



City of Richmond

Report to Committee

To:	General Purposes Committee	Date:	June 10, 2002
From:	George Duncan Chief Administrative Officer	File:	-
Re:	Preliminary Comments on the Draft Community Charter		

Staff Recommendation

That this report regarding the preliminary staff comments on the draft Community Charter dated June 10, 2002 from the Chief Administrative Officer be received for information.

Paul H.
George Duncan
Chief Administrative Officer

Staff Report

Origin

In November 2001, staff presented a report to General Purposes Committee which provided recommended positions on the proposed policy directions contained in the Province's Community Charter Discussion paper. The positions were forwarded to the Community Charter Council and the Minister of State for Community Charter for consideration.

The Provincial Government has just recently released Phase 1 of the draft Community Charter which covers the following areas: municipal powers and procedures; public participation and Council accountability measures; financial management and revenue generation; legal proceedings; bylaw enforcement and government relations. Future phases of the Charter will cover planning and land use and regional growth strategies.

The Provincial Government is now asking for submissions on the Charter during the consultation period. It is anticipated that a final draft of the legislation and the introduction of the bill will occur in Fall 2002.

Over the next couple of months, several reviews and discussion sessions will occur regarding the draft Charter including the upcoming UBCM conference on June 19, 20th. In preparation for this conference, staff from Law, Community Bylaws, Finance, Clerk's and Urban Development have undertaken a quick review of the Charter. Thus, the purpose of this very preliminary report is to highlight some of the key implications of the draft Charter to Richmond. More in depth analysis, legal review, discussion and input from Council is needed before staff can recommend final positions on the Charter. As part of the analysis of the draft Charter, staff will be participating in the review undertaken by a committee of the Local Government Management Association in which Richmond's CAO is a member. Once a more in depth analysis is conducted, staff will report back with recommended positions to Council.

Analysis

Highlights on some of the key provisions of the Charter are listed below. The staff comments highlight what is significantly new as well as what the potential implications or opportunities are for Richmond. In some cases, comments are also included as to what is missing from the Charter. For the most part, it appears that the Charter will provide a more significant degree of change for the smaller municipalities, as Richmond is already utilizing the corporate structures and many of the mechanisms proposed in the Charter.

1.0 Principles, Interpretation, Powers, Legal Proceedings and Inter-Government Relations

What is new in these areas?

- **Order of Government** – The actual changes in the areas listed above are not as profound as was anticipated. For example while the Charter recognizes the municipalities as “an order of government within their jurisdiction”, this description is qualified in three

profound ways. The underlined words are a major qualifier and the province has reserved to itself the power to overrule actions of municipalities. In any event, the province cannot unilaterally create a new “order of government.

- **Municipal Rights** – Municipalities have now the capacity, rights, powers and privileges of a natural person of full capacity. This designation will assist in the area of contracts and tenders – but a natural person does not have the power to levy taxes or regulate the activities of fellow natural persons and these powers have to be found elsewhere in the act. Municipalities may now provide any service it deems desirable.

Implications for Richmond: This would allow the City to provide additional services. For example, Richmond could get into areas such as alarm monitoring.

- **Regulatory Powers** – Municipalities will be able to differentiate in bylaws for a number of factors such as persons, activities, time, circumstances or conditions – but would still subject to general rules on discrimination and Canadian Charter of Rights and Freedoms.

Implications for Richmond: Council will have the power to tailor make bylaws to handle specific problems. Unfortunately the powers to suspend or cancel business licences have been lessened in the Charter.

- **General powers** – The ability to deal with licence holders who engage in misconduct in operating a business has been taken away.

Implications for Richmond: This power was useful in dealing with the body rub businesses.

- **General property powers** – Charter gives municipalities’ title to parkland dedicated by subdivision plan.

Implications for Richmond: The Charter then makes dealing with that land more difficult than before Richmond had title by requiring voter assent.

- **Challenges to Municipal Proceedings** – Charter sets out time limits for challenging bylaws – from prior to 10 days for security issuing bylaws, to 30 days for others unless requirement for voter assent is ignored in which case there is no time limit on challenge.
- **Required Consultation** – Charter sets out requirement for consultation prior to Province making changes.
- **Dispute Resolution** – The Charter sets out a dispute resolution system for disputes between municipalities and disputes between municipalities and the province, includes a choice between binding arbitration and mediation.

Implications for Richmond: All consultation is with UBCM and Richmond will have to ensure that there is some way to have input into the comments made by that organization. The Minister is not bound by input by the UBCM – only has to “consider” the comments.

1.1 Additional Powers and Limits on General Powers

What is new in these areas?

- **Animal Controls** – General Animal regulations have been removed and appear to be replaced with a “Fundamental Power” to regulate all aspects of activities related to animals.

Implications for Richmond: Animal regulations (and processes) can be tailored to each community and this is seen as a possible benefit here in Richmond. This allows more latitude for a community to choose how they want to address animal issues rather than having to conform to restrictions that would be the same in all the communities across British Columbia.

- **Dangerous Dogs** – The Charter now allows an animal control officer the ability to enter and search any place (except a dwelling house), and seize a dangerous dog under certain conditions.

Implications for Richmond: An animal control officer would have the opportunity to make a more timely decision, (based on reasonable grounds), to enter and seize a dangerous dog. The community would appear to benefit with a much quicker service in such dire situations. The present process requires applying for a warrant, which can lengthen the problem resolution part of a dangerous dog entry and seizure action.

- **Bylaw Courts** - Consideration is given to the establishment of Municipal Bylaw Courts.

Implications for Richmond: Bylaw Notices of Violation and other bylaw prosecutions would benefit by a bylaw court that focuses on local government problems on a continuing basis rather than using a provincial court venue where bylaw matters are generally given the lowest priority in both attention and timing. Timing, in regards to getting a date for trial, can be delayed as much as a year and on occasion even longer. Two bylaw courts already exist in British Columbia at this time and they appear to be of benefit to the communities they serve.

- **Fines and penalties** - The maximum fine has been increased for all bylaw infractions (should Council decide to include such a maximum) to \$10,000.

Implications for Richmond: Clarification on the ability of a community to increase the penalty values on Parking tickets, whether they be Municipal Ticket Information's (i.e. MTI's) or Bylaw Notices of Violation, is required. The impression, that the community can set their own rate, or fine, levels without having to receive the Chief Judge's approval, is given. This would appear to be a benefit.

- **Building Regulations** – Reference is made that there will be continuing work on the Building Regulation Liability (joint and several liability) issue.

Implications for Richmond: There is an opportunity to draft a bylaw to create a reserve fund to address potential water penetration claims against the City. This could be achieved by an additional fee collected with building permit issuance. Partnering or other Agreements – A council may, by bylaw adopted with the approval of the electors, enter into an agreement that grants an exclusive or limited franchise for the provision of a public transportation system in accordance with the agreement.

- **Partnering and Other Agreements** - Council may enter into an agreement that grants an exclusive or limited franchise for the provision of a public transportation system.

Implications for Richmond: A “public transportation system” is not well defined in the current draft of the Charter. This could include public transportation components such as rail and bus services and toll roadways. Although it is unlikely that any municipality would ever consider taking over a part of or the entire transit system, the new Charter would allow a municipality to introduce a small scale service such as a neighbourhood shuttle bus catered to a specific need that is not well served by the conventional transit system.

- **Control and ownership of highways** – All public roadways in a municipality (except for provincial highways, regional park roads, and roads under federal jurisdiction), including any statutory rights of way for drainage of a highway, are now owned by the municipality and the Provincial government may resume the roadway property or interest vested in a municipality for the purpose of a provincial highway, other transportation purpose, or a park.

Implications for Richmond: The ownership of all public roadways within the City (with the above exceptions) would lie with the municipality as opposed to the Crown (provincial government). This would result in total control of these roadways by the City including the regulation of traffic and parking, closure to public use, and disposing of the right-of-way on these roadways.

- **Additional Highways Powers**– A municipal Council may require owners or occupiers of land to fence any part of it abutting on a highway.

Implications for Richmond: This would allow the City to require the land owner or occupier (e.g. CP Rail) to erect fence along the perimeter of the property abutting a public roadway to address any safety and/or aesthetic concerns involving the use of a particular roadway by site-generated traffic.

- **Closure and Removal of Highway Dedications** – A Council may close or open all or part of a public road, or remove the dedication of a highway that has been closed (under certain restrictions such as undeveloped roadway as part of a subdivision, proximity to a provincial highway, adequate access to waterfront and private properties); and “Upon

removing the dedication of a highway that has been closed, title to the property may be registered in the name of the municipality.”

Implications for Richmond: This would allow the City to register in its name any closed public roadway, which has been removed from the dedication of a public roadway. This would in turn allow the City to dispose these properties to meet local objectives.

- **Utility Poles** – A Council may require a person who is permitted to erect poles on highways to provide reasonable accommodation on the poles for wires and equipment of the municipality on agreed terms.

Implications for Richmond: This would allow the City to require any person (e.g. BC Hydro, Telus) to provide space on poles erected within a public roadway for any municipal equipment (such as signs and traffic control). This may result in the reduction of the number of poles along the roadway by eliminating the need for separate municipal poles and thereby enhancing the City's streetscape.

- **Use of Highways and Public Places** – A Council may provide for the recovery of fees established for seizure of things unlawfully occupying a public roadway or space, including by sale of the thing.

Implications for Richmond: In addition to the removal of any unlawful objects occupying a public roadway (such as towing of an illegal parked vehicle), the City would have the authority to sell off the object in question in order to recover all or part of the fees associated with such offence.

- **Reserve Funds** – A Council may, by bylaw, establish a reserve fund for a specified purpose and direct that money be placed to the credit of the reserve fund.

Implications for Richmond: This could provide the City the authority to establish a special reserve fund towards the construction of major transportation projects such as the Blundell Road / Highway 99 interchange.

- **Local service taxes** - The only services that may be provided as local area services are (a) services that the Council considers provide particular benefit to part of the municipality, and (b) business improvement area services under section 198 [business improvement areas].

Implications for Richmond: This could provide the City the authority to impose special taxes on benefiting property owners for transportation improvements ranging from local traffic calming measures (for local residential neighbourhoods) to major projects such as the Richmond-Vancouver rapid transit project (for area businesses).

Is There Any Thing Missing That Should Be In The Charter?

- **Road Tolls** - It is not clear in the draft Charter how tolls can be introduced on provincial highways within a municipality as a new revenue source to fund the construction of major highways. This is particularly important to Richmond as the new Blundell Interchange could potentially be funded through tolls.
- **Re-claiming of Road ROW** - The issue involves the right of a municipality to re-claim an exchanged road right-of-way (in favour of the municipality) as part of a provincial highway improvement project, which is not addressed in the current draft of the Charter. An example is the surplus provincial highway right-of-way, which was supposed to be transferred to the municipality as part of an agreement for the Highway 91 project but the transfer of the land never materialized.
- **Provincial Responsibility to Improve Provincial Highways** - The responsibility of the province to ensure safe and efficient movements of goods and people within the provincial highway system should be made clear in the Charter. For example, the Steveston Highway interchange has been neglected by the province for any major upgrades and thereby resulting in various safety and operational problems, which restrict any significant new developments in the area.
- **Fine Recovery** - There is no additional method outlined for recovery of "Bylaw Notices of Violation" such as "Parking Tickets" and there are no provisions to employ collection agencies to collect alleged debts incurred by "Parking Violations"
- **Bylaw challenges** - There is no inclusion for court costs when a bylaw is challenged and the defendant loses. Remuneration of court costs is achieved in other provinces in Canada. An opportunity exists here to mirror other apparently successful processes in Canada. This is an initiative that would make the community more cost effective and it would also eliminate frivolous challenges as the potential cost would make a challenger give serious thought to his/her issues before taking up a challenge.
- **Building Code Appeals** - The Local Government Act contained a Section regarding the Building Code Appeal Board, which is absent from the Charter. Hopefully this is an oversight and the Appeal Board will continue in that it is the only current mechanism an owner or his/her representative can appeal a difference of opinion in the application of the Building Code of a property specific. The Appeal Board is appointed by the Minister.
- **Certification by Engineer or Architect** - There has been concern expressed from the Association of Professional Engineers and Geoscientists of BC regarding the word, "certification" and its applicability regarding the wording contained in the BC Building Code's Letters of Assurance which states, "give assurance." Apparently there is a question on Engineer's liability insurance, in that to "certify" would make their errors and omissions insurance coverage null and void. This requires further investigation especially in the area of municipal risk management.

2. Public Participation and Council Accountability

(a) What is new in this area

- **Annual Public Meeting and Annual Report** – There is a new requirement for an annual public council meeting for the purpose of presenting an "enhanced" annual report. The report must include the audited annual financial statements and an overview on

municipal services and operations. Also required is an indication of Council's intentions and objectives for the current and coming year as well as performance measures. An account of the successes for the current year is also required.

Implications for Richmond: Greater planning and articulation of municipal objectives required for presentation to public.

- **Conflict of Interest** – Significantly enhanced conflict of interest rules; Rules apply to Council members and members of all other (advisory) bodies; Conflict of interest can relate to other interests, such as bias, in addition to direct or indirect pecuniary interests; Restrictions on participation once a conflict is declared also applies to inside and outside influence; Prohibition against accepting gifts or other benefits, although some exceptions apply provided gifts, etc. over \$250 are disclosed; Cannot use information nor accept benefits for six months after leaving office.

Implications for Richmond: Council members will need to be aware of new guidelines and citizen appointees and staff liaisons to advisory bodies will have to be aware of and be guided by the expanded conflict of interest rules.

- **Referenda** – Somewhat broader language in general authority for referenda. Compare LGA s.245 "*A council may, by bylaw, provide for a referendum to obtain the electors' opinion on a question that affects the municipality and with which the council has power to deal*" with Charter s. 70 "*A council may seek the electors' opinion on a question that the council believes affects the municipality, by voting or any other process the council considers appropriate.*" Removes stipulation that the matter must be within Council's authority to affect, and opens the possibility of obtaining the electors' opinion through a means other than a vote, for example, a statistically valid poll.

Implications for Richmond: Little or none – Referenda are conducted on a very occasional basis and the language in the Local Government Act would have likely covered most conceivable topics and situations.

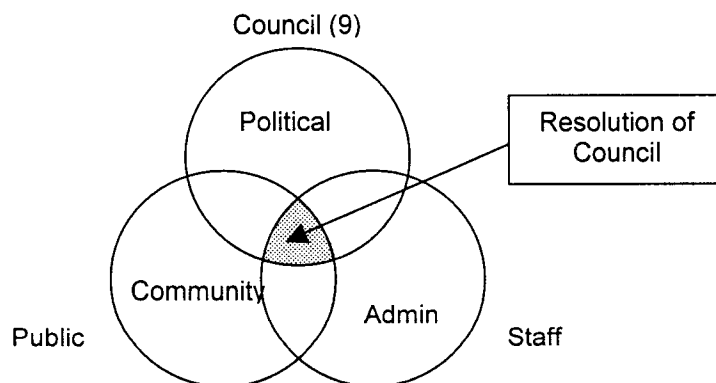
- **Closed Meetings** – New criteria include an administrative tribunal hearing affecting the municipality, negotiations and discussions relating to the provision of a new municipal service; and discussions with staff regarding objectives, measures and accomplishments relating to annual municipal reports.
Clear authority to exclude or include municipal staff at closed meetings; Clear authority to allow someone other than staff to attend a closed meeting. New requirement to record the names of all persons in attendance at a closed meeting.
- **Notices** – additional notices may be provided by internet or electronic means (although does not replace base requirements for posted notices and newspaper advertising)
- **Access to Records** – enhanced duty / authority to provide for public access to records; Charter lists records that must be publicly available.
- **Disqualification** – Clarification and consolidation of provisions pertaining to disqualification of Council members.
- **Resignations** – Council member resignations may be forward dated.

- **Electronic meetings** – Council members can participate in a meeting through “teleconferencing” and other means if certain conditions are met.
- **Bylaws** – Bylaw consolidations are legally acceptable; bylaws may include “sunset clauses” (amended or repealed on a date specified in the bylaw).
- **Procedure Bylaw** – Will require amendment to regulate in areas now required under the Charter, for example, new provisions to determine the date of the first meeting after an election (within first 10 days of December), provisions identifying where meeting notices are to appear, and provisions for determining the appointment of Acting Mayors.

Implications for Richmond: Mainly awareness of new guidelines and rules and subsequent amendments to Procedure Bylaw will be required.

- **General responsibilities of Mayor and Council Members** – Currently decisions of council have three components:
 1. Administrative/Professional aspect (provided through administration)
 2. Political aspect (provided through each member of council’s “platform” or view of public will.
 3. Community aspect (provided through public comment and public debate)

This comprehensive approach to direction and decisions enables the decisions to be made in the best interest of the community. All of Council gets to be involved in the debate and decision making process as does the community.



Richmond’s current practice is for Administration to present its professional advice to all of Council. Council brings the political and community points of view into the debate and decisions get made.

The new charter proposes to expand the authority of the Mayor’s role to include the “direction and management of policies and programs respecting its services and other activities.” This new “authority” of the Mayor could compromise the above decision making process by allowing for an individual member of Council to direct activities, programs and policies outside of the council framework. In situations where controversial issues are being debated, or where members of Council have varying or opposing points of view, it is possible

for this new process to result in staff becoming an instrument to forward the Mayor's position, as opposed to providing professional advice to Council as a whole for debate and decision.

Currently, the administrative point of view is based on fact, best practices and professional standards. One individual's authority to direct administration will upset the delicate balance and in some cases, Administration may not be able to fully bring their professional opinion to the debate.

In most cases, this will not be abused. It makes life simpler in smaller communities where the Mayor plays an active role in day-to-day activities of running a municipality.

3. Financial Management & Revenue Generation

What is new in this area?

- **Financial Planning and Accountability-** Municipal financial statements for a fiscal year must be prepared by the financial officer (before used to be a municipal officer assigned responsibility). There is a new requirement for the financial officer to compile and supply information of the financial affairs of the municipality requested by the inspector (over and above the financial statements & financial information previously provided).

Implications For Richmond: For the most part the changes appear to be simply changing of the 'legalese' and thus does not drastically alter the content.

- **Municipal Revenue -** Eliminated revenue limitations that can be used towards the payment of municipal expenditures. Opens the door to more revenue options. There is a new revenue source - Local Service Tax. There are some new special fees that may be collected as property taxes. The Draft allows imposing of new fees ranging from the use of municipal property to soil removal and fire and security alarm systems. Under the Business improvement areas and business promotion schemes there is loosening of some of the rules, which will allow Municipalities to become more enterprising. Municipalities can incorporate a corporation and acquire shares in a corporation more easily now.

Implications for Richmond: The significant change is the opening up of more revenue sources to the Municipalities. In particular; local service taxes, business improvement areas, acquiring shares in a Corporation and forming a Corporation. These new revenue sources must be proceeded with cautiously, so that Richmond residents and businesses are not burdened with more taxes.

- **Property tax exemptions –** There is an ability to use tax exemptions for some businesses. Phased in farm property tax exemptions are new.

Implications for Richmond: There are some new tax exemptions for certain industrial enterprises that would help stimulate economic development.

- **Audit** - Eliminated Auditor's termination appeal process.
- **Borrowing** - We can now borrow money to pay compensation in respect to property expropriated or injuries, etc.
- **Insurance** - Municipalities are now permitted to enter into a scheme of self insurance protection either by itself, with another Municipality or regional district.
- **Reserve Funds** - There is some tightening of the handling of Reserves.
- **Assessments** - There are some changes to the assessment averaging and phasing options

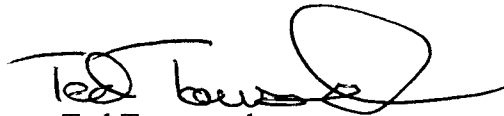
Implications for Richmond: Mainly awareness of new guidelines and rules and implementation will be required.

Conclusion

The Province has recently released Phase 1 of the Draft Community Charter. This report contains some very preliminary comments on the Charter in preparation for the upcoming UBCM conference. A position paper will be forwarded to Council for consideration once a more detailed analysis is undertaken by staff.



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