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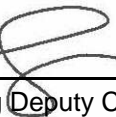
**Item No. 14.1.5**  
**Halifax Regional Council**  
**November 8, 2016**

**TO:** Mayor Savage and Members of Halifax Regional Council

Original Signed by 

**SUBMITTED BY:**

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Jacques Dubé Chief Administrative Officer

Original Signed by 

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Jane Fraser, Acting Deputy Chief Administrative Officer

**DATE:** September 16, 2016

**SUBJECT:** HRM Charter Review Update

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#### **ORIGIN**

April 15, 2014 Council motion to direct staff to negotiate a new Halifax Regional Municipality Charter based on the scope as outlined in the February 18, 2014 staff report, reporting back to the Executive Standing Committee as appropriate and for approval and recommendation to Regional Council when complete.

March 19, 2013 Council motion to authorize a joint review of the HRM Charter with Service Nova Scotia and Municipal Relations.

#### **LEGISLATIVE AUTHORITY**

Executive Standing Committee Terms of Reference Section 3.6.1 General Council Governance:

*The Committee shall act as a review committee for matters related to the general self-governance and administrative of Council as directed by Regional Council.*

#### **RECOMMENDATION**

It is recommended that Halifax Regional Council direct staff to undertake public consultation on natural person and peace order and good government powers as part of the HRM Charter Review.

## **BACKGROUND**

The HRM Charter was passed in 2008 by the Province of Nova Scotia as the governing legislation for Halifax Regional Municipality. The Charter was adopted in recognition of HRM's unique status. As is the case today, in 2007 HRM was experiencing population growth and sustained commercial and residential development. This continued growth created the need for innovative policy design, regulatory flexibility and the ability to secure legislative amendments within a reasonable amount of time to manage local challenges effectively. While the preamble to the Charter contains references to HRM's significance to Nova Scotia's economy, the legislation itself does not contain substantial differences from the MGA. The differences in the current version of the Charter are summarized as follows:

### Additional Powers

- HRMbyDesign planning powers for downtown core
- Increased notification distance to grant variances
- Power to build Oval on the Halifax Common
- Increase in monetary amount for which Ministerial approval needed (\$100K to \$500K)
- Create Community Councils and delegate powers
- Provide supplementary funding to school boards
- Site plan approval for external appearance of structures (limited to Regional Centre)
- Ability to enter into taxation agreements with Halifax International Airport Authority and eligible industrial properties
- Expanded services for which infrastructure charges may be collected
- Ability to adopt compensation disclosure policies for the Municipality and its agencies, boards and commissions
- Power to adopt election campaign finance regulations

### Additional Restrictions

- Requirement to appoint Auditor General
- Requirement to protect Dartmouth Commons
- Must conduct a 10-year review of HRMbyDesign
- Bonus zoning limited to Regional Centre area
- Bonusing agreements must include an affordable housing component in Centre Plan area (although not in the downtown area governed by HRMbyDesign)

In 2013 Council approved a review of the HRM Charter, to be undertaken by staff from HRM and NS Municipal Affairs. The objective of the review was to support HRM's autonomy through increased legislative and financial powers. A renewed HRM Charter would be similar to other stand-alone municipal charters across Canada and reduce the number of requests for legislative amendments HRM must make. Following a review of Canadian municipal legislation, the scope of the HRM Charter Review was approved by Council in 2014. Guiding principles for the new HRM Charter are to:

- Recognize the maturity of HRM
- Be strategically focused
- Be permissive in nature
- Provide increased legislative autonomy
- Provide increased financial autonomy

The intent of a new Charter is to move HRM towards a more permissive statutory regime that would broadly empower HRM to act on behalf of the interests of residents, subject only to such limits as are necessary. The scope of work approved by Council in 2014 includes natural person powers, broader and more permissive bylaw powers, ability to determine some governance structures, greater flexibility in taxation powers, research on partnering with the non-profit and private sectors, and ability to establish tax agreements.

## DISCUSSION

Research and staff level discussions with Municipal Affairs have been ongoing since 2014, though resourcing issues at both ends have increased the timelines beyond original expectations. Some issues outlined in the scope above, such as commercial tax assessment and tax agreements, have moved forward through stand-alone legislative amendments. There are a number of planning-related reports coming forward with potential amendments connected to the Centre Plan, which staff hope to address in the HRM Charter Review. These include enabling inclusionary zoning, expanding bonus zoning and site plan approval for the external appearance of structures across the region, and regulating development to protect neighbourhood character and heritage properties. There has been a significant level of public consultation on these issues through Planning & Development's work on the Centre Plan. Some minor housekeeping amendments to the Charter are also anticipated in an upcoming sitting of the Legislature. These housekeeping amendments do not change any powers under the Charter, but rather add clarity by consolidating sections (eg, all definitions in one place, all committee and community council information together), or update language to reflect current HRM practices (eg, replacing "policy" with "Administrative Order"; changing Treasurer to Chief Financial Officer).

The most significant change being sought to the HRM Charter is the move to natural person powers (NPPs). NPPs are not amendments to existing legislation, but represent an entirely different approach to drafting the legislation itself. NPPs would have a significant impact on what is included in the Charter and how it is drafted. NPPs are not a new concept for municipal legislation, as seven other provinces have enabled them for municipalities, and, in Alberta's case, even school boards. However this is the first time NPPs have been considered in a Nova Scotia context. A brief explanation of NPPs is below:

- **Legislative Approach:** NPPs take a permissive approach that treats municipalities more like private individuals and corporations than subordinate government bodies. They enable municipalities to exercise a wide range of financial and business permissive powers rather than setting out explicit lists of specific powers. NPPs allow municipal governments to expend funds and borrow in the manner Council considers appropriate unless such expenditure or borrowing is expressly prohibited by legislation. This is the opposite of the current approach of fitting the expenditure within a "laundry list" of permissible expenditures and a legislated limitation on borrowing mainly by debenture.
- **Abilities:** Natural person powers give municipalities the ability to do anything an individual has the right to do. Therefore their applicability does not relate to taxation or legislative authority, as individuals cannot impose taxes or make laws that regulate the public. Those types of powers would continue to be set out specifically in the HRM Charter. However an individual can lease or sell property, give grants and loans, create non-profit organizations, enter into mortgages, etc. Examples include increased borrowing capabilities such as lines of credit and mortgages; the power to purchase, own and use property for purposes other than municipal purposes; enter into contracts and leases for purposes other than municipal purposes; purchase shares in companies; and provide increased flexibility to make grants.
- **Restrictions:** It is important to note that NPPs are usually accompanied by restrictions. Common themes include direct financial support to the private sector and limits around borrowing powers.

NPPs would provide a wholesale change to HRM's ability to act autonomously to provide for municipal needs and forestall the need to develop specific legislation on individual issues. Therefore it is necessary to determine whether the Charter will take an NPP approach before further significant work is done. Discussions with Municipal Affairs indicate a willingness to consider an NPP approach but more information has been requested on (a) tools of interest to Council that would be enabled through NPPs; (b) potential restrictions; and (c) public input. HRM staff are recommending that Council gather information on both potential tools and restrictions via public consultation through online submissions via [www.halifax.ca](http://www.halifax.ca). HRM staff has developed a background piece to help inform the public discussion. It is attached as Appendix 1: Natural Person Powers Policy Rationale. HRM staff propose that this consultation take place throughout December and January, with a recommendation report on tools and

restrictions to come back to Council in as soon as possible afterwards for consideration.

As noted above, NPPs do not address taxation powers, taxation being a government power and not an ability given to corporations or individuals. Currently Council has only the ability to set commercial and residential tax rates for urban, suburban and rural areas. HRM would like greater flexibility to set different rates based on other criteria, so it could address current and future policy issues in a more effective way. In November 2015, Council passed a motion requesting amendments to the HRM Charter that would provide Council with greater legislative authority in setting taxes and charges respecting general tax rates and area rates for both residential and commercial properties. Specifically, Council requested:

- a) The authority for Council to determine and set rates and charges that are different for:
  - i. Different areas of the Municipality
  - ii. Different categories and size of businesses, and
  - iii. Different classes of building and size of structures, and
  
- b) The authority for Council to determine and set:
  - i. A rate or charge for frontage on a street
  - ii. A uniform charge or amount of tax that is payable per property or per dwelling unit
  - iii. A maximum and minimum charge or amount of tax that is payable, and
  - iv. A surtax or graduated rates.

Changes to commercial tax assessment introduced as Bill 177 in the Spring 2016 session of the Legislature was somewhat related to one of these requests; however the approach remains very prescriptive. HRM is seeking more flexibility through the increased range and authority of taxation powers listed above. This could be achieved through a grant of more general powers, instead of the prescriptive approach currently in place under section 79 of the Charter, to mirror the NPP approach outlined above. It is important to note that legislative changes are not for the purpose of increasing the tax burden on residents but, rather, to give HRM the ability to use different taxation tools in different scenarios to support public policy objectives such as planning and economic development. Legislation that is too detailed or specific could restrict the potential effectiveness of municipal tax policy.

Currently, the HRM Charter sets out the purpose of the legislation, such as:

- giving broad authority to the Council, including broad authority to pass by-laws, and respect its right to govern the Municipality in whatever ways the Council considers appropriate within the jurisdiction given to it; and
  
- enhancing the ability of the Council to respond to present and future issues in the Municipality.

Peace, order and good government (“POGG”) would change the way these provisions operate. Rather than being a statement of the purpose for the Charter, POGG would require that all the powers of the Charter be read broadly. For example, courts have traditionally read taxation powers strictly against the Municipality. POGG would require taxation powers be read broadly which will assist in interpreting the new taxation powers Council has requested from the Province.

## **FINANCIAL IMPLICATIONS**

There are no financial implications arising from this report. Staff will return to Council with recommendations related to NPPs and potential restrictions after consultation is complete, and outline any related financial implications. Should the Province make amendments to taxation, staff will return to Council to seek its priorities and assess any financial implications.

### **RISK CONSIDERATION**

There is a low risk associated with the recommendation in this report to conduct public consultation. Soliciting public feedback on issues is a regular activity HRM undertakes without significant risk. Risks associated with potential powers and restrictions stemming from NPPs and POGG will be evaluated in a follow up report.

### **COMMUNITY ENGAGEMENT**

Public consultation on NPPs and POGG is proposed as the report recommendation.

Extensive engagement on taxation changes, including face-to-face meetings, was carried out in 2015 with a variety of Business Associations, Chambers of Commerce and organizations working with businesses in the Halifax region. A survey of 275 Halifax business owners and managers was also conducted on issues affecting small & independent business, and in-depth interviews were conducted with 10 small business owners to better understand the issues affecting them.

### **ENVIRONMENTAL IMPLICATIONS**

N/A

### **ALTERNATIVES**

Council could choose not to proceed with public consultation on NPPs and POGG. This is not recommended as input from HRM residents an important part of the Charter Review, and the Provincial government is likely to place greater weight on HRM's requested changes if they are supported by public input.

### **ATTACHMENTS**

Appendix 1: Natural Person Powers and Peace, Order and Good Government Power Policy Rationale

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A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.php> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

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## HRM Charter Review

### Policy Rationale

#### ISSUE

Natural Person Powers (NPPs) and Peace, Order and Good Government Power (POGG)

#### INTRODUCTION

NPPs and POGG are a trend in municipal legislation that supports increased local self-government (the liberty of local governing body to act autonomously to provide for local needs). NPPs enable municipalities to exercise a wide range of permissive powers rather than setting out explicit lists of specific powers. This legislative approach treats municipalities more like corporations or individuals than subordinate government bodies. NPPs allow municipal governments to do anything that is not expressly prohibited, as opposed to a “laundry list” of permissible actions. POGG clarifies that the powers granted to the Municipality are granted in general terms and are to be read as giving broad authority to the Municipality to govern the Municipality in whatever way the Municipality considers appropriate within the jurisdiction given to it and to enhance the ability of the Municipality to respond to present and future issues.

NPPs extend the approach taken in the current HRM Charter which states that broad powers are not limited by specific powers. This clarification of powers in 2008 confirmed that HRM is allowed to act in areas that are not specifically outlined in legislation. NPPs and POGG are a logical continuation of these authorities. NPPS would grant HRM greater ability to raise revenue, provide services. POGG expands the existing purposes of the HRM Charter by requiring a broad reading to be given to the powers granted to the Municipality.

POGG sets out how the language is read and, accordingly, it does not provide an additionally authority. Rather, it requires the powers already granted to be interpreted liberally as opposed to strictly. In contrast, natural person powers give municipalities greater authority by providing it with the ability to do anything an individual has the right to do. Therefore their applicability does not relate to taxation or legislative authority, as individuals cannot impose taxes or make laws and regulations. Those types of powers would continue to be set out specifically in the HRM Charter. However an individual can lease or sell property, give grants and loans, create non-profit organizations, enter into mortgages, etc. Natural person powers would allow municipalities to access these types of fiscal tools. Generally, NPPs “include the powers to purchase; own and use property; sue and be sued; enter into contracts; indemnify; incorporate subsidiaries; purchase shares in companies for municipal purposes; create not-for-profit organizations; make grants; enter into public private partnerships; or otherwise act in the nature of a corporate body with full and natural person powers” (Lidstone D., *The Model Municipal Charter*, 2005).

NPPs allow municipalities to carry out duties within general spheres of jurisdiction without the need for detailed delegation found in section 79 of the current HRM Charter. Natural person powers address daily operational matters such as entering into contracts, acquiring property, and hiring staff. They increase revenue-generating opportunities by allowing a municipality to do what any corporation could do as a legal entity to generate revenue. It is important to note that NPPs can be, and usually are,

accompanied by restrictions, and are drafted to ensure municipal actions do not interfere with provincial interest (see below for more details).

### **JURISDICTIONAL SCAN**

A number of Canadian municipalities have natural person powers. Saint John, NB, has NPPs by virtue of being incorporated by a royal charter in 1785. Over the past 20 to 30 years many provinces have moved to grant their municipalities NPPs, in recognition of their status as an independent order of government with increasing responsibility and their related need for revenue-raising flexibility. Legislation enabling natural person powers for municipalities exists in the following Canadian jurisdictions:

- British Columbia
- Alberta
- Saskatchewan
- Winnipeg, MB
- Ontario (including the City of Toronto Charter)
- Quebec
- Saint John, NB
- Yukon

In Alberta, the provincial government recently granted its school boards natural person powers as a way to give them greater flexibility and creativity to conduct their business. The government's rationale states "NPPs are fundamental to increased local autonomy, community engagement, self-government, and responsiveness to student needs. It encourages school boards to be more innovative, particularly in terms of establishing collaborative partnerships with municipalities, business and industry, not-for-profits, and post-secondary institutions" (Alberta School Board Association, 2015).

A number of Canadian municipalities have peace, order and good government powers, including:

- British Columbia
- Alberta
- Winnipeg
- Ontario (including the City of Toronto Charter)
- Quebec

### **RATIONALE**

Under traditional "laundry list" legislation, municipal governments are unable to respond to situations which had not been contemplated when the empowering legislation was drafted (McNaughtan, 1995). POGG clarifies that the powers of the Charter are to be read broadly. This includes the taxation powers which courts have traditionally read strictly against the municipality. This will assist in interpreting the new taxation powers Council has requested from the Province.

NPPs provide cities with more flexibility to develop policies and raise capital that allows them to meet increasing demand for varied services and relieve pressure from the property tax base. This is particularly needed in larger cities which are taking on new responsibilities as economic and population

hubs for their regions. HRM's recently approved Economic Strategy sets a number of population and economic goals that NPP would help achieve. By 2021 Halifax aims to increase the population to 470,000, the labour force to 271,000 and the GDP to \$22.5 billion. Achieving these objectives would be a net benefit not only to HRM but to the Province as a whole. However they also come with the cost of increased demand for services. Through NPPs, HRM is seeking the ability to provide more services to a growing population, by exploring new options for raising revenue.

NPPs present a number of economic and social development opportunities for municipalities by allowing them the flexibility to develop innovative approaches. Permissive legislation would encourage HRM to invest the time and resources in research to develop new tools, as well as their appropriateness, chance of success, and impact on other sectors and municipalities. There have been past occasions when HRM has wanted to pursue initiatives that increased transparency and encouraged local economic development, but has had to wait on legislative change to implement them. These include instances where HRM wished to go above and beyond the minimum policies and standards set in legislation, but was not able to because it did not have explicit permission in the HRM Charter. Some examples include:

- Solar City – Legislative change was needed to allow HRM to modify its Local Improvement Charge (LIC) collection process so homeowners could finance the cost of a solar system over a period of up to 10 years. With NPPs, HRM would have had the authority to make changes to its own LIC program.
- Campaign finance reform – The Municipal Elections Act sets out reporting requirements for campaign contributions. However HRM wished to develop additional rules around campaign financing such as spending limits, maximum contributions, and disclosure requirements. HRM was unable to develop any new campaign finance policies as the HRM Charter did not specifically give HRM this power. Under NPPs HRM would have been able to set its own policies and rules around campaign finance, above and beyond those outlined in the Municipal Elections Act.
- Compensation disclosure – Council wished to disclose salaries of HRM employees above \$100,000, similar to the Provincial government. However there was no mechanism for it to do so because this power was not expressly stated in the HRM Charter. HRM therefore required legislative change to permit it to disclose the information. Similar to campaign finance, HRM would have been able to set its own policies around disclosure if it had natural person powers.
- Heritage incentives – HRM is permitted to give tax credits for reinvestments in properties located in Heritage Conservation Districts. If HRM had NPPs, it could put in place similar programs anywhere in the municipality. It could also consider Tax Increment Equivalency Grant (TIEG)-style programs. Under TIEG agreements, the municipality negotiates an arrangement with a taxpayer to invest in a property, and the municipality shares the resulting incremental taxes from increased investment with the taxpayer.

In other cases, HRM has not received requisite enabling legislation for an initiative leading the municipality to find an alternate way to implement it that is less transparent:

- The earlier versions of the Halifax International Airport Authority (HIAA) tax agreement were done via a convoluted development grant agreement which involved HRM collecting the funds and then returning them to the airport.



## Appendix 1

- Convention Centre funding – the existing formula is a work-around of tax increment financing. Tax increment financing (TIF) is a tool used commonly in the US and also in some Canadian cities to encourage redevelopment of blighted areas. The municipality issues a bond for a project designed to improve the area (eg, road paving, water/sewer infrastructure) and encourage businesses and properties to locate there. The taxes from those new properties are used to pay off the principal and interest of the bond.
- Tax relief to non-profit organizations – currently Council can only provide a reduction to the residential tax rate, unless an organization is a charity and/or the services provided might otherwise be a responsibility of the Council. This leaves some non-profit organizations at a disadvantage. The HRM Grants Committee has considered new approaches to tax relief that are less onerous for non-profits; however, these approaches are constrained by current limitations in the Charter. With NPPs HRM could design more flexible relief programs to support non-profits.

NPPs would allow HRM to proceed on innovative initiatives in a timely way. There are issues that HRM could explore in more detail, such as niche sector and business incubator growth, investment attraction in economically-depressed communities, and more effective support to social enterprises and non-profits. The Halifax Partnership is also undertaking a review of legislation and economic development tools which will inform how NPPs could be used. Some potential uses that have been implemented in other jurisdictions include:

- Partnering agreements – municipal governments can form an agreement with an external entity (eg, public authority, business or society), whereby the external entity provides a municipal service on behalf of the local government. The BC Community Charter policy paper suggests rec centres, theatres, and community/social services. The goal of these type of agreements is cost-effectiveness, if it is cheaper for an external agency to deliver a service.
- Increased expenditure and borrowing opportunities – currently HRM must receive Ministerial approval for any multi-year commitments over \$500,000 (*HRM Charter* s.111(5)). HRM also needs ministerial approval to borrow, regardless of the amount, and must submit a formal request for debt financing every six months to the Province. NPPs would remove these restrictions, increasing operational efficiencies by cutting down on the time needed to approve tenders and process expenses.
- Property management – Ontario municipalities are able to act as mortgage lenders, leveraging their strong municipal credit ratings for property owners who may not otherwise qualify for funding. These mortgages are generally meant to encourage a public benefit such as extensive energy retrofits to homes or affordable home ownership.
- Establishing corporations – several Ontario municipalities (Toronto, Hamilton, Ottawa, possibly others) have established Municipal Employee Credit Unions to provide financial services to employees and strengthen local investment to the community. These credit unions may also include other sectors such as health and education employees.
- Issuing or buying shares – The City of Edmonton has established EPCOR, a utility that provides water, wastewater services and electricity to communities throughout Canada and the United States. It is wholly owned by the City of Edmonton and provides the municipality annual dividends (\$141 million in 2015).

## Appendix 1

It is true that NPPs would open Council up to an increased number of requests for support. HRM would have the responsibility to conduct evidence-based research, consultation and risk assessment before implementing any new tools. A 2013 paper from Alberta on its MGA Review also notes that NPPs can lead to actions unrelated to municipal purposes which are set out in its Act. This echoes Manderscheid (2005) whose paper on NPPs and municipalities recommends that municipal NPPs should be restricted solely to the municipality's business function.

### **RESTRICTIONS ON NPPs**

Municipal legislation with NPPs often includes restrictions around some types of actions. Common themes include direct financial support to business and borrowing powers. Most Acts also stipulate that provincial authority prevails in any instances where municipal and provincial authority conflict. Below are some examples of restrictions in Canadian city charters. HRM would likely wish to implement similar restrictions.

#### Toronto

The City of Toronto Act lists the following restrictions on corporate and financial matters in section 13:

1. Impose any type of tax, including taxes under any Part of this Act.
2. Make a grant or loan.
3. Become a bankrupt under the Bankruptcy and Insolvency Act (Canada).
4. As an insolvent person, make an assignment for the general benefit of creditors under section 49 of the Bankruptcy and Insolvency Act (Canada) or make a proposal under section 50 of that Act.

Similarly, under Economic Development in section 82(2), the Act prohibits Toronto from granting assistance by:

- a) giving or lending any property of the City, including money;
- b) guaranteeing borrowing;
- c) leasing or selling any property of the City at below fair market value; or
- d) giving a total or partial exemption from any levy, charge or fee

#### Winnipeg

The City of Winnipeg Charter has restrictions on corporate matters in section 213 "Control of Corporations". These prohibit Winnipeg from:

- a) incorporating a corporation or nominating or authorizing a person to act as an incorporator of a corporation;
- b) acquiring any interest in, or guaranteeing or exercising any power as a holder of, a security of a corporation; or
- c) indemnifying or guaranteeing the liability of another person.

Winnipeg also has limits regarding loans and loan guarantees in section 220(2): Council may not make a loan or guarantee the repayment of a loan if making the loan or guarantee will cause the city to exceed a limit prescribed under subsection (1).

## Appendix 1

### Alberta

The Alberta Municipal Government Act – sets out Limits on Municipal Powers in Part 3 Division 8. These 2 pages of exceptions include land disposal, mines & minerals, control of profit corporations, firearms, and forest & prairie protection.

### British Columbia

The Vancouver Charter in Sections 236 to 247 sets limits and regulations around borrowing power.

The BC Community Charter lists Restrictions on Providing Assistance in Part 3 Division 2:

s. 25: General prohibition against assistance to business and exceptions (acquiring heritage property, increasing public knowledge about community history)

Additional restrictions are found in Part 6 Division 3: Expenditures, Liabilities and Investments (s. 173 and 174 limits on expenditures and borrowing), and Part 6 Division 5 — Restrictions on Use of Municipal Funds (s. 190 Purposes for which borrowed money may be used).

## SOURCES

Alberta Municipal Affairs. MGA Review Discussion Paper: Municipal Powers. December 2013. <http://mgareview.alberta.ca/wp-content/uploads/media/Municipal-Powers-Discussion-Paper.pdf>

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Alberta School Board Association. Natural Person Powers. May 2015. [http://www.asba.ab.ca/wp-content/uploads/2015/01/natural\\_person\\_powers.pdf](http://www.asba.ab.ca/wp-content/uploads/2015/01/natural_person_powers.pdf)

British Columbia Community

Charter [http://www.bclaws.ca/civix/document/id/complete/statreg/03026\\_00](http://www.bclaws.ca/civix/document/id/complete/statreg/03026_00)

City of Toronto Act <https://www.ontario.ca/laws/statute/06c11>

City of Winnipeg Charter <http://web2.gov.mb.ca/laws/statutes/municipal/c03902e.php>

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