



STAFF REPORT ACTION REQUIRED

Five-Year Review of the *City of Toronto Act, 2006*

Date:	September 4, 2015
To:	Executive Committee
From:	City Manager
Wards:	All

SUMMARY

In June 2015, the Province of Ontario launched a review of municipal legislation that includes the *Municipal Elections Act, 1996* (MEA), *Municipal Conflict of Interest Act* (MCIA), *Municipal Act, 2001* (that pertains to all other municipalities in Ontario except Toronto) and the *City of Toronto Act, 2006* (COTA). The review focuses on three broad areas: accountability and transparency, financial sustainability, and responsive and flexible service delivery. To inform the Provincial review, the City launched its own review that covered the three provincial statutes that pertain to Toronto and considered prior Council decisions related to the statutes, the City's experience with the legislation, jurisdictional and legal research, and consultations with Members of Council

Review of MEA and MCIA

The City Clerk submitted prior Council requested MEA amendments to the Province of Ontario directly. There are no current Council requests related to the MCIA. This report recommends that Council forward the key comments from Members of Council related to the MEA and MCIA as outlined in Attachment 2 to the Province.

Review of COTA

The City's review process confirms that COTA is generally working well and provides the City with most of the authorities and tools it requires to undertake its responsibilities. This report recommends that a number of key policy and technical amendments to COTA be confirmed by City Council for submission to the Province, including amendments requested by City Council previously and others identified through the City's review process. The proposed policy amendments will (1) increase the City's authority for more effective decision making in key areas; (2) provide improved flexibility to enhance service delivery; (3) support financial sustainability; and (4) improve accountability and transparency. The technical amendments will clarify intent, increase flexibility and update some provisions.

Financial Sustainability

COTA prescribes the financial tools the City can implement. The City Manager is of the view that it should be at the discretion of City Council to determine which revenue tools to implement and for what purpose. Revenue tools need to be considered within the broader context of the City's financial sustainability and Long Term Fiscal Plan. The Deputy City Manager & Chief Financial Officer will bring forward an updated Long Term Fiscal Plan later this fall to Executive Committee. Council decisions related to revenue tools will be forwarded to the Province at that time as an addendum to the City's submission.

Delegation to Community Councils

Delegation of additional matters for final decision-making to Community Councils was raised during the Review process. There may be opportunities to streamline decision-making further by delegating more local decision making to Community Councils particularly related to limitations to the delegation of authority imposed by City Council. There may also be opportunities to delegate administrative matters from Community Councils to City officials. This report recommends that the City Manager, in consultation with the City Clerk and City Solicitor, undertake a review of the delegation to Community Councils to identify additional opportunities to delegate decision-making.

Review of Other Legislation

Through the COTA 5-Year Review, areas of improvement have been identified for City programs and services which are governed or regulated under other legislation including the *Provincial Offences Act*, *Liquor Licensing Act*, the Ontario Building Code, and the *Highway Traffic Act*. Each of these areas will require further review, analysis and direction from City Council. To facilitate a review of non-COTA legislative reform and requests of other governments, the City Manager's Office will coordinate a cyclical review of City Council decisions and staff advice on intergovernmental matters as input to the annual City Operating and Capital Budget review.

Toronto-Ontario Cooperation and Consultation Agreement

COTA provides for a Toronto-Ontario Cooperation and Consultation Agreement (T-OCCA). This agreement, which was signed in 2008 and renewed in 2011, provides a formal process for ongoing City-Provincial consultation on matters of mutual interest.

As the term of T-OCCA has recently expired, this report recommends that City Council authorize the Mayor and City Manager to execute the renewal of the current and future agreements as required.

RECOMMENDATIONS

The City Manager recommends that:

1. City Council confirm the proposed amendments to the *City of Toronto Act, 2006* ("COTA") identified in Attachment 1 to this report for submission to the Province of Ontario as part of the COTA 5-year Review and authorize the Mayor and City Manager to negotiate any details as required;
2. City Council request the City Manager to submit to the Province of Ontario the key comments from the Members of Council summarized in Attachment 2 to this report related to the *Municipal Elections Act, 1996* and the *Municipal Conflict of Interest Act*;
3. City Council request the City Manager, in consultation with the City Clerk and City Solicitor, to review the delegation of matters to Community Councils and report back on any required amendments to Toronto Municipal Code Chapter 27, Council Procedures; and
4. City Council authorize the Mayor and the City Manager to execute current and future renewals of the Toronto-Ontario Cooperation and Consultation Agreement as required.

Implementation Points

The Mayor and City Manager will negotiate the proposed COTA amendments with the Province of Ontario. The City Manager will report back on final changes to COTA and the MCIA following the Province of Ontario enacting legislative amendments. The City Clerk will report back on final changes to the MEA.

The Mayor and City Manager will execute the renewal of the Toronto-Ontario Cooperation and Consultation Agreement which provides a formal process for ongoing City-Provincial consultation on matters of mutual interest.

Financial Impact

Some of the proposed COTA amendments may save the City money or generate revenue. Some of the proposed amendments will enable the City to implement an authority that may have operating impacts.

The City Manager and the Deputy City Manager & Chief Financial Officer will report further on the financial implications of amendments to COTA after the changes to the Act are proclaimed by the Province. Operating impacts will be included in future reports to City Council related to implementing any new authority or expanding an existing authority where required.

The Deputy City Manager & Chief Financial Officer has reviewed this report and concurs with the financial impact statement.

DECISION HISTORY

City Council directions related to COTA are included in Attachment 3 and City Council directions related to the MEA are included in Attachment 4.

ISSUE BACKGROUND

COTA is the enabling legislation that provides the City with its fundamental source of power. It came into force on January 1, 2007. It is broad and permissive legislation that provides the City with authorities commensurate with its size, responsibilities and status as an order of government.

COTA provides authority, with some limitations, for the City to:

- Determine what is in the public interest and respond to the City's needs;
- Determine the appropriate structure to govern Toronto;
- Determine mechanisms for delivering municipal services;
- Determine municipal spending and taxation; and
- Use fiscal tools to support the City's activities.

COTA recognizes that it is in the best interests of the Province and the City to work together in a partnership based on respect, consultation and cooperation, and the role of the City is to provide good government within its jurisdiction, through a democratically elected, responsible and accountable government.

COTA balances Toronto's authorities with requirements related to accountability and transparent government including the requirement to adopt a Code of Conduct, appoint an Auditor General, Integrity Commissioner, and Ombudsman and maintain a lobbyist registry, and provides authority to appoint a Lobbyist Registrar and an Open Meeting Investigator. It also enables the City to have direct bilateral agreements with the Government of Canada.

COTA requires a statutory review every five-years. In 2009, a two-year technical review was completed. It resulted in very few changes to the Act.

COMMENTS

1. Provincial Review of Municipal Legislation

The Province of Ontario launched a review of municipal legislation in June 2015 that includes COTA, *Municipal Act, 2001*, MCIA, and the MEA. The review focuses on three broad areas: accountability and transparency, financial sustainability, and responsive and flexible service delivery.

The Province is undertaking online public consultation and meetings with key stakeholders on the review of municipal legislation. Comments on COTA and the MCIA may be submitted until October 31, 2015. The review of the MEA is on an accelerated timeline to ensure changes will be in place in time for the 2018 municipal elections and comments closed on July 27, 2015.

As part of the Province's legislative review process, changes will be referred to a provincial standing committee for public hearings. Possible further changes may be proposed before proclamation.

2. The City's Review Process

The City's review process covered the three provincial statutes under review that pertain to Toronto.

For COTA, City staff reviewed amendments directed by City Council, proposed through the 2009 two-year technical review, and additional policy and technical amendments based on the City's experience with the legislation. Jurisdictional and legal research in key areas was completed where required.

Members of Council were interviewed to obtain comments on the three statutes pertaining to Toronto. Approximately 25 Members participated.

City Council also directed the City Manager to undertake public consultation to obtain input on COTA. This is discussed in more detail in section 4 of this report.

The Mayor requested Councillor Kelly to chair a panel with Councillor Wong-Tam and Councillor Di Ciano to assist with the legislative reviews, particularly COTA, and support intergovernmental negotiations for Toronto's proposed amendments.

A. Municipal Elections Act, 1996

The City Clerk submitted Council's requested amendments to the MEA to the Province by its deadline of July 27, 2015. The City Council directions are included in Attachment 4. The Province is continuing to have technical discussions with municipal clerks and other stakeholders particularly related to the implementation of ranked balloting.

As part of the consultation related to COTA, Members of Council were asked for input into the MEA using the Province's consultation questions. The key comments are included in Attachment 2, Table 1 and will be forwarded to the Province for consideration.

Some Members of Council raised concerns with the enforcement of election sign regulations that are set out in Toronto Municipal Code, Chapter 693, Signs. These concerns have been forwarded to the Executive Director of Municipal Licensing and Standards, who is responsible for enforcing the by-law provisions related to election signs. Additionally, Members raised the point that voter outreach and education will be critical prior to implementing ranked ballots in Toronto.

B. Municipal Conflict of Interest Act

In addition to the online consultation, the Province is consulting with Integrity Commissioners, other Accountability Officers, and key stakeholders on improvements to the MCIA.

Council decisions have been reviewed and there are no directions related to the MCIA. As part of the City's consultation, Members of Council were asked to provide input on the MCIA using the Province's consultation questions. The key comments are included in Attachment 2, Table 2 and will be forwarded to the Province for consideration.

The Integrity Commissioner was identified as a good resource with respect to conflict of interest matters even though the advice is non-binding. Several Members of Council also suggested that access to independent legal counsel for advice on conflict of interest matters would be beneficial.

C. City of Toronto Act, 2006

The review process confirms that COTA is generally working well and provides the City with most of the authorities and tools it requires to undertake its responsibilities. The Five-Year review provides an opportunity to identify improvements to COTA based on the City's experience with the legislation over the last eight years, and is consistent with the permissive nature of the legislation.

This report proposes key policy and technical amendments to COTA including amendments requested by City Council and considering the City's experience with the legislation, key comments from Member interviews, and outcomes of jurisdictional and legal research.

Policy Amendments

This report identifies a number of policy amendments that will (1) increase the City's authority for more effective decision making in key areas; (2) provide improved flexibility to enhance service delivery; (3) support financial sustainability; and (4) improve accountability and transparency. The policy amendments are included in Attachment 1, Table 1 to this report and discussed further below.

- **Increase the City's Authority for Decision Making:** the proposed amendments will result in increased authority to City Council to make decisions related to land use planning, the enforcement of regulations for signs, and imposing administrative sanctions for specific by-law violations.
- **Provide Increased Flexibility for Service Delivery:** the proposed amendments will provide increased flexibility to enhance service delivery and support strategic objectives. These changes will result in providing zoning implementation tools to enable the City to zone with conditions and implement inclusionary housing, extend the time lines for Council planning decisions to support more front-end consultation and collaboration and provide further flexibility related to vacant unit rebates.

- **Support Financial Sustainability:** the proposed amendments will result in cost of living increases for taxation related to railway rights of way and hydro corridors and heads and beds; and enable the City to collect defaulted fines for provincial offences through the property tax roll where any of the owners are responsible to pay the fine.
- **Improve Accountability and Transparency:** the proposed amendments will improve accountability by extending the jurisdiction of the Auditor General to restricted local boards (Toronto Police Service, Public Health and Toronto Public Library) and extending the jurisdiction of the Ombudsman to the Toronto Public Library. The amendments will also support protecting the public's interest by limiting claims of adverse possession of public lands, and requiring a public service by-law to set out the role of the public service and the ethical rights and responsibilities of public servants.

Technical Amendments

This report proposes a range of technical amendments to COTA that will clarify intent, increase flexibility and update some provisions. For example, the City is proposing to extend permission to have Members of Local Boards participate in meetings electronically. Additionally, the City proposes to increase the City's flexibility for the format and content of tax bills including the ability to issue tax bills electronically. The technical amendments are included in Attachment 1, Table 2.

3. Financial Sustainability Considerations

Revenue Tools

COTA provides the City with a range of revenue tools, subject to prescribed limits. The City has used these tools to implement a land transfer tax, sign tax, vehicle registration tax (subsequently repealed), and has considered imposing taxes on alcohol, tobacco and parking using these tools. COTA expressly excludes authority for the City to impose certain taxes including income and sales tax, lodgings/hotel tax, gas tax, and natural resource tax. Although COTA provides authority for the City to impose highway tolls, the Province has not yet passed a regulation to enable the City to implement this authority.

Some of the revenue tools excluded in the Act such as income and sales tax require a broader discussion with stakeholders outside of the scope of the COTA 5-year Review. However the existing blanket prohibition on a sales tax particularly poses significant tax design challenges to the City in respect of many taxes the City has considered.

The City should have a range of financial tools available to meet its objectives and ensure its financial sustainability over the long term. Consistent with the permissive nature of the legislation, it should be at the discretion of City Council to determine which revenue tools to implement and for what purpose.

Revenue tools need to be considered within the broader context of the City's financial sustainability and Long Term Fiscal Plan. The Deputy City Manager & Chief Financial Officer

is bringing forward an updated Long Term Fiscal Plan this fall to Executive Committee. The Long Term Fiscal Plan identifies issues and risks related to the City's expenditures, revenues, assets and liabilities and the financial strategies to address them. This will include the use of revenue tools, including obstacles posed by the existing blanket prohibitions on certain taxes such as a sales tax and any required amendments to COTA. Council members identified support for two tools: a lodgings/hotel tax and a regulation to enable the City to implement highway tolls.

Council decisions related to revenue tools will be forwarded to the Province of Ontario as an addendum to the City's submission, following Council's consideration of the Long Term Fiscal Plan.

Enhanced Investment Authorities

Earlier this year, Provincial staff signaled a willingness to consider expanding its prescribed list of eligible investments to enhance the City's ability to earn higher rates of return on its investment portfolios.

Since then, discussions have focused on removing the current prescribed list of investments and replacing it with broad authority to invest in accordance with the prudent investor standard. The prudent investor standard is a well-established benchmark by which to measure investment decisions and is the standard required of trustees in Ontario under the *Trustee Act*. The change would allow the City to invest in a much broader class of securities provided it exercises the care, skill, diligence and judgement of a prudent investor having regard to relevant economic and financial criteria and the City's appetite towards risk and its need for liquidity.

The securities that are currently permitted to be held in the City's general and sinking fund portfolios consist of money market holdings with maturities of less than one year, short and long-term bonds with terms between one and thirty years and total approximately \$6.4 Billion. These investments are governed by and listed as eligible investments in *Ontario Regulation 610/06* under COTA.

The proposed amendments would allow the City to add securities such as equities and long-term corporate bonds to its current holdings, provided such investments are made in compliance with the prudent investor standard.

The transition from a prescriptive investment approach to the proposed prudent investor standard model signifies a significant shift towards providing the City with more flexibility in making investments but also imposes additional responsibilities of ensuring that such investments adhere to the prudent investor standard.

The details of the City transitioning from the prescriptive list of eligible investments to the new proposed model are still being discussed. However, it is anticipated that under the new authorities, Council will be required to adopt an Investment Policy and to form an Investment Board. The Investment Board will be a city board to whom the City's investment powers will be delegated, who will implement the Council-approved Investment Policy by developing and

adopting an investment plan to manage risk as a prudent investor. It is also proposed that such a model would have to be adopted within 5 years, as the existing eligible investment list model will be deemed repealed in 5 years.

Fees for Congestion-Related Impacts

In June 2015, Council asked the City Manager to report on potential COTA amendments required to implement new fees for congestion-related impacts including lane occupations. Staff continue to undertake due diligence on this direction and will report further as required. Any resulting proposed amendments to COTA will be forwarded to the Province.

4. Public Consultation on the *City of Toronto Act, 2006*

City Council directed the City Manager to undertake public consultation on COTA following Council's consideration of this report. Public consultation will include a dedicated web page with a learning guide, an online survey and a public meeting to elicit public input. Summary comments from the public consultation will be submitted to the Province for consideration along with the COTA amendments requested by Council.

5. Delegation of Authority to Community Councils

Delegation of additional matters for final decision-making to Community Councils was raised during the review process. City Council has delegated final decision-making to Community Councils for a range of local matters. COTA prohibits Council's authority to delegate final decision-making for some matters including:

- Authority to appoint or remove a statutory officer of the City;
- The power to incorporate corporations;
- The power to impose a tax;
- The power to adopt an Official Plan or an amendment to an Official Plan;
- The power to pass Zoning By-laws;
- The power to adopt a Community Improvement Plan;
- Authority to enter into Agreements to provide financial assistance and/or property tax exemptions, in certain circumstances;
- The power to establish programs to assist businesses, as authorized; and
- The power to amend or adopt a budget.

The City Manager is of the view that the legislative limitations in COTA are appropriate and is not recommending changes. There are two regulations that City Council requested the Province enact to enable the City to delegate final decision-making to Community Councils. These two regulations are related to fire routes and declaring events of municipal significance for the

purpose of a special occasion permit. The two regulations are outstanding and will be pursued through the COTA review.

There may also be opportunities to streamline decision-making further by delegating more local decision making to Community Councils particularly related to limitations to the delegation of authority imposed by City Council. Further, there may also be opportunities to delegate administrative matters from Community Councils to City officials. This report therefore recommends that the City Manager, in consultation with the City Clerk and City Solicitor, undertake a review of the delegation to Community Councils to identify additional opportunities to delegate decision-making.

6. Toronto – Ontario Consultations and Priority Setting

The City's ability to successfully achieve its mandate is directly linked to its relationship with the Government of Ontario as the socio-economic health and prosperity of Toronto is a shared responsibility. Obtaining the authorities and funding to effectively deliver shared programs and services requires ongoing collaboration, consultation and negotiation.

The proposed amendments to COTA need to be considered within a broader intergovernmental context. Although COTA provides the essential tools for the City to govern and negotiate bilateral agreements with the provincial and federal governments, there are many other legislative authorities, program delivery mechanisms and funding arrangements that the City must access, navigate and comply with, to meet the interests of City Council, Toronto residents, businesses and communities.

Through the COTA 5-Year Review, areas of improvement have been identified for City programs and services which are governed or regulated under other legislation including the *Provincial Offences Act*, *Liquor Licensing Act*, the Ontario Building Code, and the *Highway Traffic Act*. The Budget Committee has also identified legislative reform as an opportunity for the City to save costs or generate revenue required for long-term fiscal sustainability. Each of these areas will require further review, analysis and direction from City Council.

To facilitate a review of non-COTA legislative reform and requests of other governments, the City Manager's Office will coordinate a cyclical review of City Council decisions and staff advice on intergovernmental matters as input into the annual City Operating and Capital Budget review.

The objective of the cyclical review is to identify priority fiscal requests and opportunities for enhanced policy and program collaboration with the Governments of Ontario and Canada, for City Council consideration and direction. These priorities would then be pursued through formal intergovernmental requests and consultations. Requests of the Province would be facilitated through discussions held per the Toronto-Ontario Cooperation and Consultation Agreement.

Toronto-Ontario Cooperation and Consultation Agreement

COTA provides for the establishment of a Toronto-Ontario Cooperation and Consultation Agreement (T-OCCA). This agreement, which was signed in 2008 and renewed in 2011, provides a formal process for ongoing City-Provincial consultation on matters of mutual interest. It also provides guidance on strengthening existing coordination and working relationships across City divisions, agencies and corporations and Provincial ministries and agencies. Under the T-OCCA, the Mayor is the City lead at meetings with elected provincial officials, and the City Manager leads meetings with senior officials within the Ontario public service.

As the term of T-OCCA has recently expired, this report recommends that City Council authorize the Mayor and City Manager to execute the renewal of the current and future agreements as required.

CONTACT

Lynda Taschereau
Executive Director
Strategic and Corporate Policy
Phone: 416-392-6783
Email: ltascher@toronto.ca

Fiona Murray
Director, Corporate Policy
Strategic and Corporate Policy
Phone: 416-397-5214
Email: fmurray@toronto.ca

Wendy Walberg
Practice Lead, Municipal Law
Legal Services
Phone: 416-392-8078
Email: walber@toronto.ca

SIGNATURE

Peter Wallace
City Manager

ATTACHMENTS

Attachment 1: Proposed Amendments to the *City of Toronto Act, 2006*

Attachment 2: Key Comments from Council Member Consultations - *Municipal Elections Act, 1996* and *Municipal Conflict of Interest Act*

Attachment 3: City Council Directions Related to the *City of Toronto Act, 2006*

Attachment 4: City Council Directions Related to the *Municipal Elections Act, 1996*