

Bill 68, Modernizing Ontario's Municipal Legislation Act, 2016 - Implications for the City of Toronto

Date: January 10, 2016
To: Executive Committee
From: City Manager and City Solicitor
Wards: All

SUMMARY

In September 2015, City Council requested a series of amendments to the City of Toronto Act (COTA) of the Province of Ontario as part of their Five-Year Review of the legislation. On November 16, 2016, the Province introduced Bill 68, Modernizing Ontario's Municipal Legislation Act, 2016. The bill, if passed, would amend COTA, the Municipal Conflict of Interest Act, the Municipal Elections Act and other statutes in response to feedback gathered during the Province's municipal legislative review consultations. The bill is currently at the Second Reading stage, and could be referred to a standing committee of the provincial legislature for public hearings shortly after the legislature resumes sitting on February 21, 2017.

The purpose of this report is to provide an overview of the proposed bill, report on the status of requests made by the City of Toronto during the COTA Five-Year Review, and recommends possible amendments the City could propose if the bill is reviewed by a standing committee.

RECOMMENDATIONS

The City Manager and City Solicitor recommend that:

1. City Council express support to the Province with respect to Bill 68, Modernizing Ontario's Municipal Legislation Act, 2016 and acknowledge the consultative approach followed by the Province in developing the legislation.
2. City Council confirm the proposed requests for amendments to Bill 68 identified in Attachment 2 to this report for submission to the Province in the event that the bill is reviewed by a standing committee of the provincial legislature.

3. City Council authorize the City Manager in consultation with the City Solicitor to include requests for additional technical amendments to Bill 68 in the City's submission in the event that the bill is reviewed by a standing committee of the provincial legislature.

FINANCIAL IMPACT

Some of the proposed COTA amendments may impact the City's budget through potential additional costs and revenues. In particular, if the proposed changes to the role of the Integrity Commissioner are passed, the Office of the Integrity Commissioner will require additional resources to have capacity to fulfill the duties. Some of the proposed amendments will enable the City to implement an authority that may have operating impacts.

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

On September 30, 2015, City Council adopted EX8.1 Five-Year Review of the City of Toronto Act, 2006:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.EX8.1>

In adopting this report, City Council requested a series of amendments to the City of Toronto Act in response to the Province's public consultations held from June - October 2015. Key comments from members of City Council related to the Municipal Elections Act and Municipal Conflict of Interest Act were also forwarded to the Province.

The report also noted that revenue tools for the City of Toronto would need to be considered within the broader context of the City's financial sustainability and Long Term Fiscal Plan, and that any City Council decisions related to revenue tools would be forwarded to the Province as an addendum to the City's submission at a later date.

On December 13, 2016, City Council adopted EX20.2 The City of Toronto's Immediate and Longer-term Revenue Strategy Direction:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.EX20.2>

In doing so, City Council asked the Province for legislative and/or regulatory reforms to enable the City to levy and collect a tax on lodging (i.e. a hotel and short-term accommodation rental tax) and to toll roads under the jurisdictional ownership of the City.

On December 13, 2016, City Council adopted EX20.5 Changes to the Municipal Elections Act and Related Matters Impacting the 2018 Election:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.EX20.5>

City Council directed the City Manager to request amendments to the Municipal Elections Act with regard to third party advertising as part of the Province's review of Bill 68.

On December 9, 2015, City Council adopted EX10.3 Review of the Functions of Toronto's Accountability Offices:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.EX10.3>

City Council authorized the City Manager to request the Province to amend the City of Toronto Act, 2006 to clarify and reinforce the Accountability Officers' ability to share information between them as required in order to undertake their responsibilities under Part V of the City of Toronto Act, 2006.

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 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 and provides for a Toronto-Ontario Cooperation and Consultation Agreement (T-OCCA). This agreement, which was signed in 2008 and renewed in 2011 and 2016, provides a formal process for ongoing City-Provincial consultation on matters of mutual interest.

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.

In June 2015, the Province of Ontario launched a review of municipal legislation that included 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 focussed 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 City Council. Councillor Norm Kelly served as Chair of the City of Toronto's Municipal Legislative Review Panel which provided a steering function for the review.

COMMENTS

1. Status of the City's Requests for Amendments

As noted above, City Council adopted EX8.1 Five-Year Review of the City of Toronto Act, 2006 on September 30, 2015 for submission to the Province. That report proposed 29 policy amendments and 25 technical amendments intended to (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 City's submission also proposed technical amendments to clarify intent, increase flexibility and update some provisions.

Eight of the City's requested policy amendments and 13 requested technical amendments have been fully or partially met with the proposed Bill 68 changes. Highlights include provisions that would:

- Clarify that Toronto may pass by-laws respecting climate change mitigation and adaptation.
- Repeal the provision in COTA that limits application of municipal by-laws to existing signs.
- Require Toronto to adopt a public service policy regarding the relationship between council and municipal staff (i.e. Public Service By-law).
- Extend the time limit for investigations of Provincial Offences Act charges under the City's Lobbying By-law from six months to two years.
- Provide the City with broad authority to impose administrative monetary penalties for City by-law contraventions.
- Allow the City to issue electronic tax bills.

Some requests that the City made through the COTA review process have been met through other processes. For example:

- Bill 73, Smart Growth for our Communities Act, 2015 amended the Planning Act to provide for a ten-year review period after a new official plan.
- A provincial regulatory change in November 2015 replaced the prescriptive list of eligible investments in the Financial Activities regulation under COTA with a "prudent investor" standard.
- Bill 7, Promoting Affordable Housing Act, 2016 provides a framework to allow for inclusionary zoning (requiring the provision of affordable housing as part of the approval of new development).
- Bill 70, Building Ontario Up for Everyone Act (Budget Measures), 2016 provides for additional flexibility in the Vacant Unit Rebate program, subject to ministerial approval.
- Bill 27, Burden Reduction Act, 2016, if passed, would enable collection agency fees to be added to and considered part of municipal fines under the Provincial Offences Act (Bill 27 passed Second Reading on November 29, 2016 and was referred to standing committee for review).

Some amendments requested by the City are still under consideration through other processes (e.g. the ongoing Ontario Municipal Board Review) or were referred to other ministries for consideration (e.g. the requested liquor licencing amendments). Staff will continue to follow up with the Province on these requests.

Other City Council requests were denied by the Province because they would be more appropriately addressed through other legislation or processes (e.g. the request to explore potential amendments to implement new levies on land development, requests to expand the jurisdiction of the Ombudsman and the Auditor General, and the request to remove the jurisdiction of the Ontario Municipal Board for petitions and appeals respecting ward boundaries).

Attachment 1 provides a more detailed status update for all amendments requested by the City as part of the Province's City of Toronto Act Review.

The requests made as part of the City of Toronto's Immediate and Longer-term Revenue Strategy Direction for legislative reforms to enable the City to levy and collect a tax on lodging and to toll roads were submitted to the Province after Bill 68 was tabled. Any new taxing power would require amendments to Part X of the City of Toronto Act, 2006 (Power to Impose Taxes) which is not amended by Bill 68. All-party consent would be required to allow any amendments to this section of COTA to be added during a standing committee's review of the bill. Road tolls can only be implemented if the Province makes a regulation to permit them.

2. Summary of key provisions of Bill 68

Bill 68 proposes amendments to the City of Toronto Act, 2006 (COTA), the Municipal Act, 2001 and the Municipal Conflict of Interest Act (MCIA). Key provisions are noted below:

Meetings

A number of proposed changes pertain to meetings of City Council and local boards. The definition of meeting would be clarified to require that a quorum be present and that the members deal with a matter in a way that materially advances business. While this would not change the commonly understood meaning of the term "meeting", clarity is helpful since many open meeting investigation reports for various municipalities interpret the term. The bill would also expand the potential for City Council to permit electronic participation in meetings. Currently, COTA allows City Council to provide in its procedure by-law for electronic participation in meetings of City Council. Bill 68 would allow City Council to permit electronic participation in committee meetings and meetings of local boards. Electronic participation would be limited to those situations where a quorum is physically present and to meetings which are open to the public.

The bill would also modify the open meeting rule to clarify that a meeting may be closed to the public in several situations. The first is where the subject matter under consideration is information supplied in confidence by the federal or provincial governments or a Crown agency of either. The second is where the subject matter under consideration is "a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence" and which if disclosed could significantly prejudice the competitive position or negotiations of the party that supplied it. A "trade secret or scientific, technical, commercial, financial information" belonging to the City may also be discussed in closed session if it has potential monetary value. Finally, information pertaining to negotiations undertaken by the City or local board may be discussed in closed session. These changes are unlikely to result in additional closed meetings, and would provide greater clarity with regard to the open meeting rule.

Climate Change

The subject matter with respect to which the City may enact by-laws using its broadly worded general power would be expanded to include climate change. This is helpful because it acknowledges that by-laws respecting climate change can meet the legal requirement of having a "municipal purpose" even though climate change consequences would not be confined to the municipality itself. The bill would also clarify that the City may engage in long term planning for energy use in the City including consideration of energy conservation, climate change and green energy.

Enforcement

A number of proposed amendments would enhance enforcement of City by-laws. City Council would be able to extend the limitation period for making a charge under the lobbying by-law from the default period under the Provincial Offences Act of 6 months to two years. This would enable the Lobbyist Registrar to conduct the detailed investigations often required to determine whether there has been a violation. As well, Bill 68 would amend COTA to set out explicit powers to impose administrative sanctions. Currently the City has explicit authority to impose these for parking infractions only. The purpose of an administrative sanction is to promote compliance with a regulatory regime. These sanctions are not punitive and cannot exceed the amount reasonably required to promote compliance. A system including administrative sanctions should be more efficient and provide more flexibility in the delivery of service to the public than a system imposing penalties under the Provincial Offences Act. In addition the COTA would be amended to provide for copies of more city documents to be submitted into evidence without proof of the office and signature of the official who certified the copy.

Land Use Planning

Bill 68, if enacted in its current form, would make several changes pertaining to land use planning. It would allow the City to change a local appeal body and provide for the Minister of Municipal Affairs and Housing to make an order dissolving a local appeal body. It would also provide that an agreement containing conditions of a permit to convert or demolish rental residential property can be registered on title and, therefore, enforced against subsequent owners.

Integrity Commissioner Role

The bill also contains several proposed amendments that would transform the role of the Integrity Commissioner. If Bill 68 is enacted in its current form, several of the duties assigned to the Integrity Commissioner through Chapter 3 of the Toronto Municipal Code such as education, outreach and advice-giving will be codified into provincial legislation, and the Integrity Commissioner's jurisdiction will be expanded to include receiving and investigating Municipal Conflict of Interest Act (MCIA) complaints and the responsibility to conduct investigations into Code of Conduct or MCIA matters on the Commissioner's own initiative. After investigating in response to a complaint that a member has violated the MCIA, the Integrity Commissioner would be able to apply to court for a determination that member violated the MCIA.

The changes to the role of the Integrity Commissioner will require comprehensive review and updating of operations of the Office of the Integrity Commissioner. Due to the independence of the Integrity Commissioner, City Council can expect the Integrity Commissioner to provide information and advice to City Council about operational needs, and procedural changes that arise due to the passage of Bill 68.

Code of Conduct

If passed, Bill 68 would provide the Minister of Municipal Affairs and Housing with authority to establish minimum standards for codes of conduct across Ontario. Although Toronto's Code of Conduct is comprehensive, it will require review in consideration of any regulation passed by the Minister.

Municipal Conflict of Interest Act

Bill 68 also contains proposed amendments to the MCI Act that coordinate its application with the Code of Conduct and the Integrity Commissioner. The MCI Act will expressly permit the Court to consider – as a mitigating factor -- whether the member sought, obtained and followed advice from the Integrity Commissioner.

The burdens associated with bringing forward MCI Act applications will be relaxed. If Bill 68 is passed in its current form, any person (not just an elector) would be able to bring applications either to the Integrity Commissioner or to Court claiming a contravention of the MCI Act.

The MCI Act would also be amended to expand the sorts of decisions that a member would be prohibited from attempting to influence when the member has a pecuniary interest in the subject matter to include decisions made by City officials, staff and others with delegated authority (not just matters for which votes are taken).

The legislation includes amendments to enable members of City Council and local boards can defend themselves by making statements in City Council when faced with possible penalties for Code of Conduct breaches, without running afoul of the MCI Act. The amendments would allow a member of City Council to speak and attempt to influence the vote but not to actually vote when City Council is considering a report from the Integrity Commissioner recommending suspension of the councillor's pay. The same would apply to members of local boards.

A member who declares that the member has a pecuniary interest in a matter will be required to file a written statement of the interest with the City Clerk who will maintain a public registry of these written statements. Also, the bill proposes to expand the range of penalties that a court can impose if it concludes there has been a violation of the MCI Act. Currently loss of office is automatic if the court concludes there has been a violation. Bill 68 would amend the legislation to make loss of office discretionary and to add a reprimand and suspension of remuneration as potential penalties.

Tax Collection and Tax Sales

Bill 68 contains numerous technical amendments regarding property tax collection and tax sales with a view to improving clarity and efficiency. For example, COTA would be updated to clarify that the City may issue electronic tax bills upon request, expedite the process for tax sales and provide municipalities with alternative methods to advertise them. The majority of these provisions were either requested by the City directly, or through various Provincial consultations and working groups which the City was involved in.

The only provision in this category that City staff do not support is a change to how excess proceeds from a tax sale are administered. Currently, excess proceeds are paid into court by a municipality following a successful tax sale, and after a one year period has elapsed after the excess tax sale proceeds had been paid into court, the City can apply to the court to receive the balance of the excess proceeds. Bill 68 would amend this to provide that excess proceeds remain with the court for a period of ten years following a tax sale, after which time any excess proceeds are forfeited to the Crown. Therefore, the City would no longer have an "as-of-right" entitlement to excess proceeds. While this change would reduce potential municipal revenues, the Province has advised that the amendment was made to provide for greater equity and fairness; there is no policy-based argument to be made for municipalities keeping this as-of-right entitlement.

Other Proposed Amendments

If Bill 68 is enacted in its current form, the COTA would be amended in numerous other ways. Several new requirements for policies would be imposed on the City including a requirement to have a policy pertaining to protection and enhancement of the tree canopy, a policy that would essentially be a public service by-law, and a policy providing for pregnancy and parental leave for members of City Council. The COTA would also be amended to provide an exception from the provision creating a vacancy when a member misses three consecutive meetings if the absence is a result of pregnancy, childbirth or adoption. In addition, Bill 68 contains a proposed amendment that would remove the grandfathering of existing signs when a new sign by-law is enacted.

3. Issues to raise at standing committee review of Bill 68

As a government bill, Bill 68 will most likely pass second reading and be referred to a standing committee of the provincial legislature for public hearings and a clause-by-clause review where amendments to the bill may be moved, considered, and adopted. If this process is followed, the City will have the opportunity to make a written submission to the standing committee requesting amendments, and likely be allocated time to make a deputation to the standing committee.

Staff have reviewed Bill 68 and identified two areas of Bill 68 as drafted where it would be in the City's interest to seek amendments, and two requests previously made by the City that may be worth re-submitting to the standing committee (i.e. they have not been referred to another ministry or process and the Province has not indicated during that it does not support them):

Integrated Planning for Service Delivery

Schedule 2, section 28 of Bill 68 would give the Minister of Municipal Affairs the authority to make regulations "prescribing actions that the City must take which, in the opinion of the Minister, are necessary or desirable to support the integration of planning for municipal service delivery with planning for service delivery by other public bodies or by other persons". This proposed power is unnecessarily broad and undermines key underlying principles of the City of Toronto Act (i.e. that the City should have the authority to determine what is in the public interest and respond to the City's needs, and to determine mechanisms for delivering municipal services). It is recommended that this section of Bill 68 be deleted.

Transition provisions regarding terms of office in 2018

Bill 68 would amend the Municipal Elections Act to change the beginning of terms of all offices from December 1 to November 15 in the year of a regular election. As drafted the bill does not clearly address the end of the term for outgoing members of City Council in 2018. This lack of clarity could result in confusion between November 15 when the 2018-2022 term would begin and November 30 when the current term would normally end.

Third Party Advertising

On December 13, 2016, City Council directed the City Manager to include in any submissions to a Provincial standing committee regarding Bill 68 a request to remove the third party advertising regulations from the Municipal Elections Act, or alternatively, to allow the City to impose additional conditions on third party advertisers.

Accountability Officers' ability to share information between them

On December 9, 2015, City Council authorized the City Manager to request amendments to COTA to clarify and reinforce the Accountability Officers' ability to share information between them as required in order to undertake their responsibilities under Part V of COTA and authorized the Mayor and the City Manager to negotiate the changes as required.

Attachment 2 outlines the above issues in further detail with reference to the specific relevant provisions in Bill 68.

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SIGNATURE

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ATTACHMENTS

Attachment 1 - Status Update - Amendments requested through City of Toronto Act Review

Attachment 2 - Proposed issues to raise at Standing Committee review of Bill 68