

# TORONTO STAFF REPORT

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January 12, 2006

To: Policy & Finance Committee  
From: City Manager and City Solicitor  
Subject: Bill 53 – *Stronger City of Toronto for a Stronger Ontario Act, 2005*

## Purpose:

1. To inform Council of the content of Bill 53 – *Stronger City of Toronto for a Stronger Ontario Act, 2005* – and of some of the primary differences between this Bill and Toronto's existing legislative framework; and
2. To recommend that Council seek changes to the Bill, consistent with established Council positions, when the Bill is considered by a standing committee of the Ontario Legislature.

## Financial Implications and Impact Statement:

There are no direct financial implications arising from the recommendations in this report. Bill 53, if enacted, will provide a number of legislative and financial tools not currently available to Council. The impact of these tools will depend upon how Council decides to use them. Bill 53 is not likely to come into effect until late in 2006 at the earliest. Therefore, the Act will not be a factor for the City's 2006 budget process. The Deputy City Manager & Chief Financial Officer has reviewed this report and concurs with the financial impact statement.

## Recommendations:

It is recommended that:

- (1) the City Manager request an opportunity for representatives of the City to appear before the Standing Committee of the Legislature that considers Bill 53;
- (2) the City's submission on Bill 53 request:
  - amendments to the Bill, consistent with established Council positions;
  - amendments to the Bill highlighted in this report and summarised in Appendix 1; and
  - other technical amendments identified by the City Manager and City Solicitor during their ongoing review of Bill 53; and

- (3) the appropriate City Officials be authorized and directed to take the necessary action to give effect thereto.

Background:

On December 14, 2005 the Ontario Legislature gave First Reading to Bill 53 – *Stronger City of Toronto for a Stronger Ontario Act*, which enacts the *City of Toronto Act, 2005* and amends various other Acts in respect of municipal matters. Two days earlier, on December 12, 2005 the Legislature gave First Reading to Bill 51 – *Planning and Conservation Land Statute Law Amendment Act, 2005*, which amends the *Planning Act* and *Conservation Land Act*.

Bill 53, complemented by Bill 51, updates the City of Toronto’s legislative framework in response to *Building a 21<sup>st</sup> Century City*, the Final Report of the Joint Ontario-City of Toronto Task Force to review the *City of Toronto Act, 1997 (No. 1) and (No. 2)* (collectively referred to as the *City of Toronto Act*) and other Private (Special) Legislation, which was released on November 14, 2005. The City Manager briefed Members of Council on the Joint Task Force report on November 17, 2005.

The new legislation, if enacted, represents a critical milestone in Council’s long-standing effort to secure a more enabling legislative framework, commensurate with the City’s responsibilities, size and significance to Ontario.

In 2000 City Council adopted a resolution calling for a new relationship between the City and the provincial and federal governments. Council resolved that the new relationship had to include a new legislative framework for the City. Toronto officials spent the next several years working with other cities across Canada to call attention to the need for change. This included the launch of the *Stronger Cities Stronger Canada* campaign in 2001. Business, labour and community leaders and academics were instrumental in this effort.

In May 2003 Council adopted the key elements for an enabling legislative framework. Council invited the Province to work with the City of Toronto in a Joint Task Force to turn the *City of Toronto Act* into empowering legislation based on these key elements. The Premier announced the formation of the Joint Task Force in a speech at the Hub City Mayors’ Summit in Toronto on September 17, 2004. He also committed to the introduction of a new *City of Toronto Act* by the end of 2005.

The Joint Task Force commenced its work in October 2004. Its mandate was to review the legislative framework that Toronto currently operates in (including the *Municipal Act, 2001, 2001*, the *City of Toronto Acts, 1997 (Nos 1 and 2)*, and more than 350 pieces of private legislation pertaining to Toronto and its predecessor municipalities) and to develop recommendations for a new Act that provides Toronto with an enabling legislative framework suited to its role as a modern metropolis.

The Joint Task Force was co-chaired by the City Manager, City of Toronto and the Deputy Minister, Ministry of Municipal Affairs and Housing. Between October 2004 and November

2005, City and provincial staff supporting the work of the Joint Task Force met on at least 60 separate occasions. Discussion in these meetings focused on a wide range of issues addressed in Bill 53, including:

- general governmental powers, including “shared policy space” provisions;
- intergovernmental relations;
- licensing;
- liability and enforcement;
- governance, including delegation authority;
- agencies, boards, commissions and corporations;
- transportation;
- housing;
- public health;
- heritage;
- planning;
- environment;
- environmental assessment;
- financial administration;
- financial tools; and
- economic development.

Council’s May 2003 report and subsequent Council motions on specific matters served as the basis for the positions tabled by Toronto staff who participated in the meetings of the Joint Task Force.

The Joint Task Force issued an interim report in May 2005 and, as noted above, delivered its final report and recommendations on November 14, 2005. Bill 53, tabled on December 14, 2005 closely reflects the recommendations of the Joint Task Force.

*Next Steps for Bill 53:*

This report is a general overview of some of the key provisions of the Bill. The City Manager and City Solicitor are continuing their review of the Bill. The review includes analysis of the Bill, collection of comments from City staff and discussion with provincial staff.

Bill 53 is lengthy and complex and City divisions are analyzing the provisions that are relevant to the work they do. Staff are also beginning to identify the policy development processes which will be required to advise Council with respect to working within the new legislative framework. Staff will report in more detail, recommending interim and longer-term strategies for the management of enhanced powers, following enactment of Bill 53.

In this context, the Deputy City Manager & Chief Financial Officer has directed Corporate Finance staff to co-ordinate research into the revenue options that could be available to the City, should Bill 53 be enacted. Prior to recommending any actions in regard to powers that may be provided, a number of inputs need to be researched and considered. These include:

- development of overall policy framework/review process;

- process for input from divisions, ABCs, the public and Council;
- co-ordination with the budget process, other revenue programs of the City, Province or Federal Government, and broader fiscal imbalance discussions;
- technical analysis of revenue potential, rates and rate structure;
- evaluation of social and economic impacts, economic competitiveness and border issues;
- collection and administration process, cost and service providers;
- enforcement procedures, penalties and appeals;
- principles for allocation of proceeds;
- process for approval and public notification; and
- process for review and amendment.

It is important that the City is seen to exercise its revenue options only after careful consideration of potential implications. The City must also ensure that interaction with the Province in regard to newly shared areas of responsibility is managed in an orderly fashion. This is especially true given the current fiscal environment of the City, and the anticipated concerns of businesses and citizens.

As noted above, Bill 53 has received First Reading. Because of the Bill's significance, it is expected that at Second Reading it will be referred to a standing committee of the Legislature for review and public hearings. Second Reading is expected to take place either during the short sitting of the Legislature in the second half of February or when the Legislature resumes business on March 27, 2006 following the March break. Either way, public hearings by the standing committee of the Legislature are not expected to occur until the period after March break.

Following public hearings and a clause-by-clause review of the Bill at the standing committee, Bill 53 and recommended amendments to it will be sent back to the Legislature for Third and final Reading, possibly prior to the Legislature's summer break which is currently scheduled to commence on June 22, 2006.

The City Manager and City Solicitor will report further to Council on any amendments that are made to Bill 53 as it progresses through the legislative process.

#### Comments:

Bill 53, the *Stronger City of Toronto for a Stronger Ontario Act* proposes a fundamental overhaul of the manner in which legislative authority is assigned to Canada's largest City. Some of the most significant differences between Bill 53 and Toronto's existing legislative powers are outlined below.

The Preamble to Bill 53 explicitly recognizes "that the City of Toronto, as Ontario's capital city, is an economic engine of Ontario and Canada" and that "the success of the City requires the active participation of governments working together in a partnership based on respect, consultation and co-operation." This is reinforced by s. 1(4), which explicitly acknowledges that the City has the authority to enter into agreements with the Federal Government.

The concept of co-operation and mutual respect between the City and the Province is also reflected in s. 1(2) of the Bill. Section 1(3) contemplates the City and Province engaging in ongoing consultations with each other about matters of mutual interest in accordance with an agreement between the two governments. These intergovernmental provisions are an important facet of the Bill. There would be built into the legislation and consequent agreements and protocols the conditions to maintain a constructive dialogue between the Province and the City. Ongoing dialogue and partnership will be very important to the course of reducing uncertainty and discussing compatibility of initiatives if situations arise where the City and the Province occupy the same policy space. It will also be important in preparation for a review of the legislation, which s. 5 requires the Minister to initiate after two years.

*General Powers/Approach to Powers:*

The approach to powers reflects the fact that the Government of Toronto has come of age. It is recognized as a responsible, accountable government with responsibility for shaping the broader social, environmental, cultural and economic condition of the City, and for working in effective partnerships with other governments.

The current legislative framework requires municipalities to review existing legislation to locate a power which can be exercised to accomplish an identified goal. Bill 53's emphasis on more general powers would enable the City to approach its goals more creatively. Instead of focusing on identifying specific powers that allow it to do things, the City's primary focus would be on "how to" do things and identifying any express limits on the exercise of its broad powers, including any conflicts with provincial and federal legislation. This has the potential to facilitate greater creative, flexible and nimble problem solving and to change the way of thinking about municipal government.

Section 8(2) of Bill 53 lists the following broad subject areas in which the City is permitted to legislate:

1. Governance structure of the City and its local boards.
2. Accountability and transparency of the City and its operations and of its local boards and their operations.
3. Financial management of the City and its local boards.
4. Public assets of the City acquired for the purpose of exercising its authority under this or any other Act.
5. Economic, social and environmental well-being of the City.
6. Health, safety and well-being of persons.
7. Services and things that the City is authorized to provide under subsection (1).
8. Protection of persons and property, including consumer protection.
9. Animals.
10. Structures including fences and signs
11. Business licensing.

This power is accompanied by a general power to provide services. Subsection 8(1) says that the City may provide any service or thing that the City considers necessary or desirable for the public. This is broader than the City's current power to provide services.

There are several items on the list that appear to broaden Council's powers beyond the subject matter covered by the existing *Municipal Act, 2001* powers. Perhaps the most notable is the power to pass by-laws with respect to the economic, social and environmental well-being of the City.

Bill 53 also includes a grant of natural person powers (section 7). While the language of the grant itself is identical to the language in the current *Municipal Act, 2001*, Bill 53 includes fewer express limits on the exercise of these powers. (The remaining express limits relate to imposing taxes and making grants, both of which are permitted within limits elsewhere in the Bill, and to bankruptcy and insolvency.) While this is encouraging, the subject matter of the limits that have not been stated (e.g. corporations, fees, borrowing, investment, debt financing, sale of debt and pensions), has been addressed elsewhere in the Bill and may be further addressed in regulations in the future. This is discussed later in this report under the heading "*Corporations*".

Bill 53, like the current *Municipal Act, 2001*, includes provisions that direct the courts to give a broad interpretation to the provisions granting municipal powers.

Bill 53 also includes a conflict provision stating that a City by-law is without effect to the extent of any conflict with a provincial or federal Act or regulation or an instrument of a legislative nature made under a provincial or federal Act or regulation. This part of the conflict provision is similar to the conflict provision in the current *Municipal Act, 2001*. The conflict provision in Bill 53, however, contains another part. It provides that there is conflict when a by-law frustrates the purpose of an Act, regulation or legislative instrument.

Recently courts have interpreted the term 'conflict' to mean not only direct conflict but also frustration of legislative purpose. They have found this without the words 'frustration of purpose' appearing in the conflict provision being considered. It is unclear how the courts will interpret the conflict provision in Bill 53 where the words are specifically stated and there is some risk that the courts could expand the concept of frustration of legislative purpose.

It is recommended that Council request that subsection 11(2) be removed from Bill 53. It is further recommended that Council request that the conflict provision be amended to provide that City by-laws with respect to local matters are deemed not to be in conflict with provincial statutes or regulations. A definition of "local matters" should be added to the Bill, should this approach be adopted.

#### *Delegation:*

Bill 53 will enhance the City's delegation authority. This will enable myriad new ways of organizing the work of the City in terms of both legislative processes and service delivery structures.

The Bill includes the following broad power to delegate:

Without limiting sections 7 and 8, those sections authorize the City to delegate its powers and duties under this or any other Act to a person or body subject to the restrictions set out in this part.

Under existing legislation Council may only delegate the exercise of administrative and natural person powers and, in specified circumstances, powers that are quasi-judicial and legislative. Bill 53, however, provides that Council may delegate legislative and quasi-judicial powers under the *City of Toronto Act, 2005*, the *Planning Act*, a private Act relating to the City and any other Act prescribed by regulation. These sorts of powers may be delegated to Council members, a Council committee; or a body of which at least half of the members are Councillors or appointed by Council. Legislative and quasi-judicial powers may also be delegated to individuals who are officers, employees or agents of the City but only if the legislative or judicial power is minor in nature.

The Bill would prohibit Council from delegating certain powers including the power to impose a tax, adopt an official plan, pass a zoning by-law, incorporate a corporation, and adopt or amend a City budget.

Bill 53 would significantly expand the power of Council to delegate and could be used to make Council and committee agendas more manageable.

#### *Council Governance:*

Like the *Municipal Act, 2001*, Bill 53 includes sections with respect to the role of Council, the role of City staff and the role of the mayor as the head of Council. However, the statement of the role of Council in Bill 53 has been broadened to include ensuring “controllorship policies, practices and procedures are in place” and ensuring “accountability and transparency of the operations of the City, including the activities of the senior management of the City”.

Unlike the *Municipal Act, 2001*, Bill 53 also includes a section outlining the role of the Mayor as the chief executive officer. It states the following:

As chief executive officer of the City, the mayor shall,

- (a) uphold and promote the purposes of the City;
- (b) promote public involvement in the City’s activities;
- (c) act as the representative of the City both within and outside the City, and promote the City locally, nationally and internationally; and
- (d) participate in and foster activities that enhance the economic, social and environmental well-being of the City and its residents.

Bill 53 would enable Council to pass by-laws establishing its own ward boundaries. It would also allow Council to pass by-laws changing the composition of Council provided that there are at least five members and the head is elected by general vote.

Under Bill 53 Council would have the power to establish its own governance structure. However the Province has reserved the ability to impose a governance structure by regulation. Section 151 of the Bill states that the Lieutenant Governor in Council may make regulations requiring Council to establish a governance structure set by the regulation. It is important to note that, unless a regulation is made under this section, Council's broad powers in s. 8 empower it to establish its own governance structure.

*Boards:*

Bill 53 would enhance the City's ability to create and delegate to City boards. Currently the City's boards fall into a variety of categories and are governed by various statutes. If enacted, Bill 53 would create a general category for many of the City's boards. The Bill defines a "City board" as "a board established or deemed to be established by the City under this act" and creates a few exceptions to this rule (i.e. land use planning appeal bodies and corporations). Section 140 clarifies that the general powers in ss. 7 and 8 include a broad power to establish City boards and also to both establish and alter such matters as board composition, procedures and powers.

Currently the *Municipal Act, 2001* limits the spheres in which a municipal service board can act. Bill 53 would not impose such a limit with respect to City boards. The Bill states that the City may give a City board "the control and management of such municipal services and activities as the City considers appropriate ..."

In Bill 53 the meaning of the term 'local board' is broader than the meaning of the term 'City board'. A number of boards that do not come within the definition of the term 'City board' do come within the definition of the term 'local board' and would still be governed by such statutes as the *Municipal Conflict of Interest Act*. These include a police services board, a board of health and a library board.

Under Bill 53 the City would retain the power to dissolve and change its local boards. The Minister would, however, have the power to make a regulation limiting the City's powers in this regard. As well, Bill 53 would specifically exclude the power to dissolve or change some kinds of boards. For example, as is currently the case under Regulation 214/96, the City would be unable to dissolve or change the board of health, police services board or library board.

*Corporations:*

The Bill removes many restrictions on the City's powers with respect to corporations. It states that the general powers of the City include the power to do the following:

1. To establish corporations.
2. To nominate or authorize a person to act as an incorporator, director, officer or member of a corporation.
3. To exercise any power as a member of a corporation.

4. To acquire an interest in or to guarantee such securities issued by a corporation as may be prescribed.
5. To exercise any power as the holder of such securities issued by a corporation as may be prescribed.

The *Municipal Act, 2001* currently excludes these five things from the natural person power thereby prohibiting municipalities from doing any of them. Therefore the Bill would expand the City's powers with respect to corporations. It would however give the Lieutenant Governor in Council power to make regulations prescribing limits on these powers. This creates uncertainty about the scope of the City's ability to exercise its power with respect to corporations. Therefore it is recommended that the Lieutenant Governor in Council's power to make regulations prescribing limits on the City's power with respect to corporations be removed from the Bill.

*Accountability and Transparency:*

With new powers comes the need for more robust accountability measures. Council recognized this connection in its May 2003 report. The Bill provides for a set of good-governance structures similar to those that the governments of Ontario and Canada, as large and complex public organizations, have instituted for themselves to better safeguard the public interest.

Bill 53 would impose several requirements with respect to accountability and transparency. The City would be required to establish a code of conduct, maintain a lobbyist registry, and to appoint an Integrity Commissioner an Auditor General and an Ombudsman. While the City currently has a code of conduct, a lobbyist registry, an Auditor General, and an Integrity Commissioner, it is currently not required to have these things or appoint these people.

As well, the Bill would strengthen the role of all of these accountability mechanisms. It would provide the power to impose sanctions for violations of the code of conduct and to make it an offence to violate a lobbyist registry by-law.

The Bill contemplates that the Integrity Commissioner will both give advice with respect to the code of conduct and investigate complaints that the code has been violated. Should the Commissioner find a contravention of the code by a member of Council, Council would be empowered to impose a penalty (suspension of remuneration for up to 90 days or a reprimand). The Commissioner would have new powers under the *Public Inquiries Act*. The Commissioner's reports to Council would be public.

The City currently does not have an Ombudsman. Bill 53 would require the City to appoint one. The Ombudsman would be empowered to investigate decisions, recommendations or omissions of the City, certain local boards and those City-controlled corporations specified by Council. The Ombudsman would have those powers and duties assigned by Council. The Ombudsman would also have powers to require the production of documents and things and to examine people under oath, including a complainant, in relation to a matter being investigated.

The Auditor General's responsibilities would differ from those of the City auditor. (The City's existing requirement to appoint a City auditor to conduct an annual audit of the City's accounts and express an opinion regarding the City's financial statements would continue.) Bill 53 states that the Auditor General is to be responsible for assisting Council in matters relating to stewardship over public funds and achieving value for money in City operations.

Council recognized the need for an independent Auditor General through its enactment of Municipal Code Chapter 169, Article VI. Under Bill 53, the Auditor General's specific duties would continue to be assigned by Council. However, Bill 53 would enhance the role of the Auditor General. The Bill would impose a duty upon the City, its boards, its corporations and grant recipients to furnish the Auditor General with required information. It would give the Auditor General power to examine people under oath in connection with an audit or examination. The power of the Auditor General would not apply to specified local boards, including a board of health, a police services board, a library board, a society defined in s. 3(1) of the *Child and Family Services Act*, a committee of management under the *Homes for the Aged and Rest Homes Act*, a corporation established under Bill 53 and other local boards that could be prescribed by regulation.

Bill 53 provides that, with some exceptions, matters coming to the knowledge of the Integrity Commissioner, the Ombudsman, the Auditor General or their staff shall preserve the secrecy of matters coming to their attention in the course of their duties.

Many of the current procedural requirements such as the requirement to have a procedural by-law and open meetings would continue. The Bill also provides that Council may, in its procedure by-law, designate a member of Council to preside over Council meetings. In this way, the Bill would provide a new opportunity for Council to create a role similar to that of a speaker.

The Bill would increase the number of policies that Council is required to adopt. For example the City would be required to adopt policies with respect to delegation, accountability, transparency and a policy with respect to the manner in which the property and civil rights of those affected by City decisions will be dealt with fairly. It will be up to Council to determine the content of these policies.

#### *Land Use Planning:*

In conjunction with Bill 51, Bill 53 provides significant new powers to shape the public domain and influence matters affecting the quality of life, along with accommodating anticipated population and employment growth in a fair, responsible and environmentally sustainable manner. The following provisions of Bill 53 would be improvements in the legislative framework applicable to the City with respect to land use planning:

- Bill 53 would permit the City to regulate and prohibit the demolition of residential rental properties and the conversion of residential rental to another purpose.
- The approval of the Minister of Municipal Affairs would not be required for bonusing through a community improvement plan.

- In its zoning by-laws, the City could regulate the minimum area of a parcel of land and also the minimum height and density of development.
- The City could appoint an appeal body to hear appeals from either decisions made by the City's committee of adjustment upon applications for minor variances, or City decisions with respect to consents, or both. Currently all of these kinds of appeals are heard by the Ontario Municipal Board. The Minister however would have the power to make regulations altering the qualifications and term for the body and withdrawing powers from it.
- If the City's official plan and its site plan by-law provide, site plan drawings would be required to show sustainable design elements (e.g. street furniture, trees, waste receptacles), on any adjoining highway under City jurisdiction and also to show matters relating to exterior design.
- The City would be able to impose conditions on zoning by-law amendments; however, the Minister would have the power to make a regulation prescribing the conditions.

The City's planning powers would be further enhanced by provisions of Bill 51, *An Act to amend the Planning Act and the Conservation Land Act and to make related amendments*. Bill 51 is part of the Province's comprehensive reform to the land use planning process in Ontario. The intention of Bill 51 is to redefine the role and scope of the Ontario Municipal Board (OMB) as it relates to the land use planning process. Bill 51 would shift greater responsibility for land use planning decisions from the OMB to municipal Councils. The approach recognizes the need to ensure that municipalities have the tools, powers and responsibilities needed to address the challenges associated with managing growth and development.

Bill 51 would make the following key changes to the role of the OMB:

- Having regard for Council decisions and supporting materials.
- Setting restrictions on who may appeal a Council decision by limiting appeals to those parties who had previously made oral and/or written submissions before the Council decision was made.
- Setting restrictions on adding parties to hearings with the exception of parties who had previously presented oral and/or written submissions before the Council decision was made or where the Board finds "reasonable grounds" to add the party.
- Removing the right of appeal for employment areas Council determines should be shielded from re-designation or re-zoning to a non-employment use.
- Setting restrictions on evidence presented at a hearing, by generally limiting evidence to what had been provided to Council before Council's decision was made, (unless the OMB is of the opinion it was not reasonably possible to provide pertinent new information at that time).
- In permitting new information, the Board would be obliged to notify Council that it is being given an opportunity to reconsider its decision by making its written recommendation to the Board within a prescribed time period.

- The OMB would have a fourth power to now dismiss an appeal or part of an appeal on the grounds of an abuse of process.
- The Bill would clarify that the OMB cannot approve or modify any part of an official plan that is in-effect, nor approve anything that has not been dealt with in the decision of Council to which the notice of appeal relates.

Bill 51 also includes the following enhancements:

- The list of matters of provincial interest under Section 2 of the *Planning Act* is expanded to now include promotion of development designed to be sustainable to support public transit and to be oriented to pedestrians.
- Council may refuse to accept or further consider an application for an Official Plan amendment or a zoning bylaw amendment until all necessary material has been submitted.
- The City would be required to revise its Official Plan every 5 years and to review its zoning by-law for conformity within 3 years thereafter.
- The City would be required to hold an open house 7 days before a public meeting.
- Council will be able to refuse privately initiated development applications to convert employment lands to other uses and Council's decision will be final. (The applicant will not have the right to appeal council's decision to the OMB).
- The scope for the content of Community Improvement Plans would be expanded to allow the City to include new building construction related to energy efficient uses of land, buildings and structures.
- The Bill would add two new parkland dedication policies permitting the City to prohibit an applicant from constructing a building on a site where payment in lieu of parkland is outstanding and permitting the City to reduce the amount of payment under certain conditions.
- Dedication of pedestrian pathways, bicycle pathways and public transit rights of way may be required as a condition of subdivision approval.

The Chief Planner will provide a more detailed technical briefing at Planning and Transportation Committee on the land use planning provisions of Bills 53 and 51, identifying areas where adjustments to the proposed powers will be required to ensure the new tools fit with Toronto's planning needs.

During discussions with provincial staff, City staff requested that the City be empowered to develop a made-in-Toronto class environmental assessment process for projects in Toronto that have only urban, local impacts and where the City of Toronto is the proponent. Bill 53 does not provide for the proposed power. It is recommended that Council request that the Bill be amended to provide for it.

*Licensing:*

Many provisions are similar to those contained in the *Municipal Act, 2001*, but the statutory notice requirement and some of the restrictions on the purposes of a licensing by-law would cease to be stated in the legislation. However, these sorts of requirements are imposed by common law and would still apply. The City's own notice policies and by-law requirements would also apply.

The Bill would grant a new power to suspend a license without a hearing where there is an immediate danger to health and safety. The Bill also provides that a license authorizing a business to operate on a highway or other City property may be temporarily suspended without a hearing for various reasons including property maintenance, public safety, special events and the installation and maintenance of a public utility. The Bill would grant the City the power to require that a person pay an administrative penalty for failing to comply with any part of the City's licensing system.

Like the *Municipal Act, 2001*, Bill 53 would give the Minister power to make regulations limiting the City's business licensing power.

*Financial Administration and Revenue Generation:*

Bill 53 would provide the City with access to a broader range of tools to further help improve financial administration and with which to raise the revenue required to pay for the level and type of services deemed appropriate by Council.

Passage of Bill 53 will (a) reduce Toronto's reliance solely on property taxes, user fees and development charges, (b) create opportunities to better match the supply and demand for local services by allowing the City to collect revenue from constituencies who currently consume and benefit from local services without directly paying for them, and (c) provide the City with new ways to advance public policy objectives through financial incentives. These opportunities, in turn, could significantly enhance the Government of Toronto's ability to strengthen the City's quality of life and economic competitiveness.

On their own, the financial tools made available to the City through Bill 53 will not resolve the City's structural financial challenges. The Bill does not address the need to move the cost of provincially-mandated income redistribution programs from the local tax base. Rather, the tools it makes available to the City are a very important part of the long-term, multi-faceted package of financial reforms that Toronto needs to develop and implement in partnership with the Provincial and Federal governments.

In announcing Bill 53, the Premier agreed to continue discussions with the City on these long-term fiscal sustainability issues. In this context the City will also need to go through a policy development and consultation process before determining which revenue tools to use and how to implement these new tools.

Bill 53 allows for multi-year budgets between two and five years but requires annual review and re-adoption of the budget for the year. The Bill recognizes that the City as a mature order of government is capable of determining the most appropriate ways and means of communicating to its citizens its fiscal and operational objectives and how well it is meeting them. Accordingly, the bill has removed specific requirements to establish objectives, efficiency and effectiveness standards and the reporting thereof. The Bill does, however, give the Minister a broad power to make regulations requiring financial information, so some of the previous requirements may be reinstated.

The *Municipal Act, 2001* provides that the natural person power does not include the ability to borrow, invest, sell debt, incur debt without borrowing and enter into financial agreements. As noted above, these specific exclusions have not been repeated in Bill 53; however, the Bill states that these activities must be undertaken according to “such conditions and restrictions as may be prescribed”. The extent of the City’s ability to exercise its natural person powers will become clear once the relevant regulations have been made.

*Municipal Act, 2001* restrictions upon the City’s ability to impose fees and charges have been retained; however, many of the current restrictions are found in a regulation under the *Municipal Act, 2001* rather than in the Act itself. A broad regulation-making power is included in Bill 53, and the scope of the City’s power in relation to fees and charges will become clear once the relevant regulation has been made.

The Bill does, however, provide more explicitly that the costs included in a fee or charge may include costs incurred in relation to administration and enforcement and also in relation to the establishment, acquisition and replacement of capital assets.

Bill 53 provides that broad powers of taxation are granted to the City but excludes several significant areas from the broad powers and permits conditions upon the exercise of the broad powers to be imposed by regulation. The regulation-making power makes it difficult to define the scope of the taxation power. Some of the specific exclusions from the broad power are income tax, sales tax, hotel tax, gas tax, wealth tax, and poll tax. The Bill would, however, specifically permit the City to impose taxes on alcohol, entertainment and tobacco.

The amount of money the City can generate with new revenue tools will depend on various factors, including the City’s needs, which of the tools Council decides to use, and the level of economic activity in the City.

Under Bill 53, the property tax regime would remain essentially unchanged. There would, however, be a few changes. Area rating would no longer require a regulation prescribing services for which an area rate could be imposed, but regulations could be made to limit the scope of the services. Council could write off taxes as uncollectible without a tax sale upon a written recommendation of the treasurer as to the inappropriateness of a tax sale in the circumstances.

Council's established position that the City should have full control over its property tax system is not reflected in Bill 53. It is recommended that Council request that Bill 53 be amended to provide this control.

It is also recommended that the City request that Bill 53 be amended to remove powers to limit the City's revenue generation powers by regulation. The potential for such regulations to be made creates uncertainty with respect to the City's ability to exercise its powers and is inconsistent with the Bill's overall approach to empowerment.

*Enforcement:*

Bill 53 includes a number of changes that would strengthen the City's ability to enforce by-laws.

The City's general power to create offences is repeated in Bill 53 which provides that a City by-law may provide that contravention of the by-law is an offence. In addition, section 361(3) of Bill 53 would permit by-laws to make it an offence for directors and officers to knowingly concur in the contravention of a by-law. The Bill would also permit the City to establish a system of fines for offences under City by-laws. It would, however, impose some limits on the exercise of this power. These provisions would permit the City to impose higher fines than it currently can for some offences.

The Bill contains provisions outlining powers of entry for the City. A by-law may authorize the City to enter on land for the purpose of carrying out an inspection to determine whether a City by-law, order or a condition of a license is being complied with. These provisions would expand the City's power of entry which currently applies only to some kinds of by-laws. The Bill also sets out the City's powers of inspection in relation to its powers of entry. There are some restrictions in relation to dwellings. The Bill also contains provisions in relation to court orders for inspections and for search warrants in some instances not covered by the general powers of entry and inspection such as inspection of a residence.

The Bill also provides for enforcement orders, some to be issued by the City and some to be issued by the courts. These include orders to discontinue activities and to undertake remedial action.

*Regulations Limiting and Expanding Powers:*

Section 25 of Bill 53 would give the Lieutenant Governor in Council the power to make regulations imposing conditions and limits on the general powers of the City and on its broad power to tax. Such a regulation would remain in force for a maximum of 18 months and could not be renewed. If the Province wanted to continue restrictions imposed by this kind of regulation, the Province would have to enact legislation. Importantly, this 18 month constraint would restrict the Lieutenant Governor in Council's ability to limit the City's powers in an arbitrary manner for the long term.

At the same time, the Section 25 regulation making power is a new and very broad power that appears to be inconsistent with the permissive intent of Bill 53. It is recommended that Council request that this power be removed from the Bill.

The Bill would grant broad powers to modify the City's powers with respect to licensing, fees and charges, local boards, governance, taxation and delegation by regulation. It is recommended that Council request that these and other similar powers to make regulations be removed as they are inconsistent with the intent of Bill 53, create uncertainty with respect to the scope of City powers and could ultimately result in a reduction of power.

There are also some powers that the Bill provides can only be exercised once a regulation granting complementary powers is passed. For example a regulation must be passed before the City can operate a toll highway. A regulation must also be passed to enable the City to impose administrative penalties for parking infractions.

Conclusions:

The Bill represents a vote of confidence in the people of Toronto, its government, and the Toronto Public Service itself. If enacted, it could provide Toronto with many of the tools it needs to thrive in a global economy. It should serve as the foundation of an enduring, respectful partnership between Ontario and its capital City, and position the City to make further progress in securing the resources it needs to meet its responsibilities. As Premier McGuinty noted, "The City of Toronto grew up a long time ago. Today [its] legislation will catch up."

The Bill reflects virtually all of the recommendations for a modernized *City of Toronto Act* made in the Final Report of the Joint Toronto-Ontario Staff Task Force.

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List of Attachments:

1. Summary of recommended amendments to Bill 53 highlighted in this report

## **Appendix 1**

Summary of recommended amendments to Bill 53 highlighted in this report

The following is a list of those recommended amendments to Bill 53 highlighted in the body of this report. The staff review of Bill 53 is ongoing and will provide additional input into the City's submission to the Standing Committee of the Ontario Legislature that considers the Bill.

It is requested that:

- Bill 53 be amended to remove subsection 11(2) which provides that conflict with legislative enactments includes frustration of legislative purpose.
- Section 11 of Bill 53 be amended to provide that city by-laws with respect to local matters are deemed not to be in conflict with provincial statutes or regulations. A definition of "local matters" should be added to the Bill, should this approach be adopted.
- Bill 53 be amended to remove the Lieutenant Governor in Council's power to make regulations prescribing limits on the city's power with respect to corporations.
- Bill 53 be amended to provide the City with the power to develop a made-in-Toronto class environmental assessment process for projects in Toronto that have only urban, local impacts and where the City of Toronto is the proponent.
- Bill 53 be amended to reflect City Council's established position that the City should have full control over its property tax system.
- Bill 53 be amended to remove s. 25 which empowers the Lieutenant Governor in Council to limit the City's general powers under section 7 and 8 and its general power to tax under s. 262 by regulation. The power that would be granted to the Lieutenant Governor by section 25 would be a new and very broad power and would be inconsistent with the intent of Bill 53 to empower the City.
- Bill 53 be amended to remove the sections granting the power to make regulations limiting City powers with respect to licensing, fees and charges, reserve funds, local boards, governance, taxation and delegation and other similar powers. These powers to make regulations are inconsistent with the intent of Bill 53, create uncertainty with respect to the scope of the City's powers, and could ultimately result in a reduction of the City's powers.