

Clause 18 in Report No. 16 of Committee of the Whole was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting held on October 15, 2015.

18  
Municipal Act Review

Committee of the Whole recommends adoption of the following recommendations, as amended, contained in the report dated October 2, 2015 from the Chief Administrative Officer:

1. Council endorse the recommendations set out in Attachment 1 with respect to proposed amendments to the Municipal Act, 2001.
2. This report be submitted to the Ministry of Municipal Affairs and Housing and circulated to the local municipalities.

1. Recommendations

It is recommended that:

1. Council endorse the recommendations set out in Attachment 1 with respect to proposed amendments to the *Municipal Act, 2001*.
2. This report be submitted to the Ministry of Municipal Affairs and Housing.

2. Purpose

This report is to seek Council endorsement of recommendations for proposed amendments to the *Municipal Act, 2001*, in response to the legislative review being undertaken by the Ministry of Municipal Affairs and Housing.

### 3. Background

The Ministry of Municipal Affairs and Housing is undertaking a review of municipal legislation and has invited submissions

In June 2015, the Ministry of Municipal Affairs and Housing (“MMAH”) released a discussion paper announcing its review of legislation governing municipalities. The review includes the *Municipal Act, 2001*, the *City of Toronto Act, 2006*, and the *Municipal Conflict of Interest Act*. A separate initiative is being undertaken to review the *Municipal Elections Act*.

The discussion paper invited submissions on the legislation from a broad spectrum of interested parties, including municipalities, organizations and private individuals. The overall goal of the review is to ensure that municipalities remain sustainable and have the necessary tools to respond to local issues. The paper was structured around a series of questions designed to stimulate and guide discussion on three main themes: Accountability and Transparency, Municipal Financial Sustainability and Responsive and Flexible Municipal Government. The review is also driven by the legislative mandate to review the *Municipal Act* every five years. MMAH has asked for comments by October 31, 2015.

The recommendations in this report focus specifically on amendments to the *Municipal Act, 2001*.

### 4. Analysis and Options

Regional staff from all departments provided input on amendments to the legislation and consulted with peer groups from local municipalities

Regional staff across all departments were engaged in developing the recommendations, through the Region’s Interdepartmental Advocacy Co-ordination Group. Discussions focused primarily on the specific issues raised in the consultation paper. The draft recommendations have been structured according to the three themes identified in the document. Staff also considered this to be an opportunity to raise other issues that may not fit within the themes and these have been summarized in an Appendix to the submission.

In July 2015, a meeting was convened with local municipal lawyers and clerks to discuss the draft recommendations. A majority of local municipalities were represented at the meeting and there was broad consensus on the Regional staff position. The recommendations will also be tabled at the Regional/Local CAOs meeting on October 2 and the Regional/Local Treasurers meeting on October 9.

The Region's proposals are not, however, intended to be formally made on behalf of the local municipalities, many of whom have indicated an intent to prepare their own submission.

On September 8, 2015 the Association of Municipalities of Ontario ("AMO") released its submission to MMAH on the legislative review. The general theme of the AMO submission is consistent with the Region's proposed recommendations and addresses many specific issues set out in Attachment 1.

## Theme 1: Accountability and Transparency

Regional staff do not recommend any major changes to the Accountability framework in the Act

The theme of Accountability and Transparency is aimed at soliciting comments on provisions that were introduced in the Act in 2006 to promote accountable self-governance. These include:

- Establishment of a code of conduct for Council members
- Appointment of an Integrity Commissioner to monitor compliance with the code of conduct
- Appointment of a Municipal Ombudsman
- Appointment of an Auditor General
- Establishment of a Lobbyist Registry

These measures are generally not mandatory for municipalities, with the exception of the City of Toronto. All municipalities are, however, required to have in place a policy setting out how they will remain accountable to the public and ensure that their actions are transparent.

Staff recommend that these provisions generally remain permissive and no amendments are proposed. Attachment 1 outlines the specific measures the Region has implemented to ensure accountability and transparency.

The closed meeting provisions in the Act should be amended to reflect the protected categories in privacy legislation

Under the theme of Accountability and Transparency, MMAH has invited comments on the matters which municipal councils should be permitted to discuss in camera. Currently, the scope of in camera meetings is limited and includes: personal matters about an identified individual, proposed acquisition

and disposition of property and matters of solicitor-client privilege. Council education and training sessions may also be closed to the public.

Staff have consistently identified the disconnect between the Act and the *Municipal Freedom of Information and Protection of Privacy Act* (“MFIPPA”). MFIPPA protects several categories of records from public disclosure, including commercially confidential and proprietary matters. This leads to anomalies in that certain materials are protected from disclosure, e.g. the proprietary content of a contract, but there is no clear mechanism to discuss the matter in camera. Equally, there seems no distinction in principle between negotiations regarding a property matter and other commercially sensitive transactions.

Staff recommend that there be clearer alignment between the Act and MFIPPA so that Council may consider certain matters in private session prior to adopting a recommendation. This would include proprietary information and commercially confidential material submitted in the context of contractual negotiations.

AMO is also proposing that the Act include a clearer definition of “meeting” in light of the broad definition that has been articulated by the Ontario Ombudsman and which would characterize any gathering of council members as a meeting.

Electronic participation in Committee and Council meetings should be permitted in limited circumstances

The consultation paper invited discussion on whether there should be more options for municipal councils to use technology in holding meetings. Currently, Council members must be present in person at Committee and Council meetings, with the exception of the City of Toronto where electronic participation is permitted. Those members participating remotely do not, however, count towards a quorum.

Video and audio conferencing technology is available to permit remote participation in meetings by Council members. Staff recommend, however, that extensive use of such technology would undermine the principles of accountability by denying direct access to elected officials. It is proposed that remote participation be permitted in limited circumstances, including for accessibility purposes and for calling special meetings where the attendance of Council members at short notice is not feasible.

The AMO submission supports this amendment, particularly for accessibility advisory committees, and cautions that there should be some limitation on the use of remote participation.

## Theme 2: Municipal Financial Sustainability

The recommendations on financial sustainability propose granting the Region broader powers of self-governance

Under the second theme, Municipal Financial Sustainability, the consultation paper raised the following questions:

- Do municipalities have the necessary tools to effectively plan for, prioritize and fund their investments in infrastructure and spending on services?
- What barriers do municipalities face in achieving long-term financial sustainability?

Regional Finance staff recommend the introduction of certain broad powers to enable the Region greater flexibility in the management of financial matters, in recognition of the Region as a mature municipality. A key recommendation is that the Region be permitted to establish its own debt and financial obligation limit, rather than be subject to the limit prescribed by the Province. The City of Toronto currently has independent jurisdiction in this regard. It is proposed that certain criteria should be established as a prerequisite, including maintaining at least an AA credit rating and the annual adoption of a long term debt management plan.

The Province is currently proposing to confer “prudent investor” status on the City of Toronto to enable greater diversification in portfolio management. Regional staff propose that the Region should equally be granted this status, subject to certain safeguards, including limiting the percentage of the portfolio that could be managed under this provision. AMO is also recommending that the prudent investor standard apply to the One Investment Program to enable the pooled investment plan to respond to market shifts. Regional staff support this recommendation.

Since 2006, the City of Toronto has been granted the power to impose direct taxes, within certain limitations. Under this provision the City implemented the land transfer tax. AMO is recommending that this taxing authority be made more generally available to municipalities to help diversify the sources of revenue. Regional staff support this recommendation and propose that the Region be granted the power to impose direct taxes. If this recommendation is adopted, further analysis will be required on the appropriate use of this additional tool. Additional revenues could also be made available through the phasing out of the tax capping provisions, as recommended in the draft submission.

The broader powers supporting financial sustainability would be supplemented with more flexible investment and financial management tools

In addition to the broad powers set out above, Regional staff are proposing specific amendments to the Act to permit more flexible financial and investment management. These proposals are set out in detail in the Attachment and include: the ability to invest in US dollar securities, the triggering of the provision permitting sale of debt, greater flexibility in managing bond forward agreements and extending the prescribed period for holding investments. Staff are also recommending the introduction of greater latitude in selecting appropriate securities for investment.

### Theme 3: Responsive and Flexible Municipal Government

The division of powers between upper and lower tiers should be preserved and no significant changes to the service migration provisions are proposed

The third theme, Responsive and Flexible Municipal Government addresses the scope of municipal powers in providing efficient and responsive service delivery. The topics for discussion in this section include: the division of powers between upper and lower tier municipalities, and whether there are any barriers to municipalities providing services in an effective and innovative manner. The Province also invited comments on how councils are improving the quality of municipal service delivery.

Regional staff support the current division of powers between the Region and its local municipalities. The clear delineation of responsibility for infrastructure reflects the principles of accountability and self governance that were the foundation of the major amendments introduced in 2003. As well, the current procedures that need to be followed for service migration between tiers (the “triple majority”) are appropriate in that broad consensus should be required for any major reassignment of jurisdiction.

Potential for conflict between municipal bylaws and federal and provincial regulation

One area that staff have identified as needing clarification is the potential for conflict between municipal bylaws and federal and provincial legislation and regulation. The Act provides that a municipal bylaw will be inoperative to the extent that it “frustrates the purpose” of the senior legislation. The interpretation of this requirement can lead to uncertainty as to the permitted scope of municipal jurisdiction and has led to challenges to municipal bylaws. Staff recommend that a clearer test, which has been articulated by the Supreme Court should be the

'dual compliance' test. i.e. that a municipal bylaw will not be invalid provided there can be compliance concurrently with the bylaw and the provincial or federal enactment. This would assist municipalities in determining the scope of their authority, especially with respect to broader powers which are subject to extensive regulation, e.g., health and environmental matters.

Municipalities should be specifically empowered to respond to climate change by its inclusion in the list of municipal powers

The Province has requested specific feedback on whether municipalities have the necessary tools to address climate change adaptation and mitigation.

In the proposed submission, staff have outlined the initiatives currently being undertaken by the Region to address climate change. The challenges associated with implementing these measures are also highlighted, including the need for greater coordination and a clearer legislative mandate. In this regard, staff recommend that climate change and mitigation be specifically included in the Act as a matter within municipal jurisdiction. This approach is preferable to a piecemeal enumeration of specific tools (e.g. green roofs) and is more consistent with the broader statement of municipal spheres of jurisdiction.

The main recommendations are supplemented with staff proposals for certain technical amendments

In addition to responding to the specific issues raised in the discussion paper, staff are recommending technical amendments to the Act to enhance clarity and ease of interpretation. These are set out in an Appendix to the submission with a rationale for each recommended amendment.

Link to key Council-approved plans

The Region's 2015-2019 Strategic Plan identifies "Providing Responsive and Efficient Public Service" as a Strategic Priority Area. One objective of this priority area is ensuring a fiscally prudent and efficient Region.

The stated objectives of the legislative review undertaken by the Province are to ensure that municipalities have the powers they need to respond effectively to local issues and for the efficient management of assets and resources. Accordingly, the proposed submission fully supports this Strategic Priority Area.

## 5. Financial Implications

There are no direct financial implications associated with submitting the proposed recommendations to MMAH.

If the recommendations are implemented by the Province through amendments to the Act, there will be resulting implications, particularly with respect to the Region's financial management and investment powers. These matters will be fully analyzed and reported to Council in due course, as appropriate.

## 6. Local Municipal Impact

The proposed amendments set out in the attached submission have been discussed with staff from local municipalities and are generally supported. The submission is not, however, formally made on behalf of local municipalities. If the recommendations are adopted and amendments are made to the Act, the amendments will likely be, for the most part, applicable to all municipalities and will benefit both the Region and its local municipalities.

## 7. Conclusion

In June 2015, the Ministry of Municipal Affairs and Housing released a public consultation paper inviting comments on municipal legislation, including the *Municipal Act, 2001*. The deadline for submissions is October 31, 2015. Regional staff from across all departments have prepared recommendations within the key themes identified in the consultation document and have discussed the recommendations with local municipal counterparts. AMO has now also released its recommendations which are more limited in scope but are broadly consistent with the Regional proposals. It is recommended that the submission attached as Attachment 1 be forwarded to the Province as the Region's position on proposed amendments.

The Senior Management Group has reviewed this report.

October 2, 2015

Attachment (1)

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Accessible formats or communication supports are available upon request

# York Region Response to MMAH Review of Municipal Legislation

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## **Theme 1: Accountability and Transparency**

### **1. Current system for municipal accountability and transparency**

York Region generally supports the current regime for promoting accountability and transparency. The *Municipal Act, 2001* (the “Act”) provides a framework which enables municipalities to customize policies and procedures according to their individual needs and the demands of their constituents. It is appropriate that many of the measures remain permissive rather than mandatory, to underline the principle of municipalities as responsive and accountable elected governments and to acknowledge the varied challenges across the municipal sector.

#### **The Region has implemented measures to ensure accountability and transparency**

The Region has used specific tools provided under the Act, as necessary and appropriate. Regional Council adopted an Accountability and Transparency Policy in 2007 under Section 270 of the Act. This policy established practices and procedures which broadly govern the decision making process and administrative management, including financial matters, public disclosure, internal audits and public involvement. Many of these procedures predated the formal requirement to establish a policy.

Regional Council has not formally appointed an Auditor General, however since 2001 the Region’s internal Auditor and staff have fulfilled the core functions contemplated under Section 223.19. of the Act. Reporting to Regional Council through the Audit Committee, the Auditor conducts regular audits to report on compliance with regulatory matters, contract terms and financial due diligence.

In common with other municipalities, the Region appointed LAS, an AMO affiliate, as a meeting investigator. Since the appointment in 2007, however, no matters before Council have been referred to the investigator.

Regional Council has to date not elected to establish a code of conduct for members of Council. Consequently, a Regional Integrity Commissioner has not been appointed.

It is recommended that the requirement for a code of conduct and an Integrity Commissioner remain discretionary. Accordingly, it is not recommended that the Act mirror the *City of Toronto Act, 2006* which provides that certain appointments are mandatory. Regional Council members are elected in their constituent local municipalities. Seven out of nine local municipalities have Council Codes of Conduct.

As a result, 18 of the 20 elected members of Regional Council are subject to a Code of Conduct. To introduce another municipal Code of Conduct would be redundant and, potentially introduce ambiguity. The seven Codes of Conduct that are in effect vary substantially. It might be helpful for the MMAH to provide a guideline or template stipulating minimum requirements.

With respect to the appointment of an Ombudsman, with the passage of Bill 8 the Region is currently initiating a process to appoint an Ombudsman, potentially in conjunction with its local municipalities.

<p><b>Recommendation:</b> that the procedures implemented in 2006 to promote accountability and transparency continue to be generally permissive rather than mandatory and at the discretion of individual municipalities</p>
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## 2. Open meetings

The Region acknowledges that, in the interests of transparency and public accessibility, exceptions to the requirement for open meetings should be limited and specific.

There is, however, a basis for expanding the closed meeting provisions in Section 239(2) of the Act to align with privacy legislation.

### **MFIPPA provides for exemptions from disclosure for certain categories of records**

The *Municipal Freedom of Information and Protection of Privacy Act* (“MFIPPA”) provides for certain categories of information to be protected from disclosure to the public. These include matters where disclosure could potentially prejudice the commercial interests and competitive advantage of a third party. Certain internal records may also be withheld from public release, if necessary to protect the municipality’s economic interests.

Currently, there is only partial alignment between Section 239 of the Act and MFIPPA. Subsection 239 does provide for private consideration of certain matters, including personal information, pending acquisition or disposition of land, and the security of

property of the municipality. Closed meetings are also permitted for Council education and training sessions. The scope of “security of property” matters has, however, been largely thrown into doubt by decisions of the Information and Privacy Commission which have limited its application to a perceived physical threat, rather than broader economic interests as set out in MFIPPA.

These differing statutory schemes can give rise to anomalies in the conduct of Council business. For example, proponents responding to a Request for Proposals may submit material which is designated as proprietary and which may be exempt from public disclosure under MFIPPA. Similarly, a private entity may submit confidential information on an emerging technology which may be valuable to Council in developing future strategies, for example in waste management. In either case, there is no clear mechanism for considering these matters in camera without breaching Section 239 of the Act. Subsection 239 (2) (c) permits in camera discussion of property matters but does not extend the same treatment to other potentially sensitive negotiations, e.g. commercial contracts.

### **Closed meeting provisions should be aligned with MFIPPA**

As a result of the disconnect between the *Municipal Act, 2001* and MFIPPA, there is a risk that matters may be artificially characterized as matters of solicitor-client privilege when there is a perceived need to discuss contractual and commercially sensitive issues in camera. This undermines the principles of accountability and transparency. *Alberta’s Municipal Government Act* specifically aligns the closed meeting provisions with the matters that are protected from disclosure under its privacy legislation. It is proposed that similar provisions be introduced in the Ontario context.

**Recommendation:**

- (a) that Section 239(2) of the Act expand the matters that may be discussed in camera to include those matters that are protected from disclosure under MFIPPA; and
- (b) that “security of property” be defined in the Act to include economic interests

### **3. Use of technology for holding meetings**

Currently, the Act requires members of Regional Council to attend meetings in person. The *City of Toronto Act, 2006* provides that the procedure bylaw may provide for a member of Council to participate electronically in a meeting of City Council which is open to the public. The participation of that member, however, does not count towards a quorum.

### Electronic participation in meetings should be used sparingly

Advancements in technology, particularly video-conferencing capability, would permit active participation by Council members who are not present in the Council chamber.

The Region recognizes that extensive use of technology to facilitate attendance may, however, erode the principles of accountability and transparency. If Council members are not routinely present and members of the public do not have direct access to elected officials for the purpose of making deputations and asking questions, the democratic process may be jeopardized.

The Alberta legislation addresses these concerns in part by providing that electronic participation may only be permitted where the facilities enable all the meeting's participants to watch or hear each other.

### Electronic participation may be appropriate in limited circumstances

The Region recommends that electronic participation be permitted in certain limited circumstances. The Region's Accessibility Advisory Committee has requested that attendees be permitted to attend by electronic means because of mobility issues. Permitting this form of participation would support the Region's commitment to accessibility and enhance the existing measures implemented under the AODA.

In addition, there are occasions where a special meeting of Council is required to decide on a specific matter. If the meeting is called during the summer recess or the year end break, it may be practically difficult to assemble a quorum. Permitting a meeting to be conducted by electronic means would enable a greater level of participation by Council members.

**Recommendation:** that the Act be amended to provide that a procedure bylaw may permit electronic participation at meetings by members of Council in limited circumstances, including for accessibility purposes and for calling special meetings where it is practically impossible for Council members to attend in person

## Theme 2: Municipal Financial Sustainability

### 1. Annual debt and financial obligation limit

The *City of Toronto Act, 2006* requires the City to establish a limit for the City's annual debt and financial obligations. The Region submits that it should be accorded similar powers to establish its own debt and financial obligation limit. This would afford more flexibility and recognize the Region as a mature municipality. This greater latitude could also be extended to other regional and upper-tier governments.

The Region acknowledges that it would be appropriate to establish a framework within which this power could be exercised. It is proposed that, to maintain fiscal responsibility a municipality would need to maintain a credit rating of at least 'AA-' or higher (or equivalent) by at least one rating agency and have Council adopt or affirm, annually, a long-term debt management plan.

**Recommendation:** that municipalities achieving a prescribed credit rating be permitted to establish their own debt limits

### 2. Tax capping

Currently under Part IX of the Act, the Province protects commercial, industrial and multi-residential properties from significant tax increases through a tax capping program. The program caps any change in property taxes at between 5 and 10 per cent if the assessment value of a property increases. As a result, capping protects landowners from paying an exceedingly high amount of taxes if their property assessment increases.

Tax capping is an administrative and budgetary burden due to the increased complexity it has added to annual tax billing and the management of tax adjustments required in response to tax recalculations. As well, tax capping creates inequitable tax treatment as two properties in the same municipality assessed at the same value can be subject to different tax liabilities.

In York Region, the current beneficiaries include property types such as: Vacant Commercial Land, Vacant Industrial Land and Large Office Building (Multi-tenanted). The payers into the capping program, by property type, are: Large Office Building (Multi-tenanted), Standard Industrial Properties and Heavy Manufacturing (Non-automotive).

**Recommendation:** that Part IX of the Act be phased-out over the next four years and that the Region be allowed to opt out of tax capping

### **3. Application of the prudent person (“investor”) standard to the Region, if and when the Province extends this standard to the City of Toronto**

Under the *Trustee Act, 1990*, the “prudent person” standard is applied in the context of managing an overall investment portfolio. This standard, as it applies to municipal investment officers, would require an officer to exercise due diligence and take all necessary actions to ensure the maximum performance of investments, on a portfolio basis, subject to the prescribed risk parameters dictated by the municipal investment policy.

The rationale for this approach is it enables a municipality to earn better returns and manage risk by building a more diversified investment portfolio.

The criteria for determining which municipalities would qualify to avail themselves of this standard have not been promulgated, however, these should include a weighted mix of municipal size, credit rating (‘AA-’ or higher or equivalent), and financial/investment performance.

The Province should consider extending to all municipalities who qualify the ability to avail themselves of the prudent person (“investor”) standard in a similar fashion as is being contemplated for the City of Toronto, in particular:

- (a) for those municipalities who do qualify (i.e. a credit rating of ‘AA-’ or higher or equivalent), equity investments should not exceed 10 per cent of the total municipal portfolio and a review of investment strategies should be conducted by an independent board;
- (b) for those municipalities who do qualify (i.e. a credit rating of ‘AA-’ or higher or equivalent) and are looking for equity exposure without a managed fund, equity investments should not exceed 10 per cent of the total municipal portfolio and the municipality should have the ability to buy Exchange Traded Funds (ETFs) on the Canadian and US exchange directly;
- (c) the “prudent investor” standard should be applied to the One Investment Program “(a co-mingled investment program available to Ontario municipalities and the broader Ontario public sector. It is operated by wholly owned

subsidiaries of AMO and MFOA.)” This would allow for greater returns on investments being made by municipalities within the program.

**Recommendation:** that the Province extend to all municipalities who qualify the ability to avail themselves of the prudent person (“investor”) standard in a similar fashion as is being contemplated for the City of Toronto, and that the standard apply to the One Investment Program.

#### 4. Investment in U.S. dollar securities

Currently, under section 6(1) of O.Reg. 438/97, a municipality cannot invest in a security that is expressed or payable in any currency other than Canadian dollars. Municipalities do, however, purchase goods and services from US vendors that require payment in US dollars. In anticipation of these purchases, US dollars are bought and deposited in a US account earning no interest as the funds cannot be deposited into US dollar securities where they could accumulate interest.

**Recommendation:** that the regulation be amended allowing for investments in US dollar securities of Canadian issuers. It is recommended that criteria include:

- (a) the credit exposure should be based on the equivalent rating for Canadian dollar securities at an equivalent maturity; and
- (b) the US exposure should be limited to no greater than 2.5 per cent of the total portfolio

#### 5. Exemption from municipal taxation for Conservation Authorities.

The *City of Toronto Act, 2006* provides for tax exemption for conservation authority lands under certain circumstances. Land vested in the Toronto and Region Conservation Authority and managed and controlled by the City under an agreement can be exempt from municipal taxation as long as the land is managed and controlled by the City and used for park purposes.

The Region proposes that the power to exempt these lands from taxation should be granted to all municipalities if they satisfy the conditions set out in the *City of Toronto Act, 2006*.

The Region may in future be in a position to manage and control land vested in the Toronto and Region Conservation Authority, or another conservation authority. Broadening the power to exempt these lands from municipal taxation would ensure

that conservation authorities are treated similarly irrespective of their location within Ontario.

**Recommendation:** that the powers under section 451(1), (2), (3), (4) of the *City of Toronto Act, 2006* be extended to all municipalities who fulfil the required criteria

## 6. Sale of debt payable to the Region by a third party

Currently Section 305(1) of the Act provides that a municipality may sell prescribed debt. No regulation has yet been made to prescribe classes of debt under this section. The Region does not routinely engage in loan agreements with private entities, however, there are occasions when this is done. Having the power to sell debt to a third party for collection purposes could ensure that the property tax base is protected if debt collection becomes difficult. In this way, the risk is mitigated by divesting the debt, and parties who have loans with the Region will be aware that the debts will eventually be collected.

In addition, by including bad debt as ‘prescribed debt’, the Region is afforded additional flexibility while ensuring the property tax base is protected.

**Recommendation:** that the Province enact a regulation under Section 305(1) of the *Municipal Act, 2001*, allowing the Region to sell prescribed debt that is payable to the Region by a third party. The Region would recommend that “prescribed debt” under this section include accounts receivables that have become ‘bad debt’ as determined by the Regional Treasurer

## 7. Unwinding commodity hedging agreements

Currently, under section 5(3) of O.Reg 653/05 a municipality cannot sell or dispose of its commodity agreements or any interest in them, with the following two exceptions: (a) the sale or disposition is part of a transaction for the sale of real property by the municipality relating to a change in the use of the property by the municipality, or: (b) if the municipality has ceased to carry on any activity relating to the municipal system for which the commodity was being acquired.

The current exceptions within this regulation do not take into account major changes within the market place. The policy rationale behind prohibiting partial and/or full unwinding of commodity agreements (excluding the exceptions) is to prevent financial speculation. However, remedial powers on the part of the Minister can protect against

financial speculation. As well, permitting partial and/or full unwinding of commodity agreements protects the property tax base from potential increases in property taxes. As a result, by amending the regulation to allow for the partial or full unwinding of commodity agreements as well as remedial powers for the Minister, the property tax base is protected and the risk of financial speculation is mitigated.

**Recommendation:** that the regulations be amended to permit the full or partial unwinding of commodity hedging agreements. In addition, the Region recommends amending the regulation, to afford the Minister of Municipal Affairs and Housing with investigatory and/or remedial powers should ‘financial speculation’ on the part of a municipality, be suspected as the underlying factor for the partial or full unwinding of the agreement(s)

## 8. Investment Flexibility

### (a) Extended term for bond forward agreements

A bond forward agreement is an agreement where one party agrees to sell a bond to another party at a set price on a future date. With a bond forward agreement, a municipality can sell bonds and specify the interest rate at which the bond will be repaid. A municipality will issue debt through the sale of bonds in order to finance projects.

Under O.Reg 653/05 municipalities are unable to use bond forward agreements if they intend to issue debt more than six months into the future. Therefore, municipalities cannot incorporate borrowed funds at a specific interest rate into their capital and operating budgets if they intend to borrow funds more than six months into the future.

The Region would benefit from allowing bond forward agreements to have a settlement date of up to 365 days from the day on which the agreement is executed. By doing this, a municipality would be able to lock in attractive rates at any time throughout the year, even if the next issue is up to a year in the future. This also allows a municipality to have interest rate cost certainty during the annual budget process. These changes could potentially lead to lower interest rate costs that would benefit the local ratepayer and, at the very least, provide greater budget certainty.

**Recommendation:** that the settlement date of bond forward agreements be extended from 180 days to 365 days

## **(b) Disposition of bond forward agreements prior to maturity**

Currently, under Section 2(8) of O.Reg. 653/05 a municipality cannot sell or lend a bond forward agreement prior to maturity.

The ability to sell a bond forward agreement prior to maturity would allow for more flexibility to react to market fluctuations and/or change the timing or size of debenture issues as a major change in interest rates may impact the debt management strategy.

**Recommendation:** that the regulation be amended to provide municipalities with the ability to collapse or sell bond forward agreements, placed or hedged in anticipation of a financial transaction authorized by Council, prior to maturity

## **(c) Extended period for holding investments**

Currently, under section 3(6) of O.Reg. 438/97, if an investment falls below the required standard, the municipality must sell the investment within 180 days after the day the investment falls below the standard.

In periods of market turmoil, selling these investments may worsen market conditions for these particular investments and prevent market stabilization. By extending the time period beyond 180 days, the market could be allowed to stabilize after periods of instability.

**Recommendation:** that the regulation be amended to provide municipalities the ability to create a workout plan beyond the 180 day period, to be used in times of market turmoil

## **(d) Diversification of investment portfolio**

Currently, sections 2(7.1), 3(1), 3(4.1), 4, 4.1(1.1) of O.Reg. 438/97 limit the quality and duration of securities which the Region may invest in.

The market for 'AA-' or higher bonds, with a maturity greater than five years in Canada, has grown smaller. Currently, there are only a few companies (36 as of 2014) that are in this category with a debt outstanding of approximately \$17 billion. Limiting investments to 'AA-' or higher prevents a broader credit diversification for municipalities and decreases potential portfolio investment returns. Furthermore, the available market and potential yield for investments of 1 to 5 years is limited to a

credit rating of 'A'. This negatively affects the potential returns for municipal investors and increases concentration risk.

**Recommendation:** that this regulation be amended as follows:

- (a) to allow municipalities to invest directly in corporate securities that have a credit of 'A' or higher (or equivalent)<sup>1</sup> for a maturity of ten years provided that the municipality maintains a 'AA-' or higher (or equivalent) credit rating by at least one ratings agency; and
- (b) to allow municipalities to directly invest in securities that have a credit rating of 'BBB+' or higher (or equivalent) for greater than one but not longer than five years, provided the municipality maintains a 'AA-' or higher (or equivalent) credit rating by at least one rating agency. The Region would add a stipulation noting that the overall exposure to 'BBB+' credit shall not exceed 10 per cent of the total portfolio value

## 9. Power to impose direct taxes

Under Part X, section 267 of the *City of Toronto Act, 2006*, the City may, by bylaw, impose a tax in the City if the tax is a direct tax. Direct taxes may include: motor vehicle ownership/driver's licence tax, real property transfer tax, a parking tax or a billboard tax.

The Region is a large, sophisticated government and should have the financial management powers that reflect its maturity as a government. These revenue generating tools would allow the Region to achieve recognition as a mature municipality. In addition, the new revenue tools can help alleviate the pressures on the property tax base.

Two direct taxes that could, in meeting growth plan targets, be of interest to the Region would be the vehicle ownership tax and parking tax. A vehicle ownership tax could not only provide the Region with additional revenue, but it should also help to encourage use of the rapid transit system.

As Regional Express Rail comes online and services such as park-and-ride become more prevalent, a parking tax could become a revenue source to help fund transit investments.

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<sup>1</sup> Note: 'A' rating is still well within the investment grade standard.

**Recommendation:** that the powers under Part X, sections 267 – 272 (inclusive) of the *City of Toronto Act, 2006* be extended to the Region

## 10. Publication of financial statements

Currently, under section 295(1) of the Act, within 60 days after receiving the audited financial statements of the municipality for the previous year, the Treasurer is required to publish the entire copy of its financial statements, or a notice that they are available upon request, in a newspaper with wide circulation in a municipality. However, there are more widely available forms of media.

The Region would benefit from the ability to select publishing its financial statements in a newspaper or an online medium (or both).

**Recommendation:** that section 295 (1) of the Act be amended to permit the publishing of the financial statements in either print or digital format

## 11. Revisions to the ‘heads and beds’ policy in light of inflationary pressures

Currently, Section 323 of the Act authorizes local municipalities to pass bylaws to levy annual taxes payable by colleges and universities, hospitals and correctional institutions in an amount not to exceed the prescribed amount of \$75 for each full time student, provincially-rated bed or resident place, as determined by the responsible Ministry. This section is more commonly referred to as the ‘heads and beds’ provision.

As a result of a ‘heads and beds’ policy which has remained stagnant and unreflective of inflationary pressures, municipalities are forced to compensate the difference through other means such as increases to property taxes. The rate of \$75 per student/bed does not reflect the change in cost of delivering services by Ontario municipalities. Using historic CPI or historic Construction Index (for inflation), that rate would be more appropriately set at between \$140 and \$149. The result is undue pressure on all tax classes.

**Recommendation:** that O.Reg 384/98 be amended to prescribe a rate consistent with the appropriate inflationary index. It is also recommended that the rate be revisited and reset every 5 years, based upon the inflationary index

## **Theme 3: Responsive and Flexible Municipal Government**

### **1. Division of powers between upper and lower-tier municipalities**

Generally, the Region supports the division of powers between upper and lower-tier municipalities. The clear delineation in jurisdiction supports the principles of self-governance and accountability that were introduced as key concepts in 2003. The Region has exercised its authority over major infrastructure to improve the quality of services while implementing efficiencies and cost effectiveness. In this regard, Council has endorsed various initiatives, including:

- State of Good Repair Programs
- Asset Management policies
- Transportation Master Plan
- System Performance Monitoring
- 10 year Capital Programs

The Region is also achieving efficiencies by implementing technology that provides the public with self-serve options through open data initiatives. For example, constituents have direct access to a wide array of data sets including traffic, bus schedules, energy use and facility locations.

### **2. Conflict with provincial and federal legislation**

The Act expresses municipal authority in broad terms, in contrast to the traditional prescriptive approach in the former legislation. These broader powers provide greater flexibility for municipalities, but can result in potential conflict with federal and provincial legislation in some areas of jurisdiction. This is particularly evident in environmental and health regulation which are matters where senior levels have regulated extensively.

It can be problematic to determine with certainty whether a Regional bylaw may conflict with existing regulation by a senior government. The test articulated in Section 14 of the Act is that a municipal bylaw is in conflict with federal or provincial enactment if it “frustrates the purpose” of the enactment. The case law that has evolved with respect to this issue has developed a two part test: (a) is it possible to comply simultaneously with the municipal bylaw and the senior level enactment; and (b) does the bylaw frustrate the purpose of the enactment. It is submitted that the first part of the test provides clearer guidance to a municipality in determining the scope of its authority and, if enshrined in the Act would potentially reduce the risk of *ultra vires* challenges.

**Recommendation:** that Section 14 of the Act be amended to provide that a municipal bylaw is deemed to be in conflict with federal or provincial legislation only if it is not possible to comply simultaneously with the bylaw and the federal or provincial enactment

### 3. Transfer of powers (service migration)

The Region supports the current regime for service migration and does not recommend any fundamental amendments. The scope of the services that are subject to service migration is appropriate and the mechanism for transfer (the “triple majority”) ensures the requisite level of support is obtained before a fundamental change in service delivery is implemented.

The Region used the predecessor to these provisions in assuming transit service from its local municipalities in 2001. One issue that proved challenging is that there was no clear guidance on the status of contracts entered into by the local municipalities in connection with their local transit services. There were over one hundred associated contracts including bus service providers, maintenance contracts and advertising contracts. Many of these contracts did not contemplate that the authority for transit service would be assumed by a different entity. This exposed the Region to claims that the contracts were not binding and could be terminated or renegotiated at the option of the contractor. Conversely, it was unclear whether the Region could take the position that the contracts could be renegotiated on more favourable terms, if appropriate.

**Recommendation:** that the Act clarify the status of existing contracts where service migration is implemented. This would be analogous to the provision in Section 53 where jurisdiction over a highway is transferred and provides that the municipality assuming the highway stands in the place of the transferor under any agreement in respect of the highway

### 4. Climate Change

Climate change has been identified as a key concern for municipalities. The Region is taking action to address climate change through a number of corporate and strategic initiatives and action plans, including partnerships with external stakeholders. The Province has been demonstrating leadership by addressing climate change in a number of policy/regulatory reviews. It will be important for the Province to take a holistic approach to balance climate change with other Provincial priorities.

## Challenges and/or barriers that York Region is facing in implementing initiatives related to climate change

Action at the municipal level will be a critical component of any climate change strategy developed at the provincial or national level, however there are a number of challenges for municipalities outlined below:

- Municipal climate change initiatives have been largely implemented through voluntary programs. Legislative mandates would empower municipalities to implement initiatives consistently on a wider scale.
- Impacts of climate change are difficult for municipalities to foresee and to adequately allocate resources. The Province, by coordinating modeling exercises with a goal of data sharing among stakeholders, would alleviate some of this uncertainty.
- Adaptation will be costly and challenging for municipalities to implement. A portion of the funds collected from the Province's upcoming Cap and Trade program could assist municipalities in implementing climate change adaptation and mitigation measures.
- Municipalities are constrained by the Ontario Building Code. It is important that construction practices effectively consider climate change adaptation and mitigation measures.

## What tools in the Municipal Act do municipalities need to address climate change mitigation and adaptation?

Many of the challenges outlined above require a co-ordinated approach through a range of legislative and policy tools. It would be of assistance to the Region to have clear authority in the Act to implement mitigation and adaptation measures to address climate change. Municipally driven climate change mitigation and adaptation measures should be included as a broad municipal power under Section 11 of the Act. This authority would assist municipalities in implementing a range of measures under the general regulatory powers in the Act.

**Recommendation:** that Section 11 of the Act be amended to include "climate change mitigation and adaptation" as a matter under the jurisdiction of municipalities

## **Additional comments and proposed amendments**

### **Technical amendments are recommended to clarify interpretation.**

In reviewing the Act in connection with this submission, a number of provisions have been identified which would benefit from clarification. These are essentially technical amendments and do not fit within the broad themes outlined above. Accordingly, they have been summarized in chart form and are attached as Appendix 1.

<b>Technical Amendments</b>		
Section	Proposed Amendment	Rationale
s. 1 <b>Definitions</b>	Amend definition of “highway” to include the boulevard	Clarifies the scope of jurisdiction
s. 5(3) <b>Powers exercised by by-law</b>	Amend to provide that a power may be exercised by resolution	The theoretical distinction between a by-law and a resolution is unclear since both require a majority vote. (in practice, confirming by-laws erode the distinction)
s. 28(2) <b>Jurisdiction</b> (highways)	Amend to provide that an upper tier municipality may establish highways on a registered plan of subdivision	The limitation to local municipalities does not reflect current reality
s. 128 <b>Public nuisance</b>	Amend to provide that upper tier municipalities may exercise this power	Assigning this power exclusively to local municipalities significantly limits the broad power of upper tier municipalities to regulate in respect of health, safety and wellbeing under s. 11 (1) (2)
<b>NEW – add in O. Reg. 599/06</b>	Include a new provision to require a municipal services corporation to appoint an auditor general, except where the municipality has specified that the municipal services corporation will be subject to the municipality’s appointed auditor general per section 223.19 of the <i>Municipal Act, 2001</i> , or its internal auditor, as the case may be.	The auditor would be able to audit the corporation to ensure value-for-money, thereby strengthening the municipality’s accountability for use of public funds.
<b>NEW – add in O. Reg. 599/06</b>	Include a new provision to require a municipal services corporation to appoint an ombudsman, except where the municipality has specified that the municipal services corporation will be subject to the municipality’s appointed ombudsman per section 223.13 of the <i>Municipal Act, 2001</i> .	An ombudsman would be able to investigate the decisions and/or recommendations made in the course of administration of the corporation, and thereby provide more transparency to decision-making.

O. Reg. 599/06, s. 6, <b>Business case study</b>	Include a requirement to perform a value-for-money analysis as part of a business case study to establish a municipal services corporation.	Adopting a business case study is a condition precedent to a municipality being able to file articles of incorporation. O. Reg. 599/06 is silent in terms of the content of a business case study. A value-for-money analysis to support the justification for a corporation would strengthen the municipality's accountability for use of public funds.
<b>NEW – add in O. Reg. 599/06</b>	Permit a municipal services corporation to purchase shares in a corporation established by a university or educational institution.	A corporation is limited to purchasing shares in a corporation that relates to its purpose (see subs. 18(3) of O. Reg. 599/03). A corporation that has the ability to purchase shares in an educational institution for joint development purposes would provide more flexibility in terms of service delivery.
O. Reg. 599/06, subs. 11(3), <b>Prohibited use of powers in relation to corporations</b>	The restriction of ownership to <u>new</u> long-term care facilities should be deleted.	This kind of restriction where a municipal services corporation can own a long-term care facility so long as the facility is <u>new</u> is a holdover from the predecessor Regulation. Deleting this limitation would provide more flexibility in terms of service delivery.
O. Reg. 599/06, subs. 9(4)(b), <b>Economic development corporations</b>	It is recommended that the following clauses be added → “the acquisition, development, <u>encumbrance</u> and disposal of sites, <u>including any interest in a site</u> , in the municipality for residential, industrial, commercial and institutional uses”.	Addition of the clause “encumbrance” would provide the right to encumber property to raise money.  Addition of the clause “including any interest in a site” would enable a corporation to enter into a lease and/or a license.
O. Reg. 599/06, subs. 18(1), <b>Limitations on actions of corporation</b>	It is recommended that the <i>Municipal Act, 2001</i> establish a similar regulation to Build Toronto's O. Reg. 295/09, which provides the power to create subsidiaries.	The establishment of such a regulation would permit a municipal services corporation to create subsidiaries.
O. Reg. 599/06, subss. 18(5)(a) and (b), <b>Limitations on actions of corporation</b>	The limitations pertaining to the provision of a public utility for water or sewage should be deleted.	Deleting these limitations would allow a corporation whose business or purpose includes the provision of water or sewage utility services to be privatized.

O. Reg. 599/06, subs. 18(6), <b>Limitations on actions of corporation</b>	The limitation pertaining to the provision of youth recreational services should be deleted.	Deleting this limitation would allow a corporation whose business or purpose includes the provision of youth recreational services to be privatized.
O. Reg. 599/06, subs. 9(4)), <b>Economic development corporations</b>	The following provision should be added as a catch-all → <u>“(k) provision of facilities used for ancillary purposes in respect of each of the provisions in this subsection”</u> .	Currently, facilities used for ancillary purposes are not explicitly provided for under the definition of “economic development services”. The addition of such a provision would provide greater clarity to the definition.
O. Reg. 599/06, subs. 11(4), <b>Prohibited use of powers in relation to corporations</b>	There is a missing “a” before the first word “corporation”.	Grammatical error.
O. Reg. 599/06, subs. 18(1), <b>Limitations on actions of corporation</b>	The following clause should be added → “A corporation shall not act as an incorporator of another corporate body that is incorporated under any Act, <u>save and except where a regulation has been passed with respect to incorporation of a secondary corporation.</u> ”	Subsection 18(1) of O. Reg. 599/06 is unclear now that subsection 203(3.1) of the Act has defined “secondary corporations”. The two sections appear to be inconsistent with one another. The addition of such a clause to subsection 18(1) would resolve the discrepancy between the two sections.