Proposed Contents of the Community Charter

-Comments and recommendations submitted by the Local Government Management Association, Government Finance Officers of BC and Building Officials Association of BC.

LGMA Comments and Recommendations

Part 1 – Principles and Interpretation

Section 1: The Local Government Act refers to municipalities as democratically elected, "independent", responsible and accountable; the Charter substitutes "autonomous" for "independent"; this may or may not be legally limiting depending upon how the Courts define these terms.

This section also recognizes that "one size does not fit all" and that differing municipalities have different needs and requirements and ultimately an ability to determine their own respective levels of taxation and expenditure.

The Charter states: "Before new responsibilities are assigned to a municipality there is supposed to be provisions for resources required to fulfill the responsibility". While this is a fine "principle" it is unclear how this will be reconciled should a difference of opinion arise on the interpretation.

Some communities are already experiencing a change of service or withdrawal of service traditionally provided by the province. Many communities will feel compelled to fill the void without an agreement from the province to provide adequate resources.

Section 2: This sets out the principles of municipal-provincial relations, which is the first time we have had the two respective roles delineated by statute – a very positive step.

Section 2(2)(c) is the section that is designed to preclude downloading by the Province on municipalities. While it may address assigned responsibilities it does not address, in any way, the passive downloading which is rampant throughout the Charter.

Section 2(2)(f) has the potential to limit the impact of local government powers set out in the Charter by providing the Province with the opportunity to over rule a local government decision by saying it is not in the best interests of the citizens of British Columbia to allow the decision to proceed.

RECOMMENDATION

The Charter should clarify the definition of downloading to include passive downloading so that there is recognition of the impact of these actions on local governments and employ some mechanism to recognize and alleviate the accompanying financial burdens.

RECOMMENDATION
Section 2(2)(e) should be stronger. The "consideration of municipal interests" has many meanings particularly when it comes to discussion of such issues as A.I.T. and does not bind the Province to taking any action in response to municipal concerns.

Section 3*:* This section requires the Courts to interpret the Charter and the LGA broadly, which is a vast improvement over previous legislation. However it is only interpreted broadly to give municipalities and their Councils "adequate" powers and discretion – the term adequate gives the connotation of somehow limiting the broad power.

RECOMMENDATION
Adequate powers, and who determines their adequacy should be defined in the Charter.

Part 2 – Municipal Purposes and General Powers

Section 7: Within the spheres of new, broad powers there are also four areas that are described as concurrent authority and require ministerial approval in order to enact bylaws in relation to these matters. Areas of concurrent authority include public health, protection of the natural environment, buildings and other structures and the removal of soil and the deposit of soil or other material. The concurrent authority may be more restrictive than what was originally envisioned in the Charter. It will depend largely upon how this is interpreted at the provincial level and requires more clarification for local governments.

Although there are some limitations required for reasons of public accountability, the natural person powers provision in the Community Charter is a major step forward for municipal government in British Columbia.. However, it will depend largely upon how this is interpreted at the provincial level and requires more clarification for local governments

Section 7 (2) confers broad authority to provide ***any*** municipal service, (covering activities, works or facilities), and the authority to regulate, prohibit, and require persons to take action in relation to those services. Section 7 (2) of the Charter is far reaching. This section along with section 7 (3) and 7 (4), (that confer broad authority to regulate in relation to 11 autonomous and four concurrent areas of regulatory authority), opens up a whole new world for BC municipalities when compared to our counterparts across Canada.

The fundamental powers section of the Charter provides broad authority to regulate, including the authority to prohibit and to make requirements, in defined spheres of autonomous regulatory authority and concurrent areas. It is noted that the *prohibition* of business is not generally authorized as section 7 (4) excludes the ability to prohibit unlike the previous section 7 (3) for the other stated powers.

Regulation rather than prohibition of business adheres to the philosophy of free enterprise predominant in the western world, however, local governments desiring to adhere to the moral values of the respective citizens of their community may wish to increase their powers concerning certain business activities.

RECOMMENDATION

The four areas of concurrent authority should be included within the general powers. As with all other general powers, the Province has paramount authority in each of these four areas and should set the Provincial standard. Each local government should be required to meet the standards in any exercise of authority. However, if the local government chooses to exceed this standard, they should have the ability to do so. The requirement to receive provincial authority to act in any of these four areas of proposed concurrent authority severely restricts the ability of local government to operate efficiently within these areas. Local government has documented cases where receipt of provincial authority can take many months.

Section 8: This section specifies the power to regulate, prohibit and to make requirements in cooperation with the Province in defined areas of concurrent regulatory authority.

These four defined areas are public health, protection of the natural environment, buildings and other structures, and removal and deposit of soil and other material. The Charter requirement for Minister approval in these areas of mutual interest applies a reasonable approach to allow municipalities to voluntarily expand their authority into previously occupied provincial territory. However, the Province must concur that the requirement is necessary for that municipality before it can be adopted.

Section 10: This section establishes that as long as a municipal bylaw does not require an individual to contravene a provincial statute the bylaw will stand. Therefore, a municipality is now empowered to enact a bylaw that may have more stringent requirements than a Provincial law, but may not impose a requirement that is less than the provincial statute. However, this section must be read in conjunction with 7(3) of Part 2, which lists this issue under concurrent authority requiring Provincial concurrence with any bylaw changes which would differ from the building code.

This section simply reinforces the position of local government professionals across the province; the four areas of proposed concurrent authority should be general authorities.

Section 12: This enables a Council to establish any terms and conditions it considers appropriate in its bylaws or in exercising its other powers. This is incredibly broad power, and a welcome improvement over the LGA. However the Charter still does not give local governments the ability to prohibit business. The reason for this is that prohibiting such businesses as massage parlours is in fact regulating morality, which is the purview of the Province. However, Vancouver has the ability, through Section 209 of their Charter to prohibit on a unanimous vote of Council. This begs the question, why is Vancouver able to have these powers yet the balance of municipalities are not?

RECOMMENDATION
The proposed Charter should be amended to grant this power to the balance of municipalities.

Section 14: This section outlines the authority for municipalities to establish inter-municipal regulatory schemes in relation to all areas of regulatory authority.

The efficiency of partnering with other municipalities is a welcome addition to our repertoire. Sharing staff resources with or without regional district participation also creates the opportunity for consistency of bylaws and their application to aid in certainty for the general public when doing business across various municipal jurisdictions.

Allowing municipalities to provide a service within another municipality on agreed terms and conditions opens up the ability to apply economies of scale when delivering services to the municipal citizens.

Section 15: Section 15(4) & (5) provides general powers for municipalities to establish a standard code or rule by adopting a standard, code or rule published by a known body.

This provision simplifies bylaw drafting and allows for the use of provincial, national, or international standards to be included in municipal bylaws, which are researched, drafted and updated by the professionals in the respective field. This is another welcome addition for municipal governments, particularly the smaller sized municipalities that may not have the resources to employ an engineer, for example, when incorporating works and services or subdivision engineering standards.

In summary, the natural person powers and the sections of Part 2 provides a menu of services that can be delivered to citizens in a variety of ways subject only to the small number of express limits contained in the Charter and the innovative minds of the council, staff and advisors of BC's municipal governments.

Section 16: The new power to enter on or into property is a welcome and positive step. It will enable municipalities to better enforce their bylaws, particularly building bylaws. The remaining sections in this Part are similar to the corresponding sections of the LGA.

Part 3 – Additional Powers and Limits on General Powers

Part 3 of the Charter deals with regulatory powers such as Building Inspection, Business Licensing, Animal Control and other General Property Powers. In comparison to the Local Government Act the powers discussed in this Part are vague. It will take some time to find the real limits of the "new powers".

Section 21: This section sets out the authority for what have come to be known as P3's. While there are some controversial issues surrounding the use of this authority, it is

agreed that it is an important authority to maintain for those municipalities who wish to use it.

Section 22: This area of the Charter grants authority to provide services in the areas of public transportation, water supply and gas, electrical or other energy supply

RECOMMENDATION
This section does not grant authority for sewer services and should be expanded to do so.

Section 25: Business assistance is permitted when it deals with heritage properties or resources. This is more of an issue for older communities where heritage is a market attraction and could result in many visits to Council for the purpose of tax relief. Again, the intent is well meaning in terms of assisting and encouraging heritage preservation. However giving relief to one group may very well mean giving relief to most, if not all of them. Municipalities may struggle with deciding who should and shouldn't receive exemptions. Additionally, those with a number of heritage sites may find that they need to pick up the loss in revenue through tax increases to other classes.

Section 26: General property powers have been enhanced. Section 26(3) provides for the sale of property that is not available to the public. There is still the requirement to post notice, but there is no longer the requirement to offer all property to sale to the public. This may streamline the ability of a local government to dispose of land to a commercial or industrial interest. This is a very positive step for local governments.

Controlling tenure rights to parkland eliminates the encumbrances in the current process with the Province. However, the new standards that require elector approval on parkland issues seem more onerous, especially regarding property exchange. Presently, if subdivisions occur in a developing area, each developer is required to dedicate 10 per cent of his property to park. Instead of having a number of small parks dotting the area, we currently request provincial approval to amalgamate them into one or two. The Charter seems to "add" an additional step of electoral approval that was previously not required. This seems to be an extra step as opposed to streamlining the process.

Comments regarding the disposition of parkland are similar to title transfer above.

Section 27: Dedicated parkland can still only be undedicated through the electoral process. There had been some discussion about eliminating the need to go back to the electorate and it is encouraging to know this authority remains in the hands of the citizens.

Section 31: The general powers of expropriation have been expanded and clarified and that too is a welcome move.

Sections 35-45: Division 5 of Part 3 outlines the new ownership of highways provisions. By vesting ownership of highways in the municipality, the lengthy highway exchange bylaw process will no longer be required. This will streamline the development process.

The broad powers to regulate and prohibit highway uses are a vast improvement over the LGA. However it is important to note the Council must post notice of its intentions and provide an opportunity for those who deem they are affected by the process to be heard. This provides the balance so often spoken of whereby the Charter on one hand provides new authority for local government while imposing new requirements for public input. It will be important to monitor this process to determine, in future, the worth of the public input process and whether or not the requirements in the Charter meet the needs of the public or make the process so bureaucratic as to wind up being inefficient.

The Charter is silent on the issue of contamination that may be present in road beds that are transferred to municipalities.

RECOMMENDATION

The Charter should be amended to include relief for environmental liabilities that may arise from cleanup responsibilities for contaminated road beds transferred to municipalities through the ownership transfer of municipal highways.

Section 47: The new animal control provisions allow a Council to enact a bylaw to provide for the seizure and destruction of any animal that is suffering to a degree that cannot be otherwise reasonably addressed. This is similar to the provisions of the Prevention of Cruelty to Animals Act (PCAA) that provides authority to the SPCA to seize and destroy for "critical distress" that cannot be relieved through medical intervention. The difference is that the PCAA requires a veterinarian opinion, while the Charter does not.

The Charter provides new powers to seize animals that have strayed onto private property or are on unfenced land and not securely tethered or contained. This will make the job of the animal control officer much easier to fulfill.

RECOMMENDATION

It is recommended either the Charter be amended to reflect the PCAA for those municipalities that do not use the SPCA or councils ensure they provide for a veterinarian opinion within the bylaw. Otherwise municipalities may be open to providing compensation to an owner if a Court determines the animal's suffering could have been otherwise addressed.

Sections 52-55: The Charter does not carry forward the same requirement as the Local Government Act Section 692.1 (2) "The building code and other regulations under subsection (1) apply to all municipalities and to regional districts or parts of them not inside a municipality, and has the same force and effect as a validly enacted bylaw of the municipality". Therefore, in areas where there are no building bylaws does the Provincial Code still apply? One would assume it would, otherwise the public is left unprotected. Communities neighbouring unregulated areas are left at a disadvantage in attracting business, as the cost of development is considerably cheaper in areas that require no standards for building.

RECOMMENDATION

Division 8 of Part 3 – Building Regulations has one glaring omission. The Building Code Board of Appeal is no longer in existence. It is highly recommended the Appeal Board be put back into the Charter before it is introduced in the House. Also, the issue of joint and several liability, regardless of the authority of the Attorney-General's office should be included in the Charter. Quite simply, joint and several liability should be outlawed and guidelines for proportional liability with time limitations should be established. It is not that municipalities want to operate with impunity, but responsibility should be proportional to the level of involvement and there should be time limits on liability (suggest 10 years) so that future citizens are not being held liable for distant past acts.

Section 56-58: Division 9 – Business Regulations is disappointing in that, as previously stated, it does not have the effect of prohibition. However, this section is written in such a way that it may have the effect of prohibition, depending upon how it is utilized. This does not replace the need for prohibitory powers and again, it is emphasized in order to maintain consistency across the Province, which is a stated goal of the Charter, that all municipalities should have the same powers as set out in Section 209 of the Vancouver Charter.

There are also some noted deletions in the regulations such as the regulating of hours. For example, Sunday/holiday shopping is not addressed in the Charter. It seems to read that municipalities now have the full ability to allow or disallow shopping time within their municipalities. The vagueness of the section seems to indicate that licence exemptions could be tough to sort out. For instance, are business licences still exempt for a business that rents only two suites? Again, it is reasonable to assume that in order to give more autonomy to the municipalities that they be given a broader field of authority.

Section 60: The nuisance situations set out in this section have been expanded. When the concurrent powers for the protection of natural environment are changed to regular powers, municipalities will have to carefully review how they deal with offences against the provincial standard for environmental protection versus offences against some higher standard that may be enacted locally.

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Part 4 – Public Participation and Council Accountability

Section 68: Division 1 of Part 4 does not change the electoral process set out in the LGA except that municipalities may no longer exercise the ability to charge a nomination fee (also see Section 177 (3)). This is an issue for larger municipalities that have used this option as a means of discouraging nuisance candidates such as Mickey Mouse or Superman. Again, removal of this authority is one more area where the City of Vancouver has powers not available to the other municipalities in the Province. Regional districts will also continue to have this ability.

RECOMMENDATION

Therefore, in the interests of consistency and fairness, this authority should be restored to all local governments.

Section 73: The former counter petition process has been replaced with an Alternate Approval Process with the threshold of five per cent of the number of electors now proposed to be 10 per cent. For large municipalities, the figure of five or 10 per cent is not really a concern because it is still extremely difficult to get five per cent of 100,000 signatures let alone 10 per cent. However in a small village, 10 per cent is still too small a number. It would be more appropriate to develop a percentage based on population and the smaller the population the larger the percentage of electors required as a means to address proportional fairness.

RECOMMENDATION

It would be more appropriate to develop a percentage based on population and the smaller the population the larger the percentage of electors required as a means to address proportional fairness.

Section 74 – 78: This section describes the rules for open meetings, including application to other municipal bodies and provisions respecting certain informal, "shirt sleeve" meetings.

While the Charter legislation expands the criteria for meetings that may or must be closed to the public it is not broad enough. In a survey of delegates at the 2002 LGMA annual conference on the provisions of Section 75 (1)(l), commonly referred to as "shirt sleeve sessions", the margin was 3 to 1 (75 per cent No – 25 per cent Yes) when asked whether the wording of the legislation was broad enough. The wording "discussions with municipal officers and employees respecting municipal objectives, measures and accomplishments for the purposes of annual municipal reports" is too restrictive. However, it should be noted that Section 76(2)(b) does permit Council to allow a person other than officers and employees to attend if Council considers it appropriate.

Both senior governments have the ability to meet behind closed doors to discuss ideas and concepts and it has never been made clear as to why local governments are not responsible enough to have this same ability. Therefore, Councils should have the ability to meet with staff, to hold retreats and discuss ideas away from the public venue. The Charter clarifies Council's ability to include persons it considers appropriate to attend closed meetings. This is a welcome improvement.

RECOMMENDATION

Section 75 is far too restrictive and the reference to "for the purposes of annual municipal reports" should be deleted.

Section 83: The Province has agreed to formulate a group of representatives from UBCM, LGMA, GFOA, business and other interests to come up with a standardized pro-forma document for annual reporting.

This should result in annual reports that can form a basis for comparing the information provided by the various BC municipalities. This is exactly the type of involvement of a technical nature that the LGMA and GFOA are continuing to provide as input to the process of the development of the Community Charter.

As a matter of interest during the Community Charter session at the 2002 LGMA Conference, a question was put to the delegates as follows: "Is the requirement for an Annual Report necessary?" The vote was 66 per cent Yes and 34 per cent No. The 2 to 1 ratio represents a large majority vote of approval, however during discussion it was evident that the smaller municipalities may lack the resources and staff to provide a comprehensive report.

RECOMMENDATION

Complying with the annual reporting requirements of Section 83 will be both onerous and expensive. This requirement should be removed. Municipal records, for the most part, and particularly financial ones, are available for public inspection. It is unclear why a municipality should have to compile all of this information, including the permissive tax exemptions and the amount of property tax revenue foregone in a year when citizens who are interested in the subject can already come and ask for the information – the time to put it into a comprehensive report is redundant and expensive in terms of staff time.

Section 84: This section concerns mandatory annual public meetings. With respect to this issue a further question from the 2002 LGMA conference was posed to the delegates. It states "Are Annual General Meetings necessary? Even after it was clarified that the Charter's required Annual General Meeting can be part of a regular meeting the poll of those present indicated 64 per cent No and 36 per cent Yes regarding the necessity of Annual General Meetings. The commentary centered around the adage that the Charter should reduce requirements not add more.

However, municipalities are already required to report annually for financial disclosure of expenditures and Council remuneration. Therefore, (assuming the Annual Report requirements remain in the Charter), it is not too onerous to report the results in conjunction with the financial reporting requirements at a regular scheduled Council meeting.

Section 85: The Conflict of Interest guidelines are much more specific and clearly enunciated which will be very helpful for elected officials. However Section 85(4) requires a councillor to receive legal advice before retracting a declaration of conflict. This may be difficult and expensive to achieve.

It is stated by the Charter Council that there was a need for further input "given the technical complexity of conflict of interest law". To accomplish this the Council has requested the establishment of a working group to recommend improvements to the draft legislation. LGMA may or may not desire to be involved in this particular aspect of the Community Charter.

RECOMMENDATION

It should be up to the councillor to make that determination based on whatever advice they choose to seek, legal or otherwise. They are the ones who will have to live with the consequences if they are challenged, therefore they should be able to decide from whom or where they get their advice and be comfortable with their decision. In addition, it should be made clear in the Charter that it is the individual Council member's responsibility to determine whether to declare a conflict (and not staff's).

Section 89: This section stipulates specific exceptions from conflict restrictions and as with the aforementioned provides greater clarity than the present Local Government Act.

RECOMMENDATION

Section 90: The reference to acceptance and disclosure of gifts and use of insider information should apply, in addition to current members of Council, to municipal officers and employees.

Section 92: The application of conflict guidelines to former and current Council members is appropriate.

Section 95: The Charter currently provides only for disqualification as the punishment for contravention of the conflict, influence and gift provisions.

RECOMMENDATION

There should be a graduated form of punishment that involves fines, suspension and public censure as a means of dealing with less severe forms of inappropriate behavior.

Part 5 – Municipal Government and Procedures

Section 100: This highlights the Council members' responsibilities including developing and evaluating municipal policies and programs that were not present in the Local Government Act.

Section 101: Section 101(2)(d) now requires the mayor to become directly involved in the management of policies and programs. Previously, under 218(2)(d) the mayor was required to direct the management of municipal business and affairs in the context of inspecting and directing the conduct of officers and employees so that, if necessary, the mayor was able to suspend an officer or employee. That previous wording which included reference to an officer or employee presumably qualified the mayor's authority with regard to the management of municipal business. The reference to staff has now been moved to a separate subsection (101(2)(f), so presumably the mayor's abilities to direct the management of policies and programs are now unqualified?

RECOMMENDATION

If so, this change weakens the distinction between the elected body as the developers of policy and staff as the operational body that implement that policy, and should be removed.

Section 102: This section contains a new duty for Council to respect confidentiality. Council members past or present, unless specifically authorized by Council, must keep in confidence any records until the record is lawfully released to the public and keep in confidence information considered at a meeting closed to the public until council discusses or releases the information at a meeting that is open to the public.

RECOMMENDATION

Section 102(b) should be reworded to require Council to pass a resolution to release information discussed in-camera before it becomes public. This would avoid any confusion by individual Council members when general discussion about a Council initiative has occurred in a public meeting where there is some aspect of that initiative that has also required Council discussion at a closed meeting.

Unauthorized release of this information should be made an offence in the statute (as written it would only be an offence under the Offence Act), including setting out who may enforce and how, and what specific penalties apply.

Section 105: Some municipalities may appreciate the ability under this section to develop their own oath or affirmation of office.

Section 108: The wording of sections 108(3) and (4) seems to serve no purpose. The end result is the same as current legislation (what does "must vote" mean when the very next subsection indicates what is to happen if a member does not indicate how he or she votes?)

Section 113: The ability for a Council member to participate in a meeting, or portions of a meeting, when they are physically unable to attend the meeting location could be attractive to many Councils. Each municipality would have the ability in its procedure bylaw to set the special circumstances under which this type of participation would be allowed. However, this section is a little confusing; does it mean that only one member can participate in a regular meeting electronically while a special meeting can be held with all members absent except the designated municipal officer?

RECOMMENDATION

This should be clarified in the Charter.

The oath of office for new councillors should also be permissible electronically given that individuals may be absent during the window of time required to administer the oath to successful candidates. Electronic meetings are an example of how the Community Charter welcomes municipal government and governance into the 21st century.

Section 115: This section is a great improvement over the provisions for deputy mayor and acting mayor under the LGA.

Section 116: This section is a good improvement over the provisions of the LGA for reconsideration. Removal of the prohibition against reconsidering a matter that has been "acted on" could cost a municipality in a civil action by an affected party that acted on a Council decision. However, at least Council would clearly have the ability to reverse an action if they deem it appropriate to do so.

Section 117: The ability to expel a person from a Council meeting for improper conduct without having to stop the meeting and go to court to get an expulsion order is an improvement over the LGA.

RECOMMENDATION

Section 119: Either this section will have to be amended or the transition provisions for implementing the Charter will have to deal with the special ability to adopt an official community plan or zoning bylaw at the same meeting at which the bylaw is given third reading.

RECOMMENDATION

Section 124: This section should simply provide local government with the equivalent authority for revision of bylaws provided under the Statute Revision Act in relation to statutes rather than wait for a regulation.

Section 129: Clarification that the ability to appoint to commissions and committees includes the authority to rescind those appointments is good.

Section 130: The ability under this section to establish different rules for the taking of minutes at Council meetings and the meetings of the various council committees, boards and commissions is good.

Section 136: The requirement under this section for the termination of a municipal officer to be approved by 2/3 of all Council members rather than 2/3 of those present and voting is good.

Section 138: The ability to make it an offence for interfering with municipal officers and employees could be of great assistance in a labour dispute or in dealing with an individual Council member making personal demands on staff time. There remains some questions, however, such as what does "interference" mean, and what is the penalty for "interfering" – should there be a specific penalty outlined in the Charter?

RECOMMENDATION

The Charter should define what constitutes interference, assign responsibility for resolving issues of interference and establish a penalty. There needs to be a process in place to protect from future retribution both the staff member who is the subject of interference and the staff member who raises the issue to be resolved.

Section 142: At the UBCM symposium Ministry staff provided clarification with respect to this section. A municipal day of recognition is the same as proclaiming a day, week or month to recognize an event or organization. It does not provide authority to declare a municipal or statutory holiday.

Section 145: This Section provides protection to the local government in the event a statutory notice is mailed out or otherwise delivered and is not received by the recipient. The failure of the mail or other system to deliver does not negate the process as long as the local government has complied with the requirements of the delivery requirements. No recommendations on this section can be made until Attorney General's Local Government Bylaw Forums process and Building Regulation Liability review completed.

Part 6 – Financial Management

In regard to benchmarking, municipalities should measure performance in comparison with itself and its goals. It is difficult, if not currently impractical, to measure against other municipalities, we have to ensure that we get beyond the barrier to implement meaningful measurement and that there is trust in how the data will be used. To avoid this, each municipality should determine their own benchmarks, identify the key performance measures and specify what programs and actions are being put in place to resolve the issues and monitor performance. The key is that it doesn't matter how low your performance starts, the emphasis has to be on improving. The risk of forcing standardized performance measurements between other municipalities opens a temptation to manipulate the results.

Section 157: In regards to borrowing power most financial officers support working with Municipal Finance Authority to develop a formula that is tied to revenue, rather than assets (which is relatively meaningless).

RECOMMENDATION

The revenue formula should contemplate excluding revenue from unusual or potentially volatile sources, (for example, perhaps should not include greater than 50 per cent of tax revenue from heavy industrial sources such as coastal sawmills given their precarious state). There should also be a provision to include a calculation of ability to pay tied to cash flow. A concern expressed is that in small municipalities, without restriction on borrowing tied to ability to pay, the municipality could get itself in a cash flow problem. These issues can be worked out through GFOA and MFA joint committees. These issues are equally as important as the ability for municipalities to enter into more complex financing arrangements and partnerships.

Part 7 – Municipal Revenue

Section 175: The ability to allow other tax jurisdictions to be available to municipalities may be too tempting to resist. Without a commitment from the province or municipal government to vacate a comparable amount of taxation or revenue room, additional taxation to the taxpayer seems inevitable.

Section 207: Broader authority to provide tax exemptions will pressure Councils to expand this area. Once an organization has been given this status it is very difficult (and unpopular) to take it away. Many Councils enjoyed the ability to point out the constraints of the Local Government Act when asked for exemption. They now will have less ability to use this shield. While many organizations benefit from exemption few citizens know or scrutinize this aspect of an annual budget.

Section 209: While the vast majority of municipalities advised the province they did not want to provide the possibility for business tax exemptions the province has ignored this advice and continues to press this point. This tactic calls into question the entire principle of municipal spheres and provincial spheres. The province has made one of its fundamental platforms the principle of "no business subsidies" yet attempts to allow for such in the Charter.

Part 8 – Bylaw Enforcement

Part 8 of the draft Charter deals with bylaw enforcement, and in general streamlines and simplifies enforcement procedures. The discussion paper released by the Attorney General's Ministry with regard to Local Government Bylaw Forums should be incorporated as much as possible into the LGMA's discussion of the draft Charter. Having said that, the comments below are confined to the text of the Charter as presented at this time. A format that would provide for a cost effective way to enforce what are seen as "minor" bylaw infractions would be welcome, so long as it does not impose additional costs on local government (more passive downloading). The membership should also be kept informed with regard to the review being conducted on building regulation liability and be given an opportunity to comment.

More specifically, the clarity of the language in Divisions 1 & 2 of Part 8 is generally an improvement over the LGA.

Section 248: This provides that Division 2 of Part 7 of the LGA applies, requires some clairifcation as to why it includes a section titled "Indemnification Against Proceedings" (old Section 287.2), when the next section of the Charter (Section 249) is also titled "Indemnification Against Proceedings .

Section 249: Subsection (4) appears to indicate that a Council member may vote on a resolution to indemnify himself/herself. The rationale needs to be clarified as it does not seem appropriate for a member of Council to be voting on such a resolution?

Sections 250-253: The whole of Division 3 of Part 8 is clearer than the bylaw enforcement provisions in the LGA. Council now has the power to enact "offence" bylaws (or parts of bylaws) that provide for fines up to $10,000, and for a continuing offence where applicable, both of which are an improvement.

It appears from the way the section is set up, that a municipality may now set up an MTI system, which may provide for fines up to a prescribed amount, and may also set up a further "offence" regulation which could provide for the higher fine amount mentioned above; the question here is what the "prescribed" amount will be – if it is low, then the approval of the Chief Judge will still in effect be "required" as it was in the LGA; the assumption from the way the section is set up is that the prescribed amount will be considerably less than $10,000.

Fines have been considerably increased and in addition an allowance for continuing offence fines has been added. It appears that several fines may now be placed on a single continuing contravention and held up during legal challenge. Also of interest is the minimum fine allotment. This gives judges options in applying fines if they feel the maximum is not warranted. This is a good inclusion.

Section 264: Emergency tools appear to be strengthened whereby Council by resolution or bylaw, but not just bylaw, may declare a nuisance from a building, ditch, watercourse etc. This allows for the undetermined nuisance to be dealt with without the formality of adopting a bylaw. This is a considerable savings in time and procedure and is welcomed.

Section 272: It is not clear how this is meant to supplement the provisions in Section 32 (the general authority to enter on and use property); they are obviously worded differently, and one is more directed to entering onto property in conjunction with the provision of a municipal work/service, whereas the other is directed to inspection; assuming they are distinct powers that need to be outlined separately and specifically.

Part 9 – Governmental Relations

With the exception of the similarity of some of Part 9 to the existing (but still new) dispute resolution provisions that apply to regional districts under the Local Government Act, this part of the Charter is new ground. It attempts to define some guidelines for the ongoing relationship between local governments, and between local government and the Province.

There is good intent behind this section. Building a stronger provincial-municipal relationship can only foster a better understanding and environment between the two jurisdictions. However, as outlined below, those guidelines as currently drafted raise a number of very important questions.

Section 276: The Provincial-Municipal Relations division is upstanding in trying to foster a positive and cooperative working relationship between local and provincial governments. The commitment by the Province to consult with UBCM prior to making changes to the Community Charter, Local Government Act or Local Government Grants Act allows a guaranteed voice from those who are affected most by the change.

The additional commitment by the Province to consult with UBCM prior to any reduction in revenue transfers is also commendable. Presently, municipalities wait to see what their

final grant will be. By the time they are notified it is usually too late to do anything but send a letter outlining their frustration. The Community Charter process will allow input prior to any reduction. This is a step in the right direction.

However, consultation with a permanent Community Charter Council (CCC) would be preferable to simply the UBCM, provided that the stakeholders are able to appoint their members to the CCC on an (perhaps) annual basis.

At the 2002 LGMA convention, a CCC comprised of 6 representatives from the Province, and 2 each from UBCM, LGMA and GFOA was suggested. This would appear not to be appropriate since the CCC would be "consulting" (i.e. negotiating) with the Province. The allegiance of the Provincial members of the CCC would undoubtedly be to the Province. If the only role of the CCC is to consult with the Province, beyond providing an information resource and liaison role, it seems pointless to have (additional) Provincial representation on it.

RECOMMENDATION
A permanent CCC should be created with the membership appointed annually by the UBCM, LGMA and GFOA only.

Section 277: Assuming that Section 276 sets up the "required" consultation (i.e. *what* must be done), then does Section 277 apparently sets up *how* that must be done. Arguably the items listed under 277(1)(a) – (c) are broader than those for which consultation is "required" under Section 276, but still encompass those under that section. That being the case, consultation agreements as set out in Section 277 could be useful, and giving the "parties" (the Province and the CCC) the opportunity to set the parameters is positive.

However, without a requirement that an agreement be reached (as written, there is only a requirement to "use all reasonable efforts to negotiate an agreement" if one party requests), neither party can be comfortable that any consultation will be meaningful. As written, the Province could theoretically draft a major amendment to the Charter, send it to the CCC with a deadline to respond with comments, receive those comments and if requested respond to them, then introduce the Bill in the Legislature as originally drafted

RECOMMENDATION
The Charter should require binding arbitration to settle the terms of any "consultation agreement" if best efforts to negotiate the terms fail.

Section 278: Following on the above, if there is no "consultation agreement" actually reached which outlines the parameters of meaningful consultation, then the only obligation to be enforced is the limited obligation for the required consultation under section 276. This reinforces the need for the changes recommended in Section 277.

Sections 280 -283: The idea behind this division is two-fold; first it fosters a pro-active working relationship between the municipal and provincial levels and second, it has the explicit ability to grant additional powers to municipalities as well as make exceptions to

approval requirements. This section needs to be tried to see how well it works, but it looks good on paper.

That said, there is a potential here for the Province to "vacate" a field, resulting in public, political, or legal pressure on municipalities to then fill the void created. There are no provisions specified as to how the required resources to fill that void (and enforce any corresponding regulations/requirements) would be obtained/provided, and in fact section 281 specifically prohibits conferring an authority to impose a new tax or grant a new tax exemption

Sections 284-292: The dispute resolution provisions are encouraging; the only question is exactly who are the "officers" going to be?

RECOMMENDATION:
Clarification is required to identify Dispute Resolution Officers.

Schedule – Definitions and Rules of Interpretation: The idea of having all definitions in a single location within the legislation is supported. However, it appears that they are not all in a single location yet; see section 249 and possibly other sections.

It may be appropriate to highlight or identify in some other fashion when words are being used specifically as they have been defined, e.g. in this schedule see definition of *charge* and then use of the word *charge* in the definition of the word *fee*.

GFOA Comments and Recommendations

As a general note, the Community Charter ('Charter') makes reference to the Local Government Act ('LGA') in certain areas. This begs the question as to whether there will be two legislation documents governing municipalities. We require clarification as to whether the Charter will be replacing the LGA in the future when all issues in the LGA are addressed or if both pieces of legislation will continue.

Part 6 – Financial Management

Section 148: The provisions of the Charter for this section are the same as those in the Local Government Act.

While the GFOA fully supports the preparation of a five-year financial plan, the requirement to specifically set out the separate amounts as laid out in these two sections creates yet another set of numbers to reconcile.

Most budgeting is done by function, not by type of expenditure or type of revenue. The numbers in the financial plan will not be the same as the numbers in the function budget, and neither are these classifications relevant to Public Sector Accounting Board ("PSAB") reporting where principal on debt is not treated as an expenditure.

Ideally the financial plan, PSAB prepared financial statements, the Ministry's M Forms, and the budget should be prepared in a similar format to create the highest level of understandability for all users. The MFA is working with Ministry to make the completion of the M Forms easily done, and would like to see the budgeting process tie into both the financial statements and the M Forms (the new M Form numbers are being drafted to come right from the financials).

The GFOA would be pleased to participate in rewriting these two sections.

RECOMMENDATION

The requirements for the five year financial plan format should be reviewed to ensure that it fits in the best possible manner with the requirements of PSAB prepared financial statements and municipal budgets.

Section 156: The provisions of the Charter for this section are the same as those in the Local Government Act.

The requirement to amend the annually adopted financial plan by bylaw, prior to making expenditures not in the current year's plan (other than emergency expenditures) is viewed as not practical, time consuming and unnecessary. The issue of course, is one of incurring an illegal expenditure.

The recommended approach is to amend the legislation to provide that amendments to the financial plan, may be made by Council resolution (excluding the annual

setting of the financial plan by bylaw), and that section 149 (public consultation process) would not be applicable thereto. This provision would be qualified to provide that if the resolution is for an expenditure, the resolution must set out both the funding source(s) and the expenditure amount(s), and that the expenditure must not be greater than a specified amount of the annual tax levy or some other reference number. These provisions should extend to emergency expenditures under section 156, substituting the required financial plan amendment with a similar requirement for a resolution. The argument against this approach is that changes to the Financial Plan should not be too easy, or frequent, and should have a higher level of public accountability that a bylaw process (takes at least two meetings to complete) and a public consultation process promote.

RECOMMENDATION

Amendments to the financial plan, should be able to be made by Council resolution, without the requirement for a public consultation process, for items less than a specified amount of the annual tax levy or some other reference number.

Sections 157 and 158: The provisions of the Charter for this section are the same as those in the Local Government Act, however, these are the subject of a Ministry working group and related changes are anticipated in the final Charter Legislation.

It is recommended that all liabilities be subject to the same constraints regardless of whether they are debt liabilities incurred directly by the municipality or liabilities incurred through public/private partnership agreements. For clarity, while a bylaw process is required when a municipality incurs debt in its name, such a process is not recommended for the incurrence of third party liabilities.

The determination of if an item is a liability should be based on PSAB accounting rules, and should only include those items required to be accrued on the balance sheet of the municipality. A liability should not include commitments or contingencies.

A "two point" check, regarding liabilities is recommended, based on realistic and affordable limits for total outstanding liabilities, and the annual liability payments. Basically, a municipality can incur a liability as long as it does not exceed these two limits.

The liability limits should be determined using a revenue approach and not be based on assessment or tangible capital assets as the current liability limit is. The revenues to be used for the calculation should be specifically listed, including only reliable and consistent revenue sources (excluding grants, debt, land sales, transfers from reserves, donations etc.). A reduction for tax revenues from Class 4 Major Industry should be made, as it is not appropriate that a municipality be able to leverage itself on this revenue source, given the risk associated therewith. In any case, the limits should also be considered affordable and reasonable in the circumstances from the point of view of lenders, leaders in the finance area, and the general public. Please see Appendix 1 for details of the liability limit calculations.

Lastly it is recommended that their be *no* requirement for elector assent (petition process or referendum), as long as:

- the new liability will not put the municipality above 20 per cent of *both of* the stated liability limits; or
- the liability is deemed to be of a health concern nature were a public health order has been issued requiring a municipality to address water quality, or there is a requirement for work under the Waste Management Act.

As well, Ministry approval of the borrowing bylaw would not be required for debt within the assent free room.

RECOMMENDATION

The determination if an item is a liability should be based on Public Sector Accounting Board ("PSAB") accounting rules, and should not include commitments or contingencies.

The liability limit for a municipality should be based on a "two point" check based on a limit calculated for total outstanding liabilities and annual liability payments. These limits should be based on revenue, as defined by PSAB accounting rules, and only including reliable and consistent revenue sources. A reduction for tax revenues from Class 4 Major Industry should be made.

There should be no requirement for elector assent (petition process or referendum), or Ministry approval of a borrowing bylaw, as long as:

- the new liability will not put the municipality above 20% of both of the stated liability limits; or
- the liability is deemed to be of a health concern nature where a public health order has been issued requiring a municipality to address water quality, or there is a requirement for work under the Waste Management Act.

Sections 162-166: The provisions of the Charter for this section are the same as those in he Local Government Act, however, these are the subject of a Ministry working group and related changes are anticipated in the final Charter Legislation.

It is important that the long-term borrowing process be streamlined and simplified as follows:

i. Municipality to give four readings to a borrowing bylaw;
ii. Bylaw forward to the regional district for approval;
iii. Where the regional district has approved the municipal borrowing bylaw, the regional district will apply to the Ministry for a Certificate of Approval; and
iv. Once the Certificate of Approval is received, copies of the municipal and regional district bylaws and a copy of the Certificate of Approval are forwarded to the MFABC.

It would be useful if a municipality can pass a borrowing bylaw (subject to the liability limits) that exceeds its current project's anticipated costs, and this bylaw can be parked at

the MFABC and drawn down through Council resolutions when the borrowing costs are deemed desirable.

RECOMMENDATION

The long-term borrowing process be simplified to require the creation of only one borrowing bylaw with one point of approval from the Ministry, that can cover multiple items, and that can be drawn on as required by the municipality via Council resolutions.

Section 172: Section 172 (2) states; "If the amount to the credit of a reserve fund is greater than required for the purpose for which the fund was established, the Council may, by bylaw, transfer all or part of the amount to another reserve fund."

The legislation should clearly establish what is the criterion for determining if a balance in a reserve fund "is greater than required for the purpose for which the fund was established." Is it sufficient for Council to simply change their priorities (i.e. no longer want to build the swimming pool, but wish instead to use the reserve funds built up for the swimming pool, for updating the road infrastructure, etc.)? The lack of clarity creates an unnecessary level of uncertainty.

It is recommended that this section establish that Council can make this determination at their sole discretion (i.e. they can simply change their priorities), subject to approval by the Minister under exceptional circumstances. As well, if Council collects revenues under an agreement/contract or under *specific* legislation that also specifies what the revenue is to be used for, the transfer should only be permitted if the revenue is excess for the *specific* purpose (i.e. works where cheaper). It is assumed that this would be the case by law, but if not the legislation should be worded accordingly.

Section 172(8) states "As a restriction on subsection (2), a transfer from a reserve fund established for a capital purpose may only be made to another reserve fund established for a capital purpose."

The restriction that a transfer from a capital reserve, found to be "greater than required for the purpose for which the fund was established," can only be made to another capital reserve is unduly restrictive. If a local government experiences an unexpected and/or significant, on-going revenue loss or operating expenditure increase, the local government may wish to use some funds set aside in capital reserves to phase in the tax effects on the local taxpayers. These options should be available to Council.
It is recommended that a transfer from a capital reserve to an operating reserve be permitted with the approval of the Minister, under exceptional circumstances.

RECOMMENDATION

Section 172(2) should clarify what is required to establish "if the amount to the credit of a reserve fund is greater than required for the purpose for which the fund was established". This section should also establish that Council can "simply change their priorities", and transfer the then surplus reserve funds to another reserve, subject to approval by the Minister under exceptional circumstances.

In Section 172(8), the restriction that "excess" capital reserve funds can only be transferred to another capital reserve fund, should be exempted subject to Minister approval under exceptional circumstances.

Section 174: The provisions of the Charter for this section are the same as those in the Local Government Act.

In essence this section provides that an elected official could be removed from office and held personally liable for authorizing an illegal expenditure, if they relied on information supplied by an employee who was negligent. This does not seem appropriate or fair and an elected official should be protected in this situation.

RECOMMENDATION

The possibility that an elected official could be held personally liable for approving an illegal expenditure, when s/he relied on information provided by an employee or officer who was acting negligently, should be removed.

Part 7 – Municipal Revenue

The Community Charter does not itself contain any new revenue sources for Local Governments.

Section 175: It is important that the Charter ultimately include new revenue sources for municipalities.

Protection of the Property Tax Base: The property tax base is the source of the majority of municipal revenues. Thus, a commitment by the Province to leave this taxing source to local and regional governments alone, or at a minimum commit to not eroding any more of this taxing room, would be welcome.

Provincial Home Owner Grant ("PHOG"): A commitment to eliminate the PHOG from the property tax area is desired. The PHOG creates unnecessary administrative costs and could more effectively be dealt with through avenues. ~~such as income taxes.~~

Below are some comments respecting the potential new revenue sources in as identified in the Community Charter Discussion Paper.

- **75 per cent of Traffic Fine Revenue:** The promise to transfer 75 per cent of traffic fine revenue to local governments is welcome, although it should be pointed out that this simply offsets the ever-increasing cost of policing and that the extra revenue will amount to about five per cent of policing costs for most local governments.

- **Tax-Equivalent payments for Crown Corporations:** Crown corporations should be required to pay property taxes on the same basis as all other businesses

(on taxable assessed value). Ideally, this requirement would extend to all provincially controlled entities, such as schools, hospitals etc.

- **Road Tolls:** This is a complicated area and it is important that the use of road tolls be carefully regulated and managed at the provincial level. In any case, it is felt that local road tolls will be of limited applicability except for very significant capital projects such as new bridges etc.

- **Hotel Room Tax:** Suggestion that restriction "could be loosened somewhat" is not enough. They should be removed altogether.

- **Fuel Tax**: Good idea. Fuel tax should be decided on a regional basis to avoid cross-border competition.

- **Local entertainment tax:** Good idea. It is notable that this tax would likely only be efficient for larger local governments who can afford the administration costs.

- **Resort Tax:** Good idea. Likely limited applicability.

- **Parking stall tax:** Good idea, and may have merit in some jurisdictions.

- **Fees as Tax:** Good idea. In addition to the fees this may be applicable to in the Discussion Paper, consideration should be given to fees the costs of which are hard to identify such as business licenses.

RECOMMENDATION

The Charter as it exists does not include any new revenue sources, and it is very important that the final version of the Charter does.

All new sources of revenue are welcome. It is preferred that the new sources of revenue be those that would represent a share of existing Provincial sources, thus not creating a further burden on citizens, have relatively low implementation and ongoing administration costs, and be of benefit to most local governments. As well, as appropriate, the provision for the new revenue source should come with the right for the municipality to require an audit of the information supporting the tax or charge at the expense of the individual or company being so taxed or charged.

A commitment by the Province to vacate the property tax area as a source of revenue, or at a very minimum to not erode this revenue source further is strongly desired. As well, it is desirable for the Provincial Home Owner Grant to be removed from the property tax process entirely.

Sections 177- 199: The provisions of the Charter for this section are the same as those in the Local Government Act.

The requirement to set all fees by bylaw is not practical. Council must still be involved in passing bylaws to set fees for photocopying and deciding on how much to charge for lockers at swimming pools. This could be simplified by allowing Council to set by bylaw either certain types of fees, or fees under a certain value, that can be set and changed from time to time by designated staff.

RECOMMENDATION

The requirement that all fees must be set by bylaw, should be softened to allow Council to specify by bylaw either certain types of fees, or fees under a certain dollar amount (set by regulation), that can be set and changed by designated staff.

Sections 183 –192: While some of the rules for parcel taxes are simplified, the procedure around "courts of revision" still seems overly bureaucratic, and should be simplified.

The legislation should explicitly state that section 12 of the Charter applies to the setting of fees *and* parcel taxes. In other words, it should be possible to establish a fee or parcel tax that establishes different classes of persons, places, activities, or other things and set a different rate therefore.

The ability to establish a parcel tax that establishes different classes of persons, places, activities, or other things and set a different rate therefore, is expressly prohibited under section 176(2). This prohibition should be removed to provide greater operating flexibility to local government.

The applicability of section 12 of the Charter to fees and charges seems to be the intention (as this power was given in the Local Government Act and it has been stated that the Charter does not remove any powers currently held by local government), however, the structure of the Charter does create some doubt and should be amended and/or clarified accordingly. Following is a legal argument that should be considered, prior to finalizing the Charter:

> Section 12 of the Charter provides general authority to differentiate among factors and classes when making bylaws. [In the LGA, a similar provision appears for services at section 518.1(1)]. The general fee authority is LGA s. 363].
>
> However, Charter section 177 provides the more specific authority for imposing a fee; and given the prohibition of Charter 176(1), section177 is the better section to rely on when establishing a fee.
>
> Subparagraph 177(2)(b) is comparable to the LGA 363(2)(b) in that 177(2)(b) allows for differential fees based on "any factor specified in the bylaw, including by establishing different rates or levels of fees in relation to different factors".

The authority of the LGA 363(2)(c) - to impose a fee or charge for different classes of persons, property, business and activities and different fees or charges for different classes – has been removed from the comparable provisions in the Charter section177.

The fee charging authority is not included as a "fundamental power" of the Charter, unless perhaps in section 7(4) a fee could be understood as a "requirement" that may be imposed through bylaw in relation to business, business activities and persons engaged in business. Differential fees for different classes might therefore be read as being encompassed by section 7(4) and 177(2) as a kind of requirement.

In the regulation of carriers, Charter, section 38 [LGA: 657] the *express authority to establish different classes of carriers and make different provisions for different classes [LGA 657(3)] has also been removed*. This suggests that the removal of the authority to impose different fees on different classes was deliberate and intentional.

Read in conjunction with 176(1) and section 9 [*powers are subject to specific restrictions; and must be exercised in accordance with this Act*], the absence of a specific provision authorizing fees that distinguish between the above mentioned classes [as in LGA 363(2)(c)] might be interpreted as meaning a municipality cannot impose f*ees* [as a kind of "requirement"] that distinguish between persons, property, businesses and activities.

It is possible that a court might interpret the wording of section 177(2)(b) as being sufficiently global - "*any* factor specified…" to encompass the said classes, particularly in light of section 12(2). Also, section 176(2) states that section 12(2) does not apply in relation to bylaws imposing *taxes*, possibly implying that it *does* apply to *fees*.

However, the common law indicates that the power to discriminate must be authorized by law either expressly or by necessary implication: *R. v. Sharma* [1993] 1 S.C.R. 650; *Adams v. Cranbrook* (1979) 99 D.L.R. (3d) 484. Also see Rogers text on *The Law of Canadian Municipal Corporations*.

After section 363(2)(c) was enacted, it was thought that different fees could be charged to different classes of persons as long as the fee did not offend any other law (e.g. Charter, Human Rights legislation).

Statutory amendments are interpreted as being intentional and remedial. The context and purpose of the legislation are important. The authority currently expressed in LGA 363(2)(c) may have been removed in the Charter 177 with the intention of eliminating redundancy; but its absence

could be understood as intended to relieve classes of persons, businesses, property and activities from discriminatory fees.

RECOMMENDATION
The procedure for Court of Revision should be simplified.

The legislation should specifically state that section 12 of the Charter applies to parcel taxes and fees and charges, allowing a different parcel tax to be establish based on different classes of persons, places, activities, and/or things.

Section 203: When comparing the LGA and the Charter it is noted that section 203(1)(b) now provides a tax exemption to "land, improvements or both owned by a municipality..." whereas the LGA, in section 339(1)(a) previously said "vested in, or held by" instead of owns, which appears to be a significant reduction in scope.

As well, section 203(4) has added (b), the exemption for municipally owned land, to the list of subsections that "only extend to Section 180(1)(a) municipal property taxes". See section 340(6) of the LGA. While other legislation may exist to extend the municipal exemptions to other government taxes this appears to be a narrowing of powers currently provided for by the Local Government Act.

Lastly, under the LGA section 339(1)(g) councils could decide to exempt a church hall or land surrounding an exempt church and/or church hall by passing a bylaw that would exempt the property until, and if repealed. Under the Charter this now requires the passing of a bylaw that would exempt the property for up to ten years only. The implied requirement for Council's to periodically revisit the issue of church exemptions is not appropriate, this should be left to local discretion.

RECOMMENDATION
Section 203(1)(b) and 203(4) should be expanded to include the same wording as the corresponding section in the LGA.

Section 203(1)(h), should be amended to include the same level of power to Council to exempt a church hall or, land surrounding an exempt church and/or church hall, as provided in the LGA,

Section 207: The ability for Council to provide a permissive tax exemption has been significantly expanded to include any not for profit corporation, which is very broad. The Local Government Act currently restricts the ability of Councils to legally provide tax exemptions to self-sufficient charitable organisations (with certain exceptions), although many Councils throughout the province did not adhere to the letter of the law.

This expansion will add costs to municipalities in dealing with requests and likely create inconsistencies in treatment for like organizations between municipalities, suggesting that such an expansion is not desirable. However, since the exemptions are permissive, Council can set appropriate limitations through policy or bylaw.

RECOMMENDATION

The expansion of powers in section 207 respecting tax exemptions to non-profits is supported.

Section 209: This section provides Council with the ability to extend a tax exemption to certain Class 4 or 5 properties under certain circumstances. The potential for exemption is restricted to a new industry (Major or Light) to the province, an existing municipal business to aide in their expansion or an existing business that needs assistance to continue operating. It is a major change that attempts to balance the needs of municipalities wishing to attract business through tax exemptions with those that are concerned about the introduction of mercenary inter-municipal competition for business through tax concessions.

The introduction of this legislation confines inter-municipal property tax competition to catering to the location of a new provincial industry. The other two criteria will put pressure on Councils to enter a realm of industrial assistance that has been the source of much criticism of the provincial governments for bailouts of failing industries. The ability to be in a position to consider assistance for a local industry is another tool that Councils can call upon, hopefully within a well-defined policy statement, to manage their local economies.

The expansion of the ability to provide business tax exemptions is the subject of "Continuing Work" of the Community Charter Council and remains a concern of many municipalities fearing that the tax competition that would result will create a "race to the bottom" that would, ultimately, be to the detriment of all BC municipalities.

Some other concerns on this section are as follows:

- There will be considerable added administration when introducing well-defined policies to manage this incentive and/or assistance program.
- By only allowing exemptions for industrial property classes, an unfair advantage is introduced in the business world. Competing businesses may be classed differently based on zoning of the property.
- By assisting new or failing industrial property through tax exemptions, the tax burden is shifted to the remaining industrial properties. The burden at times is shifted to the competitors. This creates an unfair playing field for competing businesses.
- This process may help larger industries enter into the market potentially putting smaller competing industries out of business.
- Adds competition between municipalities. Sharing information with other municipalities may no longer exist. Increase in administrative costs if each municipality must research issues independently.

RECOMMENDATION

The expansion of powers in section 209 respecting tax exemptions to Class 4 or 5 properties under certain circumstances, is not supported.

Section 210: This section requires newspaper ads once a week for two weeks in a row describing the exempted property (owner), reason for the exemption and the estimated property taxes foregone by the exemption. The need for public exposure is a fundamental component of an open government, but the costs associated with this mandated exposure requirement are not warranted.

RECOMMENDATION

The requirement for specific advertising of permissive property tax exemptions should be eliminated. The name and amount of taxes forgone only, should be required to be reported in the Annual Report.

Section 211: The provisions of the Charter for this section are the same as those in the Local Government Act.

The effect of the LGA and the Charter is to make land, leased by a municipality from the Crown and used for a public park or some other exempt purpose, taxable. While there is some disagreement on this interpretation of the Charter and the Local Government Act the fact is that at least one municipality (City of Delta) has been paying property taxes on land leased from the Province and used as an active park for a number of years, after having disputed this issue through the British Columbia Assessment Authority with the involvement of the Ministry.

The Vancouver Charter has a specific clause that exempts properties leased by the city and used as parkland.

RECOMMENDATION

It is recommended that the Charter include a specific clause that states that land or improvements leased by a municipality from the Crown and used for a municipal purpose should be exempt from property taxation.

Section 216-219: The provisions of the Charter for this section are the same as those in the Local Government Act.

A municipality should have the option to require payment of property taxes prior to July 2 each year without the requirement to provide taxpayers with the option of choosing either the general tax collection or alternative municipal tax collection scheme. This is necessary from a simple cash flow perspective, especially for smaller municipalities with little surplus and/or reserve balances.

RECOMMENDATION

A municipality should have the option to require payment of property taxes prior to July 2 each year without the requirement to provide taxpayers with the option of choosing either the general tax collection or alternative municipal tax collection scheme.

237 Tax Sales The Charter does not make any changes respecting the tax collection or sale process, however, there are a number of specific and general concerns that should be considered in this area:

- **Elimination of "third party" involvement in the process during redemption period:** The current system of auctioning properties to third parties and paying interest on redemption by the owners should be eliminated. Since it is rare that properties are not redeemed within the redemption period, it adds little value to the process. The administration involved in conducting the sale, collecting and holding of the upset price, registration with land titles and processing of refunds adds unnecessary complexity to the process. As well, the payment of interest encourages speculation by prospective purchasers.

- **Eliminate the automatic transfer of title to the municipality if not sold or redeemed:** The fact that the current system requires the sale of property and the assumption of title by the municipality if there is no bidder, also exposes the municipality to large potential liabilities related to environmental and other issues it could inherit with property. For example, assumption of responsibility for land fill sites or leaky condos.

- **Introduction of flexibility of municipalities to enter into extension agreements with taxpayers for tax payment (i.e. avoiding tax sale when would otherwise be required):** The introduction of the extension agreement can assist taxpayers caught in unusual circumstances to make payments over a period of time. The extension agreements could be limited to a one year period. Agreements should be approved by Council and only used in exceptional circumstances.

- **Methods to handle cases of mental disability and other circumstances through the public trustee's office:** Municipalities should be able to refer situations to the Public Trustee when there are circumstances suggesting mental incapacity and disabilities.

- **Concept of "Market Based Forfeiture":** This concept is *not* supported by GFOA. Although market value may protect the property owner against losses, it puts the municipality at risk. Local governments should not be forced into the business of buying and selling real estate. Again municipalities could be forced into assuming title for unwanted properties, using working capital. Providing a guarantee of receiving market value provides little incentive for delinquent taxpayers to deal with outstanding taxes on a proactive basis. In depressed markets or for property with inherent problems like "leaky condos", owners may be encouraged to default and avoid the risks and costs of disposal.

- **Manufactured ("mobile") Home Taxes:** As mobile homes are chattel not real property, all the provisions dealing with their taxation aren't found in the Local Government Act. There are other statutes like the Manufactured Home Act and

the Manufactured Home Tax Act that also govern how they are taxed and the three statutes (plus the rural tax statute) don't all have provisions that work together sensibly.

In summary, these Acts provide inadequate collection provisions and result in time consuming and expensive administration of property taxes on mobile homes.

The current provisions of seizure under distress to enforce tax payment is too expensive to be practical and there is no alternative process for fair and efficient recovery of collection costs. There is the need for specific legislation to provide for the recovery of collection costs and create enforceable incentives for prompt property tax payments similar to those provided for other properties under tax sale provisions of th**e act.**

- **Notification:** The process of notifying each owner, spouses, charge holders and others who have or may have an interest in the property needs to be reviewed. If municipalities where required to only serve notice, by registered mail, to the registered owner(s) and charge holders whose names appeared on the assessment roll and title at the land registry office, the process would be much simpler and manageable. There would be less risk that a sale could be set aside due to insufficient notice.

- **Escheated Assets:** Municipalities currently have no authority to sell, at tax sale, property of a dissolved corporation that has taxes in arrears and whose assets have been escheated to the Province.

- **Polluted Property:** The legislation requires updating to provide for the recovery of municipal costs of monitoring a polluted property acquired through tax sale during a period prior to the Province declaring it to be a contaminated site.

- **Seizure of Rents:** Municipalities should be afforded the power to seize rents from tenants occupying property where there are outstanding property taxes. Municipalities should be able to notify tenants to pay rents to the municipality rather than the property owner. Provision would have to be made to avoid the municipality becoming liable to tenants.

One model to consider is the Ontario model of land sales, whereby properties are eligible for tax sale after two years for unimproved properties and after three years for properties with improvements. This gives additional time for property owners to clear delinquent taxes. The tax sale process follows a process of notification of stakeholders similar to the current process including registering notice of pending tax sale on title at the land registry office.

Property owners and others may redeem the property any time within the year for the redemption price. Council may also approve extension agreements with property owners if the circumstances justify the extension of time. Under the current process, this is only

allowed if the municipality is the purchaser through default.

The process culminates in a true sale of the property by public auction if it is not redeemed. Bidders will come to the auction knowing that the property title will be transferred following the sale and, although still looking for a bargain, will be prepared to bid seriously.

As well, the municipality "may" register the property in the municipality's name if there is no successful bidder willing to pay the redemption price. In essence the transfer is "set-aside" until any liability issue can be dealt with.

RECOMMENDATION

The tax sale provision of the Charter should be reviewed and updated. The GFOA would be an integral player in this review and would be pleased to participate therein.

353 of Local Government Act -One per cent Utility Levy:

The creation of the Community Charter provides the opportunity to correct many of the difficulties that have been encountered with the one per cent utility levy that is collected, in lieu of property taxes, under section 353 of the Local Government Act. The levy is currently based on one per cent of the gross revenues of the utility companies.

The act provides local government with the authority to collect one per cent of gross revenues from the utility companies in recognition of the difficulty of assessing the value of wires, cables, poles and other equipment used by the utilities. Gross rentals have been interpreted, by the utilities, as simply the basic telephone line rental, which is to the exclusion of many other revenue sources such as phone packages, long distance charges, etc.

It has also been the experience of the municipalities that the identification of newcomers and the collection of the levy from them have not been adequately covered in existing legislation, providing the newcomers with a competitive advantage over an incumbent service provider.

The inability to verify the correctness of the amounts remitted by utilities or to provide an effective remedy for non-payment is another issue that should be addressed in the creation of the Community Charter.

Options to address the above should consider clarifying the meaning of gross revenue, requiring audited back-up of the amounts remitted (the cost of the audit to be absorbed by the utility companies), enhancing the collection authority and providing clarification that newcomers are required to submit the one per cent levy in a manner consistent with incumbent service providers. As well, an efficient remedy for non-payment needs to be introduced.

Ideally, the levy would be replaced with a property assessment basis of taxation, providing consistency with the other property taxes payers.

RECOMMENDATION

The 1% utility levy should be replaced with property taxation of the same.

Building Officials' Association of BC Comments and Recommendations

While the proposed Charter appears to contain wording in Part 8 and other Parts that provide for broader authority, the language is too broad, providing little framework for the Courts and Councils to understand the intent or limitations of the authority. There are also some requirements that appear to have been deleted, or at least not dealt with, at this time.

Part 2 – Municipal Purposes and General Powers

Section 7: Section 694 of the Local Government Act outlined the authority of local government to enact regulations by bylaw. It appears that this is now contained in Section 7(3) of the proposed Charter which identifies a number of general spheres of authority and four spheres of concurrent authority that would involve discussions with, and approval by, the Province. An example of this would be additional requirements to the health and life safety provisions of the code. This appears to provide local government with greater flexibility to establish regulations specific to their needs, however, within a framework involving Provincial approval, to ensure consistency of regulations across the Province.

Section 697 of the Local Government Act provided the municipality with authority to adopt National codes. it is unclear whether or not Section 7(3) covers the issue of adopting other regulations, such as Gas Safety, Electrical and Fire Services Acts, which also relate to health and safety.

Section 698 of the Local Government Act provided local government with the authority to develop bylaws to deal with unsafe buildings, structures and demolitions. This is an essential tool required by local government and, again, it is unclear whether or not Section 7(3) of the proposed Charter covers this issue.

Section 8: Section 8 (1)(c), as impacted by 8 (4). Does this provide an opportunity for a municipality to add or delete a regulation's application under (b) on a municipality specific, for example, a specific municipality being the only one to have a requirement for sprinkler installations in single-family dwellings. This Section is much briefer that the current Local Government Act, Division 21. Noteworthy omissions include reference to an Appeal Board and to securities. The Charter takes a broad approach to matter of health, safety, or protection of property, whereas Section 694 (1) of the LGA is more specific. Presumably the broad approach will still enable us to do what is not specifically itemized in the LGA.

RECOMMENDATION

There is a need to ensure the Building Code appeal Board continues. This is the only legally binding ability of an owner to appeal the interpretation provided by the Building

Official or Authority Having Jurisdiction. The composition of the board is by Ministerial appointment and that process is recommended to continue.

Part 3 – Additional Powers and Limits on General Powers

Section 23: This section appears to allow local government the opportunity to enter into an agreement for service delivery with other jurisdictions. This may provide local government with an opportunity to provide plan review, inspection or licencing services to neighbouring municipalities that may be unable to provide this service. While on the surface this seems simple, there are a great number of legal and logistical questions that would have to be addressed to consider offering this option.

Section 52: Section 52(1) of the proposed Charter does not include reference to zoning and land use bylaws and it is assumed this is covered under Section 7(3) or another Part of the Charter. Section 52(1) states: *"A Council may ONLY exercise its authority under Section 7(3)(m) or this Division for health, safety or protection of persons or property."*

RECOMMENDATION

This section needs clarification is required as to where this leaves issues, such as energy efficiency, security, access for the disabled, etc.

Section 53: Under Section 53, it appears that the powers of Local Government to withhold an occupancy permit, have been expanded from the health and safety requirements of the bylaws or any statute to Provincial building regulations, any requirements established under a building/structure regulatory bylaw, or any other applicable bylaw,` any other health or safety requirements established by municipal bylaw and any other Federal or Provincial enactment in relation to health or safety. The new wording appears to clarify rather than change the intended scope of the Local Government Act. The critical elements remain health and safety.

Section 54: Section 54 is essentially the same wording as contained in the Local Government Act. The wording, however, does result in some concerns in that it refers to certification of compliance of the plans with current Building Code and other applicable enactments respecting safety. The reference to only plans and not construction, as well as the reference to unqualified compliance, is inconsistent with the current wording of the code in requiring Letters of Assurance for substantial compliance of design and field review.

RECOMMENDATION

The term *"certification"* and *"implied unconditional compliance"* is of major concern for the Architectural Institute of B.C. and the Association of Professional Engineers and Geoscientists of B.C. Sentence (b) of Section 54 should also be consistent with the code requirement for certification of field review as well as design. This issue must be considered in conjunction with proposed changes to legislation dealing with liability.

Section 290 of the Local Government Act, which provided for a limitation on municipal liability regarding building plan approval where the municipality relied on the certification of a Professional, appears to have been deleted unless it is to be found elsewhere. There is an outstanding issue regarding why the existing provision did not cover inspections and it is assumed that this whole issue has been placed within the purview of the current liability review.

Section 55: This section has the same issue as in 54. In addition, the wording of Qualified Engineer is a defined term. The Local Government Act used the wording, "Professional Engineer with experience in geotechnical engineering". The LGA wording is more appropriate.

Part 6 – Financial Management

Sections 171 and 172: Section 171 (1) and 172 (1) appear to allow the opportunity for an authority to establish a reserve fund through bylaw for the purposes of creating an insurance fund to address lack of MIA insurance coverage on water penetration problems or full self insurance should a municipality wish to consider.

Part 7 - Municipal Revenue

Section 241: Section 241 (1) continues to allow the municipality to add fees to the property taxes for work done or services provided to land or improvements.

Part 8 - Legal Proceedings and Bylaw Enforcement

Section 251: Part 8, Division 3, addresses Bylaw Enforcement wherein Section 251 sets out the fines that supersede the offence act's maximums and provides greater ability/emphasis for enforcement. However, this will also require assistance in the Courts to actually have the maximum imposed, based of course on the severity of lack of compliance with judgment.

Part 8 also appears to provide authority to local government to levy fines up to a specified amount without having to use the Court system. This would provide a simplified alternate process to encourage compliance without having to go through costly and time-consuming Court process. It is understood that Council may now designate any bylaw to be a ticketing bylaw. It appears that the Charter under Section 251(3)(b) now provides the authority to Council to utilize tickets with respect to continuing offences.

Section 263: This addresses Enforcement by Civil Proceedings, it appears that this is the section which gives power to the municipality to enact, through the Supreme Court of BC, injunctive measures.

Sections 264-271: Part 8, Division 6 addresses, Requirements for Remedial Action, which includes "nuisance" and the procedures therein. This replaces the Local Government Act Section 727.

Sections 272-275: Part 8, Division 7 addresses, Other Matters and includes filing Notices on Title that building regulations are contravened. There is some confusion between different parts of the Charter covering similar matters.

The requirements of Section 701 of the Local Government Act are now contained in Section 272(3) of the proposed Charter. While the Local Government Act required Council to hear the owner before filing a notice against the land title, the proposed Charter only requires Council to provide a reasonable opportunity to be heard. This would simplify the current process that currently can be disrupted where the owner refuses to appear.

RECOMMENDATION
It would be of assistance to have clarification on the difference between how Council may deal with building regulation contraventions and a nuisance.

Part 9 - Governmental Relations

It is interesting to note in Part 9 of this document that under continuing work for the provincial government to abide by municipal zoning and land use bylaws that there is no mention as to permits and licences. The issuance of building permits, review of plans and conducting field inspection services isn't addressed and would form an additional level of revenue.

Continuing Work and Other Issues

Building Code: Section 692 of the Local Government Act, which outlined the adoption and application of the Building Code, appears to have been deleted. Unless contained elsewhere, this Section is required in order to outline the process for creating building regulations and ensuring that those regulations consistently apply to all jurisdictions within British Columbia.

RECOMMENDATION
The regulations currently do not apply to all areas within B.C., and this should be considered with any proposed changes to the Act.
Building Code Appeal Board: Section 693 of the LGA created the Building Code Appeal Board. The Appeal Board does not exist in the Charter. Hopefully this is an oversight.

RECOMMENDATION
The Appeal Board should continue as it is the only mechanism by which an owner or his/her representative can file an appeal regarding a difference of opinion in the application of the Building Code to a specific property.

Building Regulation Liability: This is an issue that must be contained in the proposed Community Charter. The present legislation, which includes Joint and Several liability provisions, has proven to be unsatisfactory, especially with respect water ingress claims.

While local government should strive to retain their important third party role in the plan review and inspections of buildings and structures, they require protection against unwarranted liability exposure through the creation of proportionate liability and reduced limitation period. Even the creation of proportionate liability may not provide sufficient protection unless the Province mandates required insurance and ensures that it is available at a reasonable cost. It should be noted that currently, insurance against water ingress claims is not available to anyone, including local government. The Attorney General's office has created a discussion paper on the issue of liability legislation, which also requires review and comment.

Land Use Bylaws Applying to Crown Corporations: It is unclear whether or not the scope of this Section is limited to land use and zoning bylaws or is intended to apply to compliance with codes and other local government bylaws. Recent dealings with the Rapid Transit authority with respect to permits and inspections for Skytrain stations clearly emphasises the need for legislation requiring Crown corporations and other Provincial agencies to comply with the bylaws and regulations enforced in the jurisdiction in which they are located. This would also result in additional revenue for local government.

New Revenue Sources: It's doubtful that there is an appetite for additional local taxes and charges to offset some of the hard or soft downloading that the Charter proposes. Current perception of the public is that they are already paying more than the level of service provided. Perhaps, some consideration should be given to expanding the services already being provided, e.g., renewal of driver's licences, obtaining marriage licence, applying for a passport, mailing a parcel, payment of car insurance, distribution of firearms, forms or transfer of property forms. For the most part, these are all administrative, clerical functions that municipal staff could perform as well as anyone. Municipalities could collect a processing fee from the appropriate government body or Crown corporation and, at the same time, provide a real and probably more effective service to the community.

Municipal Bylaw Courts: The cost of operating a bylaw Court may not warrant the benefits. A bylaw Court might be useful for some types of bylaw enforcement but it's questionable whether or not it would be very useful for the type of issues dealt with by Building Departments. The majority of building issues require a resolution, not a fine.