



Corporate Report

NO: R149

COUNCIL DATE: July 28, 2008

REGULAR COUNCIL

TO: Mayor & Council DATE: July 22, 2008
FROM: City Solicitor FILE: 0125-50 (Surrey)
SUBJECT: Proposed City of Surrey Act

RECOMMENDATION

Legal Services recommends that Council:

1. Receive this report as information;
2. Endorse the City of Surrey Act (the "Surrey Act") in the form attached as Appendix "A" to this report, which if enacted would provide the City with additional powers commensurate with its size and governance abilities; and
3. Authorize the Mayor to forward on behalf of City Council a request in writing to the Minister of Community, Aboriginal and Women's Services and the Provincial government to take all necessary actions to bring into law the Surrey Act and that the letter include a copy of this report and the related Council resolution and be copied to the Premier, Members of the Legislative Assembly representing Surrey constituencies and the Executive Director of the Union of British Columbia Municipalities ("UBCM").

INTENT

The purpose of this report is to obtain Council's approval of the proposed Surrey Act, which if adopted will provide the City with new powers to facilitate innovation and service delivery flexibility.

BACKGROUND

The Intergovernmental Affairs Committee has discussed the need for the City to have additional legislative powers similar to those enjoyed by the City of Vancouver under the *Vancouver Charter*. It is noted that the City of Surrey is the largest municipality in B.C. falling under the *Community Charter* and *Local Government Act*. It has a total population of over 450,000. The median-sized municipality in B.C. has a population of less than 5,000. The technical sophistication and specialization that is available to the City of Surrey as a result of its relative size is not available to the vast majority of municipalities in B.C. The *Community Charter* and the *Local Government Act* were drafted to reflect much smaller scale local government operations in comparison to the City of Surrey. As such, some of the provisions and related regulations in the *Community Charter* and the *Local Government Act* unduly encumber the City of Surrey.

Staff has reviewed the *Local Government Act*, the *Community Charter*, the *Vancouver Charter* and the *Resort Municipality of Whistler Act* with a view to determining provisions that should be included in a proposed Surrey Act.

Staff considered the Vancouver approach of a stand alone "Surrey Charter" and opted instead to recommend a Surrey Act that expands several areas of jurisdiction available to the City under the existing *Community Charter*, S.B.C. 2003, c. 26 (the "*Community Charter*") and the *Local Government Act*, R.S.B.C. 1996, c. 323 (the "*Local Government Act*").

The powers in the proposed Surrey Act, attached as Appendix "A", include autonomy from provincial approvals with respect to by-laws covering development cost charges, public health, the environment, building regulation and soil deposition. The Surrey Act also exempts the City from building regulation liability in the same manner as the *Vancouver Charter* (i.e., the City is saved harmless from claims related to checking building plans, issuing building permits and undertaking building inspections/reviews during construction of the building).

Vancouver, under its *Charter*, may enact and amend its own building regulations independently of the Province. Vancouver also has broad powers to enact by-laws in relation to building regulation, business licencing and development cost charges. Similar provisions have been included in the Surrey Act.

In British Columbia, Whistler is the only municipality, other than Vancouver, which has its own special legislation, the *Resort Municipality of Whistler Act*. Whistler's legislation expanded its development cost charge by-law powers and its borrowing and local service area authority. Some municipalities in the Province have been given specific additional powers by regulation approved by an Order-in-Council. Victoria has been given additional land use planning authority in a regulation made under the *Local Government Act* (see *City of Victoria Additional Powers Regulation*, B.C. Reg. 69/97).

A survey was conducted of the municipalities in the Big Cities Mayors Caucus of the Federation of Canadian Municipalities. Most of the member municipalities have either their own Charter or special legislation that provides additional powers beyond those found in their respective provincial municipal legislation.

DISCUSSION

The Surrey Act does not replace the *Community Charter* or the *Local Government Act*. Section 3 of the Surrey Act provides that:

"Subject to this Act, the *Community Charter* and the *Local Government Act* apply to the municipality unless they are inconsistent with this Act or the regulations."

Most of the features of the *Community Charter* and the *Local Government Act* will remain applicable if the Surrey Act is enacted as law.

The Surrey Act varies the *Community Charter* and the *Local Government Act* as follows:

Spheres of Concurrent Authority

The *Community Charter* (s. 9(1)) requires provincial approval of municipal by-laws involving:

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

Consistent with the experience of other large Canadian municipalities, it is submitted that Surrey has the staff expertise and technical resources to enact and amend its own by-laws in relation to public health, protection of the natural environment, buildings and soil removal and deposition. At present by-laws, including any amendments, in relation to matters, which could be deemed, to fall under any of these categories require provincial approval. Section 5 of the proposed Surrey Act provides that public health, protection of the natural environment, building regulation and soil deposition and removal are no longer spheres of concurrent authority requiring provincial approval.

There is no evidence that the Province adds any value to City by-laws in these areas and there have been lengthy delays in the approval process for by-laws by virtue of the need to involve the Province. In the case of the City's Building By-law, the Province informed Legal Services that it could not amend its by-law to require interior wireless communication standard devices for Fire Services. No reason was given other than it did not wish to have any requirements that differed from other municipalities in British Columbia.

Borrowing and Local Services Areas

Under the Surrey Act, the limits on borrowing and elector approval for loan authorization by-laws are removed. Whistler's recent special legislation provided the same exemptions. Section 6(3) of the Surrey Act adds a new authority for Surrey to provide or require alternative energy systems and infrastructure as part of a local service area. Local service areas provide owners and local governments with cost recovery financing mechanisms to build services.

Development Cost Charges

The Surrey Act proposes to collect development cost charges for a wider set of services and provides more flexibility in how the services are obtained. One benefit of removing provincial oversight would be to allow the City to index its development cost charges. Indexing to a construction cost index would allow charges to be current without having to amend the by-law.

The proposed Surrey Act allows the City to "replace, acquire and improve services" in addition to "provide, construct, alter or expand services".

Section 7(2) of the Surrey Act broadens the "sewage" works into "a sewage collection, conveyance, treatment or *Local Government Act* disposal system".

"Water facilities" are now defined in the Surrey Act as "a water supply treatment, conveyance, storage and distribution system, including water reservoirs".

"Highway facilities" are now "highway and transportation works and services including off-street parking".

The following new services are included in the realm of services for which development cost charges may be collected:

- 7(e) transit works and services;
- 7(f) recreational and library facilities; and
- 7(h) energy producing and distribution systems.

Building Regulation

Section 8 of the Surrey Act adopts the *Vancouver Charter* provision of removing municipal liability for economic loss where buildings are found to be unsafe or are not in compliance with the Building By-law. A qualified engineer or architect must certify all building plans submitted to the City.

Business Regulation

Section 9 of the Surrey Act provides a broader means to suspend or cancel a business licence where the holder of a licence has been convicted of any offence under federal, provincial or municipal laws. Gross misconduct in respect of the licenced premises is grounds for suspension or cancellation of the licence as is conducting a business or performing a service in a manner that is harmful or dangerous to the health and safety of any person.

Excavation in and Occupation of Highways

Section 10 of the Surrey Act clarifies the City's authority to impose fees for highway usage, excavation and facility relocation by utilities such as pipeline companies. The City has been challenged in recovering utility relocation costs.

CONCLUSION

Based on the above discussion, Legal Services recommends that Council:

- endorse the Surrey Act as documented in Appendix "A" to this report; and
- authorize the Mayor to forward on behalf of City Council a request in writing to the Minister of Community, Aboriginal and Women's Services and the Provincial government to take all necessary actions to bring into law the Surrey Act and that the Mayor's letter be copied to the Premier, Members of the Legislative Assembly representing Surrey constituencies and the Executive Director of the UBCM.

CRAIG MacFARLANE
City Solicitor

CM:mlg
Attach.

APPENDIX "A"

CITY OF SURREY ACT

Section

1. Definitions
2. Municipality continued
3. *Community Charter* and *Local Government Act* apply
4. Boundaries of municipality
5. Spheres of concurrent authority
6. Borrowing and local service areas
7. Development charges
8. Building regulation
9. Business regulation
10. Excavation in and Occupation of Highways
11. Power to make regulations

Definitions

1. In this Act, unless the context otherwise requires:

"municipality" means the City of Surrey continued as a corporation under section 2;

Municipality continued

2. The area of land within the boundaries set out in Schedule A and the residents in that area are continued as the corporation of the municipality known as the City of Surrey.

Community Charter and Local Government Act apply

3. Subject to this Act, the *Community Charter* and the *Local Government Act* apply to the municipality unless they are inconsistent with this Act or the regulations.

Boundaries of municipality

4. The boundaries of the municipality may be extended, redefined or altered by supplementary letters patent under the *Local Government Act*.

Spheres of concurrent authority

5. Sections 9(1) (a) [*public health*], (b) [*protection of the natural environment*], (d) [*buildings and other structures*] and (e) [*removal and deposit of soil and other material*] of the *Community Charter* do not apply to the municipality.

Borrowing and local service areas

6.(1) Section 174 [*limit on borrowing and other liabilities*] of the *Community Charter* does not apply to the municipality.

(2) Section 180 [*elector approval required for some loan authorization bylaws*] of the *Community Charter* does not apply to the municipality.

(3) Despite section 210(2) [*authority for local area services*] of the *Community Charter*, the municipality may provide energy infrastructure, improvements, systems or supplies, including alternative energy infrastructure, improvements, systems or supplies as a local area service.

Development charges

7.(1) In this section "**development**" means

- (a) subdivision of land, and
- (b) a building permit authorizing the construction, alteration or extension of a building or other structure.

(2) The municipality may provide, construct, alter, replace, acquire, and improve one or more of the following:

- (a) a sewage collection, conveyance, treatment or disposal system,
- (b) a water supply, treatment, conveyance, storage and distribution system, including water reservoirs,
- (c) drainage works and facilities,
- (d) highway and transportation works and services, including off-street parking,
- (e) transit works and services,
- (f) recreational and library facilities,
- (g) parks, and
- (h) energy producing and distribution systems.

(3) In addition to rates, taxes and charges under the *Community Charter* or the *Local Government Act*, for the purposes of assisting the municipality to provide, construct, alter,

- replace, acquire, operate or maintain one or more of the works and services under subsection (2), the council may, by bylaw
- (a) impose charges on the owners of land for which or on which developments are undertaken, and
 - (b) provide for the collection of charges so imposed.
 - (4) Charges imposed under subsection 8(3) may be made
 - (a) on the value of land or improvements or both,
 - (b) on the dwelling units or building area or developed area of the parcel,
 - (c) on the value of work permitted under a permit, or
 - (d) on a flat rate per parcel or unit.
 - (5) Charges under subsection (3) may vary with respect to different
 - (a) zones or other defined areas,
 - (b) uses,
 - (c) classes of building,
 - (d) classes of development,
 - (e) sizes or numbers of parcels or units, and
 - (f) works or services.
 - (6) A bylaw that imposes charges under subsection (3) must specify the amount of the charges in a schedule or schedules.
 - (7) The municipality must prepare a written report stating in detail the considerations, information and calculations used to determine the schedule referred to in subsection (6) and must make this available to the public, on request.
 - (8) A charge imposed under subsection (3) is payable at the time
 - (a) after an application for a subdivision has been made, but before the final approval of the subdivision has been given, or
 - (b) after an application for a building permit has been made, but before a building permit has been issued.
 - (9) Despite subsection (8), the council may, in a bylaw under subsection (3),
 - (a) authorize payment of a charge by installments and set terms under which the installment may be paid and where not paid the installment may be inserted in the real property tax

roll as a charge imposed with respect to the parcel or in relation to which the building permit was issued,

- (b) provide for refund of a charge, and
 - (c) impose on any portion of a charge that is overdue a penalty not greater than 10% of the overdue amount.
- (10) If the council authorizes the payment of a charge by installments, it must, in the bylaw under subsection (3), require the owner to post security for payment in the manner specified.
- (11) A charge under this section is not payable
- (a) if a charge has previously been paid for the same development unless, as a result of further development, new cost burdens will be imposed on the municipality, or
 - (b) in respect of a building permit authorizing the construction, alteration or extension of a building or part of a building that is or will be, after the construction, alteration or extension, exempt from taxation under section 220(1)(h) [*statutory exemptions for places of public worship*] or section 224(2)(f) [*permissive exemptions in relation to places of public worship*] of the *Community Charter*.
- (12) Despite a bylaw under subsection (3), if the municipality has imposed a charge or made a requirement under
- (a) section 729 or 965 of the *Municipal Act*, R.S.B.C. 1979, c. 290, before those sections were repealed,
 - (b) section 194 [*municipal fees*] of the *Community Charter*, or
 - (c) Division 11 [*Subdivision and Development Requirements*] of Part 26 of the *Local Government Act*.

for park land or for specific works and services outside the boundaries of land being subdivided or developed, that are included in the calculations used to determine the amount of a charge, the amount of the charge imposed or the value of the requirement made under any of the provisions referred to in paragraphs (a) to (c) must be deducted from a charge that is applicable to the types of works and services or the park land for which the charge was imposed or the requirement was made.

(13) Despite a bylaw under subsection (3), if an owner has, with the approval of the municipality, provided or paid the cost of proving specific works and services that

- (a) are outside the boundaries of land being subdivided or developed, and
- (b) are included in the calculations used to determine the amount of a charge,

the cost of those works and services must be deducted from those charges that are applicable to the works and services provided by the owner.

- (14) Section 937 [*adoption procedures for development cost charge bylaw*] of the *Community Charter* does not apply to the municipality.

Building regulation

8. Where a building inspector of the municipality accepts the certificate of a qualified engineer or architect pursuant to section 55 [*requirement for professional certification*] or section 56 [*requirement for geotechnical report*] of the *Community Charter* neither the municipality nor the building inspector nor any other municipal employee shall be liable for any loss, damage or expense caused or contributed to because the building in respect of which a certificate is issued is unsafe or does not comply with the municipality's building bylaw or other applicable law.

Business regulation

9. Despite section 60 [*business licence authority*] of the *Community Charter* the municipal officer or employee authorized by council to suspend or cancel a business licence shall in addition to the authority under section 15(1)(e) [*licences, permits and approvals – suspension and cancellation*] and section 60 of the *Community Charter* have the authority to suspend or cancel a business licence if the holder of the licence:

- (a) is convicted of any offence under any statute of Canada or the Province of British Columbia,
- (b) is convicted of any offence under any bylaw of the municipality,
- (c) has in the opinion of the municipal officer or employee been guilty of such gross misconduct in or with respect to the licenced premises as to warrant the suspension or cancellation of the business licence, and
- (d) has in the opinion of the municipal officer or employee conducted the business or performed a service in a manner that is harmful or dangerous to the health and safety of any person.

Excavation in and Occupation of Highways

10. Without limiting any other authority the municipality has respecting highways, no person may excavate in or occupy any highway except under such terms and conditions as may be imposed by Council which may include the imposition of fees and conditions pertaining to the recovery of costs associated with such excavation or occupation.

Power to make regulations

11. (1) Without limiting sections 1 to 12. the minister may make regulations as follows:
- (a) exempting the municipality from any Act applying to municipalities or modifying the application of any Act to the municipality,

- (b) prescribing additional works and services which may be undertaken by the municipality under section 8(2), and
 - (c) respecting any other matter required to carry out the intent and purpose of this Act.
- (2) A regulation of the minister prevails over a bylaw of the municipality in the event of conflict.