reasonable notice. As well the new Act provides for a number of City actions which no longer require public notice under the new Act, such as passing a bylaw for the installation of bicycle lanes or bus lanes. While the new Act simplifies the issue of notice and provides greater discretion on the part of Council it could require that each action necessitate a decision by Council on the form of notice for the specific action..

In order to reduce the number of decisions required by Council for notice of routine decisions, it is recommended that Council adopt a notice by-law that specifies the minimum notice requirements for identified sections of the new Act. Adoption of a notice by-law would eliminate the need for Council to consider adequate notice for every instance in which notice is required. The minimum requirements of the notice by-law could still be supplemented by more extensive notice if Council decides that a matter merits more than the minimum notice.

A proposed notice by-law is attached to this report as Appendix A.

By adopting the proposed notice by-law as Municipal Code Chapter 162, Notice, Public, Council will in effect be declaring that it considers notice of the activities specified in the by-law to be adequately given where:

- a) the notice is published in a newspaper of general circulation at least two weeks prior to the committee meeting at which the matter will be considered; and
- b) the notice is posted on the City's website for a two week period immediately preceding the committee meeting.

This notice would be in addition to the standard posting of Council and Committee meeting dates and agendas on the City's website. The notice by-law would require the City Clerk to at least once a year cause a notice to be published on how the public might make use of the City's website to locate public notices and the related documents. Further, the by-law would require the annual schedule of Council/Committee meetings to be posted to the website.

Section 291 of the new Act requires that the City give public notice of its intention to adopt or amend a budget at a council meeting specified in the notice. The new Act does not provide a definition of budget amendment, for purposes of section 291. Staff have requested that the Province provide clarification regarding 'intent to amend a budget' as it is used in section 291. Bill 177, the "housekeeping legislation" does not provide clarification.

The City of Toronto process to adopt a budget is a very open process. Notice of the Standing Committee and Budget Advisory Committee meetings is provided to the public. There is extensive communication and media coverage leading up to the debate and adoption at Council. Subsequent to the adoption of the budget by Council, it is routine that changes are made to departmental or program allocations. The City may receive funds through bequests or provincial or federal government programs that change the overall budget. Projects may be substituted for others that have been delayed resulting in a change to the budget allocation. Council has delegated some authority to staff for transfers of funds between programs or line items.

The intent of section 291 is to provide for accountable and transparent decision-making regarding municipal budgets – and likely speaks to the legislative practices of other Ontario municipalities, which do not have the open government traditions of the City of Toronto. If even the minimum notice requirements of the recommended notice by-law were applied to every budget amendment, the result would be a virtually impossible standard for Council to meet and would result in unnecessary, ineffective and expensive notice for routine items regarding budget adjustments by Council and staff. It is therefore recommended that the minimum notice requirements of the notice by-law be applicable only to budget amendments that result in a change to the total tax supported net levy or a change to any property tax rate. It is further recommended that notice of the schedule of Council meetings as posted on the City's website serve as adequate notice of potential budget amendments not affecting the tax supported net levy or property tax rates which may be approved at any such Council meeting.

The proposed by-law represents an effective means to engage the public in the legislative process while also meeting specified requirements under the Act. Adoption of the notice by-law will require that Departments be advised of the requirements of the notice by-law and prepare procedures for addressing related operational and budget issues including provisions for giving notice in an extended manner beyond the minimum requirements. Departments should also establish consistent public notice requirements for those actions that are not specifically mentioned in the new Act and, therefore, not subject to the proposed Notice Bylaw.

List of Licensed Classes of Businesses and Fees

Section 158 of the new Act requires that the City make available to the public a list consisting of:

- the classes of businesses subject to municipal licensing;
- the licensing fee to be charged to each business in the class;
- the cost of administering and enforcing the business licensing by-law with respect to each class of business;
- how the amount of the business licensing fee is calculated; and
- the classes of business that will be subject to business registration.

Staff are compiling the list of classes of businesses and fees. Bill 177, includes an amendment to the *Municipal Act, 2001* to allow municipalities until January 1, 2005 to establish the list.

List of Fees and Charges

Section 392 of the *Municipal Act, 2001* requires that the City and its local boards establish and maintain for public inspection a list of fees and charges for municipal services and activities and the use of municipal property charged under Part XII of the new Act.

The City has many fees and charges for a variety of services and activities ranging from child care to recreation programs to photocopying. Legislative authority is required for any fee that the City charges. Such authority is found in the new Act and in many other statutes. Fees charged under the new Act require a by-law or resolution adopted by Council.

Staff are now compiling a comprehensive and accurate list of all the fees and charges imposed by the City under the new Act, to be available for public inspection by January 1, 2003. The CAO is informing all agencies, boards, and commissions of the requirement to compile lists of any fees and charges which they charge under the new Act and make such lists available for public inspection by January 1, 2003. The list of City fees and charges will be made available on the City's website and in hardcopy from Access Toronto.

In order to organize all fees and charges charged under the new Act, and to ensure that they are duly enacted with the appropriate Council authority and periodically reviewed and updated, it is proposed that the City adopt a comprehensive fees and charges by-law to become a chapter of the Municipal Code. It is recommended that the CAO, in consultation with the City Solicitor and the CFO, prepare a by-law to amend the Municipal Code, as necessary, to consolidate the City's fees and charges in a new Chapter 441, Fees, with the by-law to be submitted to Council prior to December 2003;

Treasurer/Tax Collector

Section 473 (2) of the new Act provides that any person who is a tax collector but not the Treasurer or Deputy Treasurer of a local municipality on December 31, 2002, shall be deemed to be a deputy treasurer of the municipality as of January 1, 2003. However, if section 88 of Bill 177 is enacted, this provision is repealed. Any reference to a tax collector in any legislation becomes a reference to the Treasurer.

It is not advisable for the City of Toronto to have all individuals currently holding the title of tax collector to be deemed Deputy Treasurer. Should section 88 of Bill 177 not be enacted, Council will need to repeal the by-laws appointing tax collectors.

Councillor's Salaries

Under section 255 of the old Act one-third of the salary paid to members of council or a local board was deemed for expenses and was therefore tax-free. The new Act provides that as of January 1, 2003 this provision ceases to apply unless the municipality passes a resolution before January 1, 2003 stating its intention that one-third of the remuneration paid to the elected members of the council and its local boards shall continue as expenses incident to the discharge of their duties as members of the council or local board.

This issue will be addressed in a separate report from the CFO to Administration Committee before the end of 2002.

By-law Compliance with the New *Municipal Act*

Section 457 of the *Municipal Act, 2001* provides that any by-law for which a municipality had authority under the old Act or any other Act repealed by the new Act, will continue after December 31, 2002 until the earlier of its repeal or January 1, 2006. However, after January 1, 2003 such by-laws cannot be amended. This section provides time for the City to review all by-laws, identify any by-laws that are not in compliance with the *Municipal Act, 2001* and

determine in consultation with staff of the Ministry of Municipal Affairs and Housing what actions should be recommended with respect to such by-laws. It is recommended that the City Solicitor, in consultation with the CAO and departments, undertake a review of City By-laws for compliance with the *Municipal Act, 2001* to be completed by early 2005.

Conclusions:

The new Municipal Act, 2001 comes into effect on January 1, 2003. An interdepartmental staff working group has reviewed the legislation and identified actions that must be taken before January 1, 2003 to ensure that the City is in compliance with the new Act. This report discusses the status of these actions.

Contact:

Anna Pace
Senior Corporate Management and Policy Consultant
Phone: 416-392-8117
Email: apace@toronto.ca

Christina Hueniken
Solicitor, Legal Division, Corporate Services
Phone: 416-392-8429
Email: chueniken@toronto.ca

Shirley Hoy
Chief Administrative Officer

List of Attachments:

Appendix A: Proposed Notice By-law
Appendix B: News Release and Backgrounder on Bill 177, Municipal Statute Law Amendment Act, 2002