

**Corporate** NO: R255**Report** COUNCIL DATE: December 10, 2001\_

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| <b>REGULAR COUNCIL</b> |                                 |       |                         |
| TO:                    | <b>Mayor &amp; Council</b>      | DATE: | <b>December 7, 2001</b> |
| FROM:                  | <b>City Solicitor</b>           | FILE: | <b>0020-003</b>         |
| SUBJECT:               | <b>Surrey Community Charter</b> |       |                         |

**RECOMMENDATION**

That the information be received.

**INTENT**

The intent of this report is to facilitate discussion, receive Council's proposals and formulate the City's submissions to the Province on the new Community Charter legislation to be introduced in February 2002.

**BACKGROUND**

The Province recently unveiled its Community Charter initiative that intends to reduce the existing 1150 section *Local Government Act*, R.S.B.C. 1996, c. 323 (the "Act") to less than 300 completely new sections.

The three guiding principles of the Charter are:

1. Broader powers for municipalities;
2. Stronger and clearer recognition of the relative jurisdiction of municipalities and the Province; and
3. Improved public participation.

The first phase will change all areas of municipal governance with the exception of land use planning, elections and regional districts. The model for the Charter concept of broader local government powers is the Alberta *Municipal Act* introduced in 1995.

A key concern for local government in British Columbia is the imposition of new service responsibilities without concurrent taxation and revenue sharing powers to fund these mandates. The submission outlined below addresses the issue of new fiscal and taxation powers that need to be granted to the Province's largest municipalities.

The Charter proposals include as yet undefined mechanisms to resolve provincial-local government disputes. Public participation is to be expanded to incorporate new notice and hearing rights and broader "*counter-petition*" opportunities to open a voter challenge to local government decisions. Under the counter-petition process a referendum can be triggered with the support of 5% of the electors. Also under consideration is a broader opportunity for judicial review of whether the procedural prerequisites to by-law passage were properly carried out (see Alberta, ss 537 and 538 which provides for such a summary procedure). No appeal process to administrative tribunals of substantive decision making by councils has been proposed.

However, Vancouver under its Charter does not have counter petition, voter approval (with minor exceptions) and Provincial approval requirements through the Inspector of Municipalities of its legislative powers. Vancouver has told the Province that it wishes to have both the broader Community Charter powers together with the additional powers it now enjoys. Surrey proposes that it have the option of adopting the ten (10) key areas of jurisdiction which are contained in the Vancouver Charter but not the *Local Government Act*. These powers are summarized on pages 3-4 of this report.

Traditionally, municipal enabling legislation in Canada expressly defined what local government could or could not do, with little in the way of residual powers to provide services or enact by-laws outside of the express powers. This historical legislative approach is delegation by each province of local government powers, because the provincial legislatures are given exclusive legislative jurisdiction over "*municipal institutions in the province*" (s. 92(8)). Unlike federal and provincial governments, municipalities derive no independent powers or jurisdiction directly from the Constitution. Municipalities and the scope of their powers are solely dependent upon provincial legislation. Therefore, the proposed Community Charter cannot create a separate order of government or even a U.S. style "*home rule*" which is allowed under most U.S. state constitutions.

The province can, however, give municipality broad "*general welfare*" and "*peace order and good government*" powers to pass by-laws relating for example to health, safety and the environment. In Quebec, municipalities may enact by-laws to secure the peace, order, good government, health, environment and general welfare of their inhabitants. The Supreme Court of Canada (*Spraytech v. Hudson (Town)* 2001 (S.C.C.) 40) recently upheld by-laws limiting pesticide use for specified purposes in prescribed locations under the environmental, health and safety wording of the Quebec statute.

The *Spraytech* case is extremely important in that it illustrates how a "*general welfare*" clause can support a wider jurisdiction over local health, and environmental matters, than would otherwise be the case where the statute is silent on these matters. The Court advised that only an outright conflict with federal or provincial law, where one enactment allows what the other forbids, could result in the local enactment being struck down

The proposed Charter will attempt to give municipalities a general grant of power in relation to various defined "*spheres*" of municipal activity. In each "*sphere*" of power local governments will be able to regulate in any manner they wish, provided that the powers are not exercised in a manner inconsistent or in conflict with provincial or federal legislation.

Whether these powers allow local government to respond to local needs will depend upon any statutory limitations in the Charter (eg. referendum) conflicting provisions of federal and provincial legislation, or constitutional authority (eg. criminal law), and the tax and fiscal resources available to fund these mandates. Surrey will want to ensure that the new "*spheres of powers*" include all existing municipal powers so that none of the current powers are inadvertently left out.

The Charter proposes to grant "*natural person*" powers. Natural person powers would allow the City to conduct its business and civil law activities in the same manner as a private sector person or corporation enjoys. While this power could permit more flexible business dealings for local government they will not expand any legislative jurisdiction.

On July 25, 1994 Council received a staff report containing a list of items to incorporate into a Surrey City Charter. This list was presented to the then Deputy Minister of Municipal Affairs and many of the City's proposals were ultimately incorporated into the *Local Government Act*. The process currently under way is a much broader legislative effort.

## DISCUSSION

### SUBMISSIONS OF THE CITY OF SURREY TO PHASE ONE OF THE COMMUNITY CHARTER

The following discussion reviews the existing Parts 1 – 20 of the *Act* and comments on how they could be replaced and made consistent with the Charter principles. The City also lists the key legislative powers of the Vancouver Charter that need to be available to the Province's second largest City.

## Part 1 – Purposes, Powers and Capacity of Municipalities

Proposed Community Charter Changes:

- Broader Powers
- Natural Person Powers
- Broad Service Powers
- Regulatory Powers

1. It is submitted that given the service needs, size, complexity and population of Surrey, it ought in addition to the new Community Charter powers, have available to it those key powers now available to the City of Vancouver under its existing Charter. The following Vancouver Charter powers need to be made available to Surrey:

- (i) The ability to prohibit as well as regulate activities.
  - (ii) The unfettered power to grant franchises without elector consent.
  - (iii) Removal of all restrictions on the ability to enter into agreements which is consistent with having natural person powers.
  - (iv) The unfettered power to accept, sell, lease and dispose of all types of property without elector consent, provided Council acts in good faith.
  - (v) Independent borrowing and financing authority.
  - (vi) Limitation of liability with respect to approvals and inspections.
  - (vii) Mandatory building inspection certification by architects and engineers.
  - (viii) Exemption from any approvals by the Inspector of Municipalities.
  - (ix) Exemption from the counter petition and elector consent process, except in the case of annexation or amalgamations.
  - (x) Broad powers to regulate, suspend or revoke business licenses, subject to a public hearing process.

2. The City supports natural person powers, broad service and new regulatory powers proposed by Charter (now found in Part I, Section 3 – 10 of the Alberta *Municipal Government Act*, c. M-26.1) provided the use of these powers is at the discretion of local government.

3. In particular, Surrey supports the concept that it be a corporation with natural person powers, with the power to incorporate subsidiary corporations.

4. Surrey agrees with the independent right of local government to create offences, impose fines and enforce a broad range of by-laws respecting:

- safety, health, welfare and protection of people and property
- people, activities and things in, on or near a public place
- nuisances, including unsightly property
- transport and transportation purposes
- businesses
- services provided by or on behalf of the municipality
- public utilities
- animals

5. In respect of the above by-law authorities, Surrey supports the Alberta and Vancouver Charter approach to by-laws that may be passed to both regulate and prohibit activities.

6. There is a need to provide special emergency powers (see Alberta s. 551) for Council to take immediate action with respect to unsafe or hazardous lands and buildings.

7. Surrey supports the concept (see Alberta s. 9) that the power to pass by-laws be stated in general terms to give broad authority to Councils, and to govern municipalities in whatever way the Council considers appropriate, and to respond to present and future issues in their municipalities.

## Part 5 – Corporate Powers and Their Use

General Corporate powers should be framed to meet local needs as follows:

1. Replace the existing s. 176 corporate powers and make them consistent with broad natural person and corporate powers;
2. Eliminate the requirement to post property for sale or lease (s. 186);
3. Eliminate restrictions on use of money from the sale of land (ss. 188, 189);
4. Maintain the prohibition (s. 182) against assistance to industrial, commercial or business undertaking unless there is a s. 183 type partnering agreement. The Province must avoid the erosion of municipal tax base through intermunicipal tax and development cost charge exemption competition to attract or retain businesses. The Province must take the lead role in assisting key corporate relocations or start-ups which arise from inter-provincial or international competition; and
5. Greater flexibility to partner in utility, water and sewer systems (s. 190) to allow for public-private partnerships and privatisation of some or all of these works.

It is submitted that service powers be dealt with as follows:

1. Surrey supports the position that no new service powers be granted to local government without the legislative mandate to appropriately fund the service, or revenue share with the Province.
2. Provincial withdrawal or reduced service funding shall require prior consultation, public hearing and mediation as it affects local government.
3. The provincial government retain and fully fund the following powers within its legislative sphere:

- health
- education
- social services
- environment
- gaming
- housing
- provincial highways
- agricultural land reserve
- wild life conservation

The Charter ought to consider eliminating the two most common methods of provincial downloading. The first is, rather than officially announce a download the province simply stops providing the service. However, the community may still need the service and pressure mounts on local government to fund it. Second, the province can download through reduction or elimination of provincial grants and phase out cost-sharing programs, again leaving local government the task of maintaining the program.

The Charter could provide an appropriate consultation, public hearing and mediation process on downloading that does not, however, exclude the Court system.

### Part 5.1 – Local Government Officers and Employees

- Surrey does not recommend leaving the appointment of a CAO to the discretion of each Council. This would detract from the independent professional status of the lead public servant. Each local government over a defined population size threshold should require appointment of a CAO and maintain the powers, duties and functions contained in the existing legislation

### Part 5.2 – Municipal Council

1. Surrey supports the Charter proposal of setting out the role of Mayor in initiating policies, programs and by-laws subject to the present equal voting provisions of the *Local Government Act*. There is a need to more clearly defining the role of the Mayor and individual Councillors without making a significant shift from their existing powers.
2. Closed Council proceedings ought to have confidentiality provisions included in the Charter (s. 242).
3. Divisions 2, 3 and 4 – Enforcement and Ticketing for by-law offences:

Surrey agrees with the independent right of local government to create offences, impose fines and enforce a broad range of by-laws respecting:

- safety, health, welfare and protection of people and property
- people, activities and things in, on or near a public place
- nuisances, including unsightly property
- transport and transportation purposes
- businesses
- services provided by or on behalf of the municipality
- public utilities

- animals

4. Surrey supports having provincial offence ticket revenue derived in Surrey returned to the City.

## Part 7 – Legal Proceedings

1. Add a new clause to provide protection where inspections of buildings, utilities, structures or anything requiring a construction permit does not comply with City by-laws, similar to s. 294(8) of the *Vancouver Charter*. It is Important to shift the responsibility for complying with by-laws to those responsible, i.e. builder, architect, engineer.
2. Eliminate liability for damages based on frequency, infrequency or absence of inspections and maintenance (see Alberta s. 530).
3. Provide a provincial residential home warranty program such as Ontario's highly successful "*Home*" warranty.
4. Protect City from nuisance cases resulting from increased drainage flows from urbanization. Additional flows from development can have a major impact on the volume of water affecting City's lowlands, resulting in flooding and crop damage.
5. Presently s. 288 provides the City with limited liability in the event of the "*breakdown or malfunction*" of a drainage facility or system, but does not adequately cover the City's recognized use of natural watercourses which may overflow from time to time.
6. Nuisance actions proposed change – local government not to be liable (and by default the insurer) for the following damages:
  - (a) caused by breaking of any pipe, conduit, wire, cable or the ditch; or
  - (b) caused by the shut off of water or the discontinuance or interruption of any service or connection by reason solely of accident to the works or maintenance, repair or replacement of works;
7. No liability for injury to any property or person caused by snow, ice or slush on any sidewalk, street, highway or lane (see Alberta s. 404). Local government avoids being the insurer.
8. Members of Council to have no liability in their capacity as directors of regional district boards.

## Part 8 – Special Municipal Powers Relating to Property

1. Eliminate requirement for assent of electors to dedicate park lands, require only counter petition process.
2. Eliminate public hearings for cancelling highway dedication.
3. Give title to all subdivision and park land dedications to local government.
4. Expropriation s. 309 limit injurious affection claims to actual damages from a land taking.

## Part 9 – Financial Management

The Charter proposes "*local self-sufficiency*" in finance as essential to facilitate "*local self-determination*" including:

1. New flexibility to earn revenues from water, sewage and sewage treatment services and new ways to raise revenues, including "*programs that have worked in other jurisdictions*".

2. To maintain key existing features in long term financing, adjusting the role of voters in "*significant*" decisions on long term financing.
3. Retain existing tax exemptions and allow specific tax relief to new business or job creation.

In response Surrey states that property taxes should continue in their present form. Council can set rates by property class which gives local government flexibility to ensure the tax load is distributed in accordance with council's priorities. Local government cannot afford to erode its tax base, and allow tax exemptions that leads to an uneven playing field.

Any additional revenues generated from new sources must flow into general revenues in the same manner as property taxes and user fees to allow council flexibility in service provision.

### Division 1 – Financial Planning

### Division 2 – Financial Reporting

### Division 3 – Audit

### Division 4 – Expenditures, Liabilities and Investments

In response to the above-noted Charter principles:

1. Provide a clear definition of "*significant*" liabilities that are included in total debt limit.
2. Flexibility is required in the use of debt proceeds.
3. Calculation of overall indebtedness to be based on a flexible approach, related to ability to service debt and collect user/franchise fees.
4. Liabilities under agreements – recommend removal of counter petition opportunity for agreements of more than five years, *Vancouver Charter* has no such provisions.
5. Remove counter petition opportunity for borrowings, *Vancouver Charter* has no such provisions.
6. Allow broader investment powers similar to the Alberta *Municipal Act*, including shares of a company approved by the Minister and investments approved by regulations.

### Part 10 – Assessment and Taxation

1. Surrey does not support any fiscal or tax exemptions for business at the local level.
2. Inter-municipal tax competitions will erode the tax base and distort other locational and economic factors which should play a legal role in determining business location.
3. Incentives for business ought to be a federal/provincial responsibility.

## Part 10.1 – Taxes, Fees and Charges

Consistent with the Charter principles:

1. Provide local government with a share in proceeds of crime.
2. Expand ICBC coverage of damage claims to municipal property.
3. Give local government exclusive tax jurisdiction over hotel/entertainment/amusement taxes and shared taxation powers on cabarets, pubs and liquor outlet sales.
4. Based on the U.S. model allow sales tax powers to a defined maximum percentage of sales consistent with provincially taxed goods and services.
5. Section 363 Fees and Charges
  - tie fees and charges to broad based powers and service fees
  - expand revenue, fee and tax base to include, but not limited to:
    - utility franchise fees, without elector consent, but with Public Utilities Commission hearing and approval
    - utilities to include hydro, gas, water, sewer, communications and transportation services
    - power to share in provincial taxes and levies
    - broadly define what rights constitute municipal "*property*" and the power to sell local government property both tangible and intangible, at fair market value by tender, auction, lease or negotiated sale
    - allow a tax or fee on provincial recreation facilities such as a park or ski hill.
6. Consider expanding development cost charges to soft services such as libraries, fire halls, community centres and parks development.

## Part 11 – Tax Collection

### Part 12 – (repealed)

## Part 13 – Special Funds

- consider repealing reserve fund from tax sale money

## Part 15 – Municipal Services

### Division 1 – Service Powers

- Surrey supports broad voluntary service powers noted above (under Part 1 5) based on Alberta model.

### Division 2 – Police Services



### Division 3 – Fire Protection

- similar to the *Vancouver Charter* (s. 310(f)) allow the City to enter into agreements with owners or occupiers outside the City limits to provide fire protection on a fee basis and allow flexibility in user fee and insurance company charges within the Municipality.

### Division 4 – Health

### Division 5 – Highways

1. Surrey concurs in the transfer of title to highways to local government.
2. Make the title transfer retroactive to cover all non-provincial highways, a dual system of possession and title would cause needless administrative costs.
3. Include all rights-of-way in the transfer.

### Division 6 – Sewers, Storm Drains and Drainage

### Division 7 – Waste and Recycling

### Division 8 – Miscellaneous

1. Introduce broader regulation of signs and advertising, and
2. Allow fees for all outdoor signs and advertisements.

### Part 17 – Utilities

1. Granting of franchises (s. 607) for all utilities to be subject to franchise fees for use of public domain and roadway compensation.
2. Broaden this power and tie to new revenue/franchise fee provisions.
3. Eliminate elector consent for franchise fees.
4. Direct the Public Utilities Commission by new provincial policy to allow local government franchise fee agreements with all utilities.

### Part 19 – Local Improvements and Specified Areas

1. Consider flexible powers of local government to set alternatives to local improvements charges.
2. Abolish and replace with general corporate powers to apportion cost of improvements between local government and owners

## Part 20 – Business Regulation and Licensing

1. City supports broadening to general powers noted above on the Alberta model. Power to "*prohibit*" activities (as with *Vancouver Charter* and Alberta *Municipal Act*) needs to be included.
2. Incorporate Vancouver Charter provisions on business licensing, approval, suspension and revocation.
3. Allow specific power to business license secondary suites.
4. Existing Act restricts primary tool to regulating secondary suites to zoning and building regulations.
5. Licensing of secondary suites by City gives greater authority and flexibility in regulating secondary suites to balance community needs and conflicts through the following:
  - require building standards and specifications;
  - require design standards and specifications;
  - limit number of occupants of secondary suites;
  - require inspections at any reasonable time;
  - require the posting of security deposits;
  - providing for the cancellation of licenses and orders for removal of suites and/or occupants;
  - providing the authority not to renew an annual license if Council deems it to be a nuisance to the neighbourhood;
  - protection regarding the liability of the City for cancellation or non-renewal of a license;

## **CONCLUSION**

The principles stated for the proposed Community Charter provides an opportunity for local government to become more autonomous with greater flexibility in delivering services to their residents. These broader powers ought to be expanded for the Province's largest municipalities to include the key elements of the Vancouver Charter.

The introduction of a broader role for local government must not be used as a vehicle for downloading provincial responsibilities unless there is guaranteed basis for funding the service from the province.

CRAIG MacFARLANE

City Solicitor

CM:mlg

c.c. City Manager

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