

NO: R165

COUNCIL DATE: September 9, 2024

REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **September 5, 2024**

FROM: **City Solicitor
General Manager, Planning & Development
General Manager, Finance**

FILE: **2210-20-105**

SUBJECT: **Proposed Surrey Charter**

RECOMMENDATION

The Legal Services & Risk Management Department, Planning & Development Department and Finance Department recommend that Council:

1. Receive this report for information;
2. Approve in concept the proposed Surrey Charter, as generally described in this report;
3. Authorize the Mayor to send, on behalf of Council and the City, a letter to the Premier and the Minister of Municipal Affairs that will be substantially the same form as Appendix "I" to this report, which will request that the Province enact the Surrey Charter and attach a copy of this report; and
4. Direct staff to work with the Province and to take all necessary steps to develop, draft, and enact the Surrey Charter.

INTENT

The purpose of this report is to obtain Council's approval in concept of the proposed Surrey Charter, which if enacted, will provide the City with additional powers, responsibilities, and exemptions that appropriately address the size and diversity of the City, and the nature of its corresponding challenges. This will give the City more flexibility and autonomy to be more responsive to the needs of its community.

BACKGROUND

The City is the second most populous municipality in British Columbia with a population of over 600,000 people. It is projected to be the most populous city in British Columbia by 2030. Currently, it is the most populous municipality in British Columbia that is governed under the legislative framework of the *Local Government Act* and the *Community Charter*.

The *Local Government Act* and the *Community Charter* generally apply to local governments in British Columbia, except the City of Vancouver ("Vancouver"), which falls under the *Vancouver Charter*. The Resort Municipality of Whistler ("Whistler") also has special legislation. Although

the *Local Government Act* and *Community Charter* generally apply to Whistler, those pieces of legislation are subject to the *Resort Municipality of Whistler Act* (the “*Whistler Act*”), which among other things, exempts Whistler from some provisions of the *Community Charter*. The *Local Government Act* also has specific regulations for some local governments. For example, a regulation made under the *Local Government Act* relates only to the City of Victoria and addresses additional aspects of land use.

The current legislative framework fails to address many of the challenges faced by larger municipalities since the *Local Government Act* and *Community Charter* were intended to apply to a broad range of local governments, most of which are smaller by population than Surrey.

In 2008, the City requested that the Province enact the Surrey Act. Instead of requesting a standalone “Surrey Charter,” the proposed Surrey Act would have expanded several areas of jurisdiction already addressed in the *Community Charter* and the *Local Government Act*. The Surrey Act was not enacted by the Province.

Since 2008, the City has experienced extraordinary growth, which is expected to continue into the foreseeable future. A Surrey Charter would recognize the unique challenges faced by the City by giving it additional powers, responsibilities, and exemptions not adequately addressed by the *Community Charter* and *Local Government Act*.

Due to the Province’s failure to address the City’s concerns through the Surrey Act, many still remain outstanding. The City now faces additional challenges owing to legislative changes; the growth of the City through increased business, development and population; and other pressures.

The size and complexity of the City, together with the expertise of its staff, supports the expansion of the City’s powers. The Surrey Charter would give the City greater autonomy, revenue sources, and protections in several areas. This will allow the City to be more responsive to the needs of its community and address some of the concerns of a complex, growing, and sophisticated municipality.

DISCUSSION

Below is a summary of the main issues intended to be addressed by the Surrey Charter.

1. Exemptions From New Provincial Housing Legislation

The Province has recently introduced legislation in an effort to significantly increase housing density. For example, local governments across the Province are now generally required to permit between two to six units of housing on lots formerly recognized as single-family or duplex lots. Whether and how many additional units will be permitted will depend on several factors, including lot size, the property’s proximity to transit, and whether the property is in the urban containment boundary.

Surrey recognizes the need for more affordable housing. It has been a leader in contributing to the housing needs of its residents and the region, as exhibited by Surrey’s significant population growth in the recent past, which has occurred without the Province’s plan for more housing density. Even without the Province’s new legislation, the City has in the recent past taken measures to accomplish the goals underlying the new legislation.

However, the Province's legislation is not tailored to the unique needs of the City and removes the autonomy the City previously possessed to shape housing development in the City. The Province's strategy to increase housing density, without regard to the unique needs of the City, would require commensurate increases to infrastructure, such as schools and hospitals. Challenges related to school and hospital capacity and overcrowding are well documented and are already serious problems in Surrey. The Province needs to provide more investment to address these problems.

The Province's new legislation will also limit the City's ability to set off-street parking requirements. For example, municipalities are prohibited from establishing requirements for off-street residential parking spaces in transit hubs, other than for people with disabilities. This may create additional pressure and competition for on-street parking and may not be reflective of the reality of families that need to live in an affordable home and must also own a car for work or school.

The Province is also prohibiting public hearings for zoning bylaw amendments for residential developments or mixed-use developments of least 50% residential that are consistent with the Official Community Plan. This means that Council will be unable to engage with the public in the same manner that it has in the past and will restrict the feedback Council will receive with respect to any specific development. The ability to express concerns arising from new developments are an important part of civic engagement that should be retained at the City's discretion.

Although the City intends to foster the growth of sustainable and affordable housing for current and future members of its community, standard requirements applied across the province are not reflective of the complex and growing needs of the City. Rather, Council is best placed to assess what is suitable for its community.

In order to address these concerns, the Surrey Charter would retain the existing Provincial legislative regime, but would allow Council the discretion to exercise greater autonomy with respect to some aspects of housing development, if Council considers it is warranted. In particular, the Surrey Charter would:

- give Council the discretion to maintain single-family residential zones instead of being required by the Province to automatically permit up to six dwelling units;
- give Council the discretion to hold a public hearing for residential rezoning instead of the Province's automatic prohibition against public hearings under many circumstances;
- exempt transit hubs in the City from the density requirements imposed by the Province and to give Council the discretion to allow the level of density that Council considers appropriate; and
- give Council the discretion to require off-street parking as it considers appropriate.

2. Revenue Sources

City services touch on the daily lives of residents more so than many other services provided by other levels of government. These include, police and fire services, municipal road construction and maintenance, parks, recreation centres, arenas, pools, waste collection, bylaw enforcement,

land use planning, business licensing, etc. The City provides these services with limited funding and revenue sources.

The Province has, over the course of many years, increasingly relied on the City and other local governments to assume greater responsibilities, including matters in relation to public safety, public health, and infrastructure. The Province's plan to increase housing density will place greater pressure on existing City services by significantly increasing population growth.

Existing Provincial legislation unduly constrains the revenue sources available to the City. The Surrey Charter would give the City more options for revenue sources should the City choose to exercise them. Providing the City with options to expand its revenue sources, as discussed below, would allow it to better fund and deliver the services that the community needs. Other revenue sources may be identified as staff work with the Province to develop the Surrey Charter and staff intend to work with the Province to explore any other opportunities.

a. Empty Homes Tax

The *Vancouver Charter* permits Vancouver to impose a vacancy tax, more commonly known as the Empty Homes Tax ("EHT"), which Vancouver has implemented through the *Vacancy Tax By-law No. 11674*. This tax is in addition to the Province's speculation and vacancy tax.

The EHT was introduced in 2017 to address housing affordability and availability challenges and to increase rental supply in Vancouver. Homeowners are required to submit an annual declaration to determine whether the tax will be imposed. Properties deemed or declared empty for a specific year will be subject to the tax. In 2017, the tax rate was 1% of the property's assessed taxable value. The tax rate has increased over subsequent years and is currently at 3%.

Vancouver claims that from the 2017 to 2022 reference years, the number of vacant properties decreased by 54% based on data collected by Vancouver under the EHT program. Since 2022, the annual revenue collected from the EHT, inclusive of penalties, has been about \$32 million.

To ensure compliance, Vancouver conducts risk-based and random audits to verify property status declarations. From November 2, 2022 to November 1, 2023, Vancouver conducted 14,219 audits.

Revenue generated by the EHT is first allocated to fund annual operating costs to administer the tax. The remaining revenue is used for affordable housing initiatives. These include the Community Housing Incentive Program, which provides non-profit housing providers with capital grants towards the development of new social housing projects. Revenue is also used to fund land acquisition to secure new sites to develop social housing in partnership with other levels of government and non-profit partners.

The ability to implement an empty homes tax in Surrey would reduce the number of vacant properties while generating important revenue to increase the housing supply.

b. Municipal Property Transfer Tax

The Province currently levies a property transfer tax on transfers of real property based on a percentage of the fair market value of the property.

The Province's general property transfer tax applies to all taxable transactions. The general property transfer tax rate is set out below:

- 1% of the fair market value up to and including \$200,000
- 2% of the fair market value greater than \$200,000 and up to and including \$2,000,000
- 3% of the fair market value greater than \$2,000,000
- If the property has residential property worth over \$3,000,000, a further 2% tax will be applied to the residential property value greater than \$3,000,000.

Toronto, Montreal, and Halifax each have their own form of property transfer tax based on a percentage of the value of a property.

To impose a municipal property transfer tax, the City must seek appropriate authority from the Province to charge a tax in parallel with the existing provincial transfer tax. In this way, the tax could be implemented through leveraging the current provincial collection system versus collecting the tax locally.

c. Utility Taxes

Under the *Local Government Act*, utility companies carrying on business in a municipality in which it has specific infrastructure, such as cables, towers, pipelines, etc., are taxed by the municipality at a rate of 1% on a portion of money the utility companies receive from their business activities. Utility companies include electric power, telephone, water, and gas companies.

The proposed Surrey Charter would give the City the ability to change the tax rate for these utility companies as the circumstances warrant and as the City deems appropriate, up to a maximum to be set by the Surrey Charter.

3. Enhancing Bylaw Enforcement Tools

a. Maximum Fines

The Surrey Charter would allow the City to set maximum fines for bylaw contraventions.

Under the *Community Charter*, the maximum fine for a bylaw offence is \$50,000. If a person is found guilty at the conclusion of bylaw prosecution, the City's prosecutors may ask for the maximum fine if the bylaw and the circumstances warrant such a fine. In terms of tickets, maximum fines are limited to \$3,000 for Municipal Ticket Informations ("MTIs") and \$500 for Bylaw Notices. Both of these are forms of tickets that bylaw enforcement staff may issue to a person if there is evidence that the individual contravened a City bylaw.

The maximum fine of \$50,000 is not adequate to address some bylaw contraventions. For example, a business that is operating in contravention of City bylaws may have a strong financial incentive to continue the unlawful conduct since it is the source of income for the business.

The City should have the power to increase the maximum fines for MTIs and Bylaw Notices to enhance these more streamlined and efficient methods of enforcing bylaws. Although the maximum fine for MTIs was recently increased, it was previously set at \$1,000 for many years. The

maximum fine for Bylaw Notices has been in place for many years and is no longer adequate for many types of offences.

A Surrey Charter would give the City the ability to set the maximum fines for all of the above. This will allow the City to ensure that maximum fines increase with inflation and reflect the appropriate penalty for any given offence.

b. Orders

Although the Provincial Court may make an order at the conclusion of a bylaw prosecution requiring a person to stop the contravention and to remedy the harm caused by the offence, the order may only last one year. Notably, orders in the Supreme Court of British Columbia, relating to the enforcement of bylaws, are not subject to the same constraint. A Surrey Charter would allow Provincial Court orders to be effective indefinitely and it will strengthen enforcement mechanisms where a person breaches an order.

c. Collecting Fines

Fines and costs arising from tickets and prosecutions cannot be collected through property taxes. This increases the administrative burden on the City in cases where a person has already admitted to or has been found by a court to have contravened a City bylaw. The *Community Charter* gives the City the ability to collect some types of unpaid fees through property taxes, but this power does not extend to tickets or court ordered fines.

The Surrey Charter would give the City the ability to recover fines related to bylaw contraventions from a person's property taxes, thereby enhancing the City's enforcement tools to ensure compliance.

d. Remedial Action Requirements

The Surrey Charter would expand the situations in which Council may impose a remedial action requirement ("RAR"). RARs are orders made by Council to owners of property to remedy nuisances or hazards. However, RARs only apply in specific situations contemplated by the *Community Charter*. For example, under the *Community Charter*, Council may impose an RAR against a property owner of certain things that are unsafe or contravene the Building Code, including:

- buildings;
- openings in the ground;
- trees; and
- wires cables that are on, under or along a highway.

Council may also impose an RAR in relation to certain things if they are a nuisance, including:

- buildings;
- openings in the ground; and
- drains, ditches, watercourses, ponds, surface water.

In the past, the City has used RARs to address structures that have been destroyed by fire but remain partially standing.

The Surrey Charter would broaden the circumstances under which Council may impose an RAR. For example, the proposed Surrey Charter would allow Council to impose an RAR in relation to any matter or thing in or on private property, public land or a road. It would also broaden the criteria so that it would not be limited to only nuisances, hazards, and contraventions of the Building Code. For example, it would allow Council to impose an RAR where there is a breach of specific bylaws.

4. Assistance to Business

Subject to some narrow exceptions, the *Community Charter* generally restricts the ability of the City to provide any assistance to businesses. The term “assistance” under the *Community Charter* is very broad and includes a “grant, benefit, advantage or other form of assistance”, including:

- an exemption from a fee or tax;
- disposing of land or improvements, or any interest or right in or with respect to them, for less than market value;
- lending money;
- guaranteeing repayment of borrowing or providing security for borrowing; and
- assistance under a partnering agreement.

By having such restrictive conditions on assisting business, the *Community Charter* precludes potential opportunities to help businesses that the City considers to be a priority and that Council wishes to foster and encourage to grow. It fails to recognize the importance of businesses as vital contributors to the continued success of the community. For example, the City may wish to provide a grant to a small business to help it establish in the City. However, this is currently prohibited by the *Community Charter*.

Encouraging business growth, innovation, and investment in the City is critically important to the City’s long-term future and sustainability. The Surrey Charter would permit the City to assist businesses in a broader range of circumstances, but in accordance with rigorous policies and procedures, to ensure that any assistance is provided in a transparent and fair manner.

5. Delegation

The *Vancouver Charter* gives Vancouver’s council broader authority to delegate certain powers. For example, under the *Vancouver Charter*, appeals of business license suspensions may be delegated to one or more council members. However, in Surrey, this power must be exercised by Council under Section 60 of the *Community Charter*.

Further, Council is precluded from delegating the power to impose an RAR. A Surrey Charter would give Council the authority to delegate this power. RARs could potentially be a powerful tool to address challenging situations in a timely and effective manner, if the City is given the power to delegate and broader authority in relation to RARs, as described above.

Giving Council greater powers of delegation would allow Council to focus on matters that must be handled by Council and that cannot or should not be delegated. This would give Council more time to consider issues that are more pressing and demanding of Council’s attention.

6. Protections Against Legal Claims

The *Vancouver Charter* gives Vancouver a much wider range of protections from liability than that afforded to other local governments under the *Local Government Act*, including broader protections against legal claims in relation to building construction and land use regulation.

Municipalities were often named as defendants in leaky condo claims due to their role in the approval of plans and inspection of construction. Construction claims can be significant – for example, certain leaky condo claims were in the range of several million dollars (*Strata Plan NW 3341 v. Canlan Ice Sports Corp*, 2001 BCSC 1214). Crucially, developers and builders may not have sufficient funds to pay a court judgment, but due to the legal principle of joint and several liability, a municipality may have to pay another defendant's share of a court award for damages even though the municipality's share of liability may be nominal, effectively rendering a municipality an insurer.

Section 294(8) of the *Vancouver Charter* gives Vancouver immunity from claims arising from the negligence of building inspectors and plan checkers. This immunity is much broader than that afforded to other local governments under Section 743 of the *Local Government Act*.

The *Local Government Act* only provides Surrey with immunity from plan checking. This is an important distinction since many claims arise through building inspection. The *Local Government Act* also requires that in order for a municipality to qualify for immunity from plan checking, it must meet certain conditions, including that a registered engineer or architect certifies that the plans comply with Provincial building regulations or other regulations and the municipality must lower the fee for the building permit to reflect the reduction in work due to the municipality relying on the work of the registered professional. These conditions are not present in the *Vancouver Charter*.

Another area where Vancouver benefits from greater immunity is in relation to land use. Section 569(1) of the *Vancouver Charter* limits recovery against Vancouver under specific circumstances where loss occurs due to Vancouver's exercise of its land use powers. For example, Vancouver is not liable to property owners where it amends its zoning bylaw and, as a result of the amendment the municipality's actions have the effect of taking land, even though the municipality has not formally expropriated the land (*de facto* expropriation). Although claims of this nature are rare and difficult to prosecute, adopting a provision similar to Section 569 of the *Vancouver Charter* would provide additional clarity to potential claimants.

The protections from liability under the *Vancouver Charter*, such as those referenced above, address scenarios that are not unique to Vancouver and are encountered by any large municipality. Surrey is a large and sophisticated municipality facing many of the same problems as Vancouver. There is no reason why Surrey should not benefit from the same immunities as Vancouver, particularly in light of the considerable pace of development in the City. Similar immunities would recognize that Surrey plays a significant role in ensuring the safety of building construction and regulating development and remove the potential that the City could be liable for an impecunious defendant's share of liability. Further, the proposed protections could potentially deter frivolous claims and reduce legal costs.

7. Business Regulation

Section 203 of the *Vancouver Charter* allows Vancouver to prohibit in relation to businesses through a unanimous vote of Council. On the other hand, Sections 8(6) and 59 of the *Community Charter* only give municipalities the power to regulate in relation to most businesses, unless the business is a type specifically listed in the *Community Charter*. For example, Council may prohibit carnivals and boxing matches. This list is very limited and may not be reflective of the desires of the community.

A broader authority to prohibit businesses may be advantageous if there are businesses that are harmful to residents and the community and there is a desire to prohibit them from operating in the City. For example, types of businesses that have posed challenges in the past include body rub parlours; retail sale of certain types of animals, including dogs, cats, and rabbits; illegal cannabis retailers; and businesses that deal in stolen catalytic converters. In many cases, the City has been able to use its existing regulatory powers to address the challenges presented by problematic businesses.

However, the present legislation unduly restricts the City's ability to address these challenges in a more direct and effective manner since municipalities must ensure that regulation of business activity does not amount to prohibition. As new types of businesses arise due to social and technological changes, the City would benefit from being able to act promptly and proactively to prohibit businesses that are harmful to the community.

8. Building Regulation

The *Vancouver Charter* together with the *Building Act* give Vancouver the power to regulate the design and construction of buildings. This power is unique to Vancouver as construction in other communities in British Columbia must comply with the Province's BC Building Code. The ability of Vancouver to make its own technical building requirements means it can respond quicker to issues that have an impact on building safety and to tailor the requirements to the local community.

The proposed Surrey Charter would give the City the power to make its own technical building requirements so that the City can lead the design and construction of buildings by ensuring buildings are green, accessible, and affordable.

Coupled with greater autonomy over land use matters as described in this report, the power to make technical building requirements has the potential to address the housing needs of the community in a more fulsome manner.

9. Spheres of Concurrent Authority

Subject to some exceptions, including those set out in a regulation or an agreement, Section 9(1) of the *Community Charter* generally requires Provincial approval prior to the adoption of bylaws, including amendments, involving:

- (a) public health,
- (b) protection of the natural environment,
- (c) wildlife, and
- (e) removal and deposit of soil.

In some circumstances, the Province has adopted specific regulations to restrict how municipalities may exercise powers within these spheres without Provincial approval. For example, a municipality may adopt a bylaw regulating single-use plastics if it meets the restrictions set out in the applicable regulation.

The proposed Surrey Charter would allow the City to amend or adopt any bylaws related to the above-noted matters without Provincial approval. Surrey has very ably prepared and adopted bylaws in relation to matters falling within Section 9(1). The Province's approval creates unnecessary delays and limits the power of the City to address the City's concerns in a timely and effective manner. The City needs to have the ability to respond quickly to address any issue that concerns the City. For example, matters falling within the spheres of concurrent authority, such as the environment, often require swift action. Without the ability to act quickly, the City is unable to address challenges immediately, thereby potentially and unnecessarily exposing the community to harm.

10. Other

As staff work in partnership with the Province to enhance the existing legislative framework, other improvements may be identified and included in the proposed Surrey Charter.

Legal Services Review

Legal Services has reviewed this report.

CONCLUSION

Staff recommend that Council authorize the Mayor to send to the Premier and the Minister of Municipal Affairs the draft letter in Appendix "I" and to direct staff to work with the Province to develop, draft, and enact the Surrey Charter.

Philip C.M. Huynh
City Solicitor

Ron Gill
General Manager, Planning & Development

Kam Grewal
CFO / General Manager, Finance

Appendix "I": Draft Letter to the Premier and Minister of Municipal Affairs

Honourable David Eby
Premier
Parliament Buildings
Victoria, BC V8V 1X4

Honourable Anne Kang
Minister of Municipal Affairs
Parliament Buildings
Victoria, BC V8V 1X4

Dear Premier Eby and Minister Kang:

Re: Proposed Surrey Charter

We write to advise that Surrey City Council considered Corporate Report No. *** regarding the Surrey Charter. Council adopted the recommendations in that report. A copy of the report and related resolution is attached to this letter.

The Corporate Report explains the concept of the Surrey Charter and why it is important to the City given the size, complexity, and continued growth of the City, which is projected to be the largest by population in British Columbia in the coming years.

We ask that the Province work with the City to develop, draft and enact the Surrey Charter, as generally described in the Corporate Report.

Please contact me if you require any additional information or if you wish to meet to discuss the City's request.

Brenda Locke,
Mayor