
KEY ELEMENTS OF AN IMPROVED LEGISLATIVE FRAMEWORK FOR TORONTO

“The Right Deal for Toronto is a Great Deal for Ontario”

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Key Elements of an Improved Legislative Framework for Toronto

This document describes key elements of a new legislative framework for the City of Toronto.

Readers are advised to bear the following caveats in mind when reviewing this document:

- The document includes draft examples of legal provisions that could be incorporated into a new statute for the City of Toronto and/or amended to existing statutes, such as the *City of Toronto Act, 2001*. These provisions are included for demonstration purposes only. As such, they do not necessarily reflect the exact wording that Toronto would propose in forthcoming discussions with the Province of Ontario.
- The list of items and issues included in this Appendix is not exhaustive of all matters that Toronto would like to review with Provincial officials. While every effort has been made to identify the fundamental elements of an enhanced legislative framework for the City, further analysis and discussions may reveal additional issues requiring consideration.
- The inclusion of a given issue or topic in this Appendix does not imply that Toronto considers every element of existing legislation with respect to this item to be inadequate or ineffective. Rather, the inclusion of an item indicates that it is (a) a necessary component of an enabling legislative framework for a municipality of Toronto's stature and/or (b) worthy of careful review by City and Provincial officials.

Part 1 - Preamble, Principles and Interpretation

Overview:

Part 1 of the proposed legislative framework for the City of Toronto would define the principles of municipal governance and city-provincial relations. It would acknowledge the fundamental right of free people to establish a democratically elected, autonomous, responsible and accountable municipal government to provide for a local community's needs. It would also lay the foundation for a new relationship of mutual respect and co-operation between the provincial and city governments, based on a commitment to consultation and to amicably settling governmental conflicts.

Together with Part 2, the preamble and statement of principles contained in this Part would largely define the fundamental nature of municipal government in Ontario with respect to the province's capital city, Toronto.

Following the direction set in section 9 of the *Municipal Act, 2001*, Part 1 could include an interpretation section that would signal to public officials, the courts and the general public that provisions of the framework legislation are to be interpreted broadly.

Examples of provisions and topics that could be included in this Part:

- Recognition of the City of Toronto, under the stewardship of Toronto City Council, as an autonomous, accountable and democratically established order of government within its jurisdiction.
- Recognition of the City's need for adequate powers, financial resources and discretion to meet existing and future community needs.
- Provincial obligation to provide the City with the necessary resources to fulfil any new responsibilities that it assigns to the City.

Sample Preamble:

Great things happen when diverse peoples come together in a place - a city - that supports individuals, communities, neighbourhoods and enterprise. The City of Toronto is this kind of place.

People from around the world and across Canada proudly call Toronto home.

Toronto residents and businesses support a dynamic, diversified economy and a wide array of public services and cultural institutions. The economic and cultural wealth generated in Toronto, in turn, contributes significantly to the high standard of living enjoyed by all residents of Ontario and Canada.

As a corporate and political entity, the City of Toronto is the primary venue where local residents and their democratically elected representatives establish municipal services and standards that reflect their needs, values and aspirations. By electing representatives to serve on Toronto City Council and

contributing to Council's decision-making processes, the people of Toronto shape the rules, services and institutions that are needed to maintain a vibrant, caring, safe, prosperous and forward thinking community.

It is the privilege and responsibility of the City of Toronto to nurture and sustain the economic, cultural and social diversity that makes Toronto an exceptional place in which to live, work, play and visit.

It is the privilege and responsibility of the City of Toronto to ensure that Toronto continues to support - financially, culturally and socially – the high quality of life enjoyed by all residents of Ontario and Canada.

This Act enables the City of Toronto to deliver on its responsibilities and address local needs in a responsive, effective and efficient manner.

This Act enables the people of Toronto to hold their local elected representatives accountable.

This Act enables the City of Toronto to generate wealth and opportunities for the benefit of all the residents of Ontario.

This Act enables the City of Toronto to continue its proud tradition of being a place where diverse people come together to live well, care for one another, and accomplish great things.

Sample Principles of Municipal Governance for Toronto (Based on *BC Community Charter*)

- (1) The City of Toronto, under the stewardship of Toronto City Council, is recognized as an order of

government within its jurisdiction.
Toronto City Council:

- (a) is democratically elected, autonomous, responsible and accountable;
 - (b) is established and continued by the will of the residents of the City of Toronto; and
 - (c) provides for the municipal purposes of the City of Toronto.
- (2) In relation to subsection (1), the Provincial government recognizes that the City of Toronto requires:
- (a) adequate powers and discretion to address existing and future community needs;
 - (b) authority to determine the public interest of the local community, within a legislative framework that supports balance and certainty in relation to the differing interests of the community;
 - (c) the ability to draw on financial and other resources that are adequate to support community needs;
 - (d) authority to determine the levels of municipal expenditures and taxation that are appropriate for their purposes; and
 - (e) authority to provide effective management and delivery of services in a manner that is responsive to community needs.

Sample Principles of City-Provincial Relations (Based on *BC Community Charter*)

- (1) The people of Ontario are best served when the relationship between the City of Toronto and the Provincial government:
- (a) acknowledges and respects the jurisdiction of each;
 - (b) works towards harmonization of Provincial and municipal enactments, policies and programs; and
 - (c) fosters cooperative approaches to matters of mutual interest.
- (2) The relationship between the City of Toronto and the Provincial government is based on the following principles:
- (a) the Provincial government respects City authority and the City respects Provincial authority;
 - (b) consultation is needed on matters of mutual interest, including consultation by the Provincial government on proposed changes to local government legislation or revenue transfers;
 - (c) before new responsibilities are assigned to the City of Toronto, there must be provision for resources required to fulfill the responsibilities;
 - (c) active consideration of the City of Toronto's interests is needed when the Provincial government

- participates in inter-provincial, national or international discussions on matters that affect the City;
 - (e) the authority of the City of Toronto is balanced by the responsibility of the Provincial government to consider the interests of the residents of Ontario generally; and
 - (f) the Provincial government and the City of Toronto should attempt to resolve conflicts between them by consultation, negotiation, facilitation and other forms of dispute resolution.
- (a) address existing and future community needs;
 - (b) determine the public interest of the community of Toronto; and
 - (c) otherwise fulfill municipal purposes.
- (2) If
- (a) an enactment confers a specific power on the City of Toronto or Toronto City Council in relation to a matter; and
 - (b) the specific power can be read as coming within a general power conferred by this Act or the *Municipal Act, 2001*;

Sample Interpretation Clause (Based on BC Community Charter)

- (1) This Act and the *Municipal Act, 2001* must be interpreted broadly to give the City of Toronto and its Council adequate powers and discretion to:

then, subject to any conditions and restrictions established in relation to the specific power, the general power must not be interpreted as being limited by that specific power.

Part 2 - Municipal Purposes, Powers and Spheres of Jurisdiction

This Part would define the City of Toronto's purposes and set out the fundamental powers Toronto City Council is authorized to exercise in order to fulfill these purposes. In addition, this Part would indicate where and how the City of Toronto can exercise its fundamental powers, and establish related authorities such as licensing, inspection and discontinuing a service.

Building on provisions contained in the *Municipal Act, 2001*, this Part would define the spheres of jurisdiction in which the City could regulate, by bylaw, provided that its bylaws would not prevent a person from complying with a provincial or federal law

(i.e. subject to the "consistency rule"). In other words, if a provincial act says that Toronto is not allowed to do X, Y, or Z, nothing in this Act would permit the City to continue, initiate or otherwise perform the restricted action. But if no such restrictions apply, the City would be free to act within its spheres of jurisdiction.

By moving away from the prescriptive 'laundry list' approach of defining municipal powers, this Part would afford Toronto greater flexibility to respond to new issues as they arise, without necessarily needing to obtain explicit provincial permission to act.

This Part would also safeguard the public interest by setting reasonable limits on the City's powers and outlining basic procedures that must be followed. Likewise, it would protect Provincial interests by reserving for the Province the ability to restrict or otherwise curtail the general grants of authority afforded in this Act through express limitations in this or any other Act.

Examples of provisions and topics that could be included in this Part:

- Authority for the City to exercise 'natural person powers' in a manner that is less restrictive than that provided for in the *Municipal Act, 2001*.
- Broad authority for the City of Toronto to provide any municipal service and to regulate, prohibit, or impose requirements in relation to services, within its jurisdiction.

Sample Purposes Section (Based on *Municipal Act, 2001*)

The Province of Ontario recognizes the City of Toronto to be a responsible and accountable government with respect to matters within the City's jurisdiction. As such, the City is afforded powers and duties under this Act and many other Acts for municipal purposes including:

- (a) providing the services and other things that the City considers are necessary or desirable for the municipality;
- (b) managing and preserving the public assets of the City;

- (c) fostering the current and future economic, social and environmental well-being of the City; and
- (d) delivering and participating in provincial and federal programs and initiatives.

Sample Fundamental Powers (Based on *Municipal Act, 2001* and *BC Community Charter*)

- (1) The City of Toronto has the capacity, rights, powers and privileges of a natural person of full capacity.
- (2) The City of Toronto may provide any service that the council considers necessary or desirable, and may do this directly or through another public authority or another person or organization.
- (3) Toronto City Council may, by bylaw, regulate, prohibit and impose requirements in relation to the following spheres of jurisdiction:
 - (i) Highways, including parking and traffic on highways
 - (ii) Transportation systems, other than highways
 - (iii) Waste management
 - (iv) Public utilities
 - (v) Culture, parks, recreation and heritage
 - (vi) Draining and flood control
 - (vii) Structures, including fences and signs

(viii) Parking, except on highways	relation to business, business activities and persons engaged in business.
(ix) Animals	
(x) Economic development	
(xi) Nuisance, noise, odour, vibration, illumination and dust	
(xii) Health, safety, well being and protection of persons or property	
(xiii) Natural environment, including trees and activities in relation to trees	
(xiv) Land use planning, subject to the <i>Planning Act</i> and other statutory restrictions	
(4) Toronto City Council may, by bylaw, regulate and impose requirement in	

Other Powers

Other powers that could be specified in this Part are noted below. Existing standards, statutes, and practices with respect to these powers could be reviewed on a case-by-case basis.

- Authority to provide services outside the boundaries of the City of Toronto
- Licensing and other general regulatory powers
- Authority to enter on or into property
- Authority to discontinue providing a service
- Emergency powers

Part 3 - Democratic Control, Public Participation and Council Accountability

This Part would reflect the core democratic values of public participation and accountability. Provisions in this section would aim to limit abuses of power by public officials and to ensure that the City of Toronto remains responsive to the needs and interests of local residents.

Emphasizing the importance of public participation and council accountability, this Part could reiterate the general rule that council meetings are to be open to the public, with some exceptions. It could also include mechanisms designed to increase public participation in decision-making and enhance transparency in relation to council actions (e.g. new annual reporting requirement listing Council objectives and

accomplishments). As well, this section could contain conflict of interest provisions and specify requirements for local elections.

Examples of provisions and topics that could be included in this Part:

- New requirements for City to report annually on objectives, measures and accomplishments;
- Authority to establish a lobbyist registry, integrity commissioner, auditor general and ombudsperson; and
- Strengthened conflict of interest and code of conduct requirements.

Elections for council and mayor

To ensure that Council members remain responsive to residents' concerns, this Part could subject the City of Toronto to provincial statutes specifying the rules, schedules and procedures that are to be followed with respect to local elections.

Community engagement provisions

This Part could enhance existing mechanisms - public consultation requirements and procedures; petitions; non-binding referenda; etc. -- that enable electors (and other residents and businesses subject to Council decisions) to participate and shape local decision-making and service delivery.

Open meetings, public notification, access to information and public hearings

To provide the public with an opportunity to fully and fairly evaluate the process and arguments by which Council reaches decisions, this Part would require all meetings of Council or its committees to be open to the public, as currently provided for in the *Municipal Act, 2001*.

To further enhance the transparency of municipal government, the new legislative framework could specify stronger standards for public notification and public access to municipal records and require Toronto City Council to pass a bylaw specifying a procedure and requirements for public meetings.

Annual reporting requirements

To help the public hold local elected representatives accountable, the new legislative framework could require Toronto

City Council to report or otherwise make available to the public each year, the following:

- The City's budget
- Detailed information about the City's operations and services
- The City's latest audited financial statements
- A required business plan
- A report on the City's goals and objectives
- Information about any violations of the City's conflict of interest policy
- Disclosures made under the financial disclosure provisions of this Act
- A record of total remuneration, expenses and benefits paid to Council members; and
- A record of gifts received by Council members and senior City officials

Conflict of interest and other ethical conduct issues

Citizens have an interest in ensuring representatives on Toronto City Council act ethically, and that sanctions are imposed if ethical rules are breached. Accordingly, the framework legislation could strengthen existing conflict of interest and code of conduct requirements.

Amendment of the framework legislation

This Part could include an amending provision that would allow either the Council and/or local electors to recommend

to the responsible Provincial minister that changes be made to the City's framework legislation. While any such recommendation would not necessarily be binding on the Province, the Province could be obliged to formally respond to any such request within a reasonable period of time stating its reasons for denying, adopting or adopting with modifications the requested change(s).

Authority to establish a lobbyist registry,

integrity commissioner, ombudsperson and auditor general.

This Part could provide Toronto City Council with unrestricted authority to establish and define the terms of reference for a lobbyist registry, Integrity Commissioner, ombudsperson and auditor general. This authority would in no way limit the Province's ability to require the establishment of such functions.

Part 4 - Municipal Government and Procedures

This Part would focus on the rules and procedures that Council uses to conduct its business. It would link the municipal purposes and powers defined in Part 2 to the mayor and council and lay out the respective roles and responsibilities of elected and non-elected municipal officials.

This Part could also address various matters of municipal governance and administration, including council meetings and proceedings, voting rules, appointing officers and employees, delegating council authority, and establishing committees, commissions, and local boards.

Examples of provisions and topics that could be included in this Part:

- Description of the mayor's role, which could include providing leadership and directing the management of municipal policies and programs;
- Description of Council members' role, which could include developing and evaluating municipal policies and programs;
- Requirement for Council members to vote if present during council meeting;

- Authority for Council to establish the boundaries and names of municipal wards, as presently enjoyed by other municipalities in Ontario;
- Confidentiality provisions for council members; and
- Provision for electronic meetings.

Sample Delegation Provision (based on *BC Community Charter*)

- (1) A council may, by bylaw, delegate its powers, duties and functions, including those specifically established by an enactment, to the extent provided, to:
 - (a) a council member or council committee,
 - (b) an officer or employee of the municipality, or
 - (c) another body established by the council.
- (2) As exceptions, a council may not delegate the following:
 - (a) the making of a bylaw;

- (b) a power or duty established by this or any other Act that the council give its approval or consent to, recommendations on, or acceptance of an action, decision or other matter;
 - (c) a power or duty established by an enactment that the council hear an appeal or reconsider an action, decision or other matter; and
 - (d) a power or duty to terminate the appointment of an officer.
- (3) Despite subsection (1), a council may only delegate a power or duty to appoint or suspend an officer to its chief administrative officer.

Part 5 - Financial Management

This Part would specify sound financial management methods, practices and procedures to be used by the City of Toronto. It would set out a financial management framework for the City, including powers to incur liabilities and invest funds. To ensure that broader authority granted under the proposed legislation is used responsibly by the City, appropriate financial accountability measures could be embodied in the legislation.

This Part would also respond to the need for public accountability with respect to audits and certain types of financial reporting. It could lay out a simple approach to the City's use of reserve funds. Detailed provisions on borrowing could be redesigned to meet both the City and the Province's interests.

The City's diversified economy, skilled labour pool, sizeable population base, developed municipal administration, and its multi-billion dollar municipal capital stock suggest that it should not be subject to same restrictive borrowing and investment conditions as are applied to the province's smallest municipalities. At the same time, Provincial fiscal policies could be impacted by decisions taken by a municipality as large as Toronto. Changes to current financial management practices that address these

considerations could be incorporated into this Part.

In many cases, existing provisions specified in the *Municipal Act, 2001* and other provincial statutes would continue to apply. On a case-by-case basis, however, changes should be considered which would provide additional flexibility or ensure that new revenue sources made available to the City are managed and utilized to maximum public benefit.

Topics that would likely be addressed in this Part are noted below.

Financial Planning and Accountability

- Fiscal year
- Financial plan
- Public process for development of financial plan
- Annual financial statements
- Reporting of council remuneration and expenses

Audit

- Auditor general
- Audit committee
- Auditor's reports
- Complaints to council or auditor about financial affairs

Expenditures, Liabilities and Investments

- Limit on expenditures
- Limit on borrowing and other liabilities
- Liabilities under agreements
- Liabilities imposed under prescribed enactments
- Revenue anticipation borrowing
- Short term and long-term capital borrowing
- Security issuing bylaws
- Self insurance
-

- Investment of municipal funds
- Ownership of corporations

Reserve Funds

- Establishment of reserve funds
- Use of money in reserve funds

Restrictions on Use of Municipal Funds

- Purposes for which borrowed money may be used
- Liabilities for use of money contrary to Act

Part 6 - Revenue Sources

Traditional financial tools available to the City, such as property taxes and user fees, would be included in this Part. To strengthen the City's fiscal capacity, however, this Part could also make available to the City, subject to reasonable limitations and conditions, new sources of revenue which are sustainable, adequate, and appropriate for the services which they are intended to support.

This Part could also contain provisions relating to business improvement areas, exemptions from property taxation, development charges and other revenue-related matters (e.g. property tax deferment under certain conditions to stimulate investment).

In many cases, existing provisions specified in the *Municipal Act, 2001* and other provincial statutes would continue to apply. On a case-by-case basis, however, changes should be considered which would provide additional flexibility or ensure that new revenue sources made available to the City are managed and utilized to maximum public benefit.

Examples of provisions and topics that could be included in this Part:

- Authority to link user fees to certain types of policy objectives, such as encouraging conservation of water, land and energy.
- Access to revenue from a PST levy on hotel visitors or authority to levy a destination marketing fee;
- Access to a dedicated portion of Provincial gas tax revenues; and
- Authority to set property tax rates on residential, commercial, industrial and multi-unit residential property classes without restrictions.

Additional Revenue Sources

A major objective of a new legislative framework for Toronto is to enhance the City's autonomy and improve its ability to plan for and meet long-term financial obligations. At present, a large percentage of the City's revenue comes from property taxes. In 2003, it is estimated that 43% of

the City's operating revenues will come from property taxes. The City receives some transfers from the provincial government to support certain services, but these funds are often inadequate. Local Service Realignment (LSR) has resulted in the transfer of under-funded mandates to the City, increasing pressure on its narrow tax base. To diversify its revenue sources, Toronto City Council has repeatedly requested the Province to provide Toronto with access to new sources of sustainable, adequate and appropriate revenue sources.

By affording the City with the option of applying new taxes or charges in line with its responsibilities, a new legislative framework could increase the allocative efficiency of public expenditure and strengthen local residents' ability to hold Council accountable for its decisions and performance.

The exact type and scope of new revenue sources to be made available to the City should be determined through joint analysis and agreement by City and Provincial officials. Several criteria should be used to guide the selection of new taxing and revenue-generating powers for the City of Toronto, the 6th largest government in Canada responsible for the day-to-day needs of over 2.5 million people:

- Taken as a whole, the new finance package should be (i) adequate to the City's needs, (ii) stable, and (iii) and appropriate for the types of services it is expected to provide to the public.
- The new finance package should provide Toronto with a new source of consumption-based revenue that tends to rise during period of economic expansion (e.g. dedicated share of provincial gas tax revenues)
- The new finance package should more fully respect the "user pay" principle by providing the City with the means to collect revenues (through taxes and/or user fees) from all individuals and groups (including non-Toronto residents who do not pay local property taxes) who benefit from municipal services. Respecting the user-pay principle helps to ensure that the socially optimal and efficient level of municipal services is provided. It also limits the extent to which certain groups of taxpayers wind up subsidizing services enjoyed by other groups.
- The new finance package should provide Toronto City Council with more discretion to establish property tax classes and full authority to set property tax rates (i.e. limit application of Bill 140 to the City).
- The new finance package should allow the City to provide monetary incentives (whether through taxes or user fees) to encourage conservation and optimal use of scarce resources, notably water, energy and land.
- The new finance package should make it easier for local residents to hold local elected representatives accountable by providing the City with adequate resources and using service swaps to reduce the number of services that are jointly financed by the Province and City.
- The new finance package should substantially reduce the extent to which municipal property taxes support income-redistributive programs (e.g. welfare and affordable housing).

- The cost of designing, implementing, collecting, administering and enforcing the measures included in a new finance package should be taken into consideration.
- The impact of the finance package on Provincial fiscal policy should be considered.
- The impact of the finance package on inter-regional competitiveness should also be considered.

Some combination of the financing tools described below could be included in a new financial package for the City.

User Fees: The new legislative framework could provide the City with more flexibility to link user fees to certain types of policy objectives. This approach may be more appropriate for some types of fees and policy objectives than for others. For example, fees related to sewer, water or sewage treatment may help to encourage water conservation, but substantially increasing charges for certain kinds of permits may discourage compliance with municipal regulation.

Visitor Levy/Destination Marketing Fee: The new legislative framework could afford the City with the power to levy a destination marketing fee and/or access to dedicated provincial sales tax revenue on hotel accommodation in order to support tourism promotion activities.

Fuel Tax: A dedicated share of provincial fuel taxes collected in the City of Toronto could be transferred to the City to support investment in public transit and transportation infrastructure.

Parking Stall Tax: The framework legislation could authorize the City to levy a surcharge for parking or the rental of a parking space. Applied as an incentive to reduce traffic congestion and to encourage the use of public transit, this revenue source could be dedicated to support transportation improvements and transit infrastructure.

Density Bonusing: Building on section 37 of the *Planning Act*, the framework legislation could authorize the City to grant exemptions from density restrictions on development and explicitly indicate (to the OMB and other bodies who may be responsible for interpreting the legislation) that funds raised through bonusing can be used to finance affordable housing and other public amenities.

Tax Increment Financing and Tax Incentive Zones: The framework legislation could authorize the City to establish and implement Tax Increment Financing Zones and Tax Incentive Zones to stimulate development consistent with Smart Growth and other public policy objectives, create jobs, and increase property and other tax revenues.

Part 7 – Intergovernmental Relations

A major objective of the proposed framework legislation is to support a new relationship between the Provincial and City governments based on mutual recognition

and respect for the legitimate interests and jurisdiction of the other order of government.

This Part would elaborate on the provincial-municipal relationship principles set out in Part 1. It could obligate the Province to consult with the City before taking actions that significantly impact the City's budget or service requirements, such as a decision to alter Toronto's boundaries, reduce revenue transfers or change cost-sharing arrangements. This Part could also establish dispute resolution mechanisms for the Province and City to employ in certain situations.

Of equal significance, the framework legislation could recognize the City's authority to consult, negotiate and partner with the Federal government on matters falling within the jurisdiction of the Federal or City governments.

Examples of provisions and topics that could be included in this Part:

- A Provincial commitment to consult with the City before amending local government legislation, downloading new responsibilities to the City, or altering cost-share program arrangements;
- A Provincial commitment to refrain from making unilateral changes to the City's boundaries (i.e. forcing Toronto to amalgamate with neighbouring jurisdictions or splitting Toronto into 2 or more localities);
- Dispute resolution mechanisms for resolving conflicts without resort to costly, time-consuming litigation; and
- Recognition of City's authority to negotiate, enter into agreements and partner with Federal, regional and other municipal governments and agencies on matters of mutual interest.

Part 8 – Legal Proceedings and Bylaw Enforcement

This Part would address technical matters associated with municipal proceedings, indemnification against proceedings, bylaw enforcement, ticketing for bylaw offences and other means of enforcement.

Examples of topics and provisions that could be included in this Part:

- Broader authority to set fines for bylaw offences (e.g. property standards, local traffic violations, etc.);
- A streamlined procedural requirement in relation to removal of nuisance structures;
- City's liability in regard to building regulation and inspection; and
- Application of City (zoning and land use) bylaws to Crown corporations.