

Federation of Canadian Municipalities

The Model Municipal Charter

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Donald Lidstone
Lidstone, Young, Anderson
Barristers and Solicitors
1616 – 808 Nelson Street
Vancouver, BC V6Z 2H2
Email: Lidstone@lya.bc.ca

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Model Framework for a Municipal Charter

INTRODUCTION

A Municipal Charter is a provincial or territorial statute that provides for the powers, duties, fiscal tools, rights and liabilities of a municipal government and establishes its territory. Accordingly, a Municipal Charter creates the structure and function of the order of government that is nearest the electors, ratepayers and residents and that affords the greatest degree of democratic public participation in decision making.

A modern Municipal Charter should be a plain language constitution for municipalities that helps the public and the courts to understand or ascertain:

- municipal powers
- municipal territory
- procedures respecting governance
- roles, structures and functions
- municipal official accountability
- financial resources and related required procedure
- relations with other orders of government
- dispute resolution mechanisms
- bylaw enforcement procedures
- rules respecting court actions and liability

PREAMBLE

- The preamble is part of the Charter and is intended to assist the public and the courts in explaining its meaning and object.
- As in the case of a constitution, the preamble of the Charter could specify the core concepts and assumptions on which the Charter is based.

The preamble could provide that:

- the municipality is a major public agent for providing services, programs and facilities to maintain and enhance the quality of life for all its residents,
- the municipality must be accorded the same treatment, subject to the constitution of Canada, as if it were an autonomous order of government,
- the municipality must be accessible, democratic and accountable,
- the municipality must have adequate powers and financial and legal resources:
 - to provide for peace, order, good government and services locally,
 - to meet existing and future community needs,
 - to apply creative, innovative and entrepreneurial solutions,
 - which ought not to be altered unilaterally, without consultation with other orders of government.

A second objective of the preamble is to guide the local provincial/ territorial relationship.

The preamble could provide that the Charter is based on the principles that the provincial/ territorial government recognizes that:

- it must work toward harmonization of provincial/territorial and municipal enactments, policies and programs,
- it must foster cooperative approaches to matters of mutual interest,
- it must not assign responsibilities to municipalities unless there is provision for resources required to fulfil the responsibilities,
- it must consult on matters of mutual interest, including with respect to municipal legislation, proposed changes to revenue transfers and proposed changes to

provincial/territorial programs impacting municipal matters,

- it must respect the varying needs and conditions of different municipalities in different areas,
- it must consider municipal interests when it participates in interprovincial, national or international discussions on matters affecting municipalities,
- it and the municipalities must attempt to resolve their conflicts by consultation, negotiation, facilitation and other forms of dispute resolution.

PART 1 - PURPOSES

- The “purposes” provisions of the Charter are intended to help the public and the courts to interpret the legislation in a “purposive” way.
- A purpose statement sets out the moral basis on which the sections of the Charter are founded.
- The purpose section is intended to be elastic enough to meet future needs.
- Municipal government legislation enacted recently by Yukon Territory, Manitoba, Alberta and British Columbia contains “municipal purposes” clauses.
- The purposes of a municipality under the Charter include providing for:
 - peace, order, and good government,
 - democratic public participation in governance by the municipality’s citizens,
 - services and other things the council believes are necessary or desirable for the municipality,
 - the health and the social and economic well-being of its community and of current and future generations of the municipality’s citizens, and
 - the stewardship of its assets and the natural environment.

PART 2 - GENERAL

The general provisions of the Charter define key characteristics of the municipality and its government and provide guidance to the public and the courts with respect to the interpretation of the Charter.

- The inhabitants of the municipality are incorporated as a body corporate.
- The powers, duties and functions of the municipality are performed or exercised by its council.
- Anything commenced by one council may be continued and completed by a succeeding council.
- Except as otherwise provided in the Charter, the municipality and its council may only perform or exercise their powers, duties and functions within the municipal boundaries.
- Provisions of the Charter are to be interpreted broadly to give the municipality and its council adequate powers, resources and discretion for municipal purposes in response to existing and future local issues and needs, and to give the council full discretion and power to exercise its powers and to use its resources to meet local conditions, to determine the community public interest, and to otherwise fulfill the municipal purposes.
- A general power must not be interpreted as being limited by a specific power.
- The Charter provisions supersede other statutory provisions of the Province or Territory, as applicable.

PART 3 - POWERS

DIVISION 1 –NATURAL PERSON POWERS

- The municipality has the power and capacity, rights, and privileges of a natural person of full capacity, except to the extent expressly limited or restricted under the Charter.
- This enables the courts to construe municipal powers on the basis of court precedents respecting natural person powers.

- These include the powers to purchase; own and use property; sue and be sued; enter into contracts; indemnify; incorporate subsidiaries; purchase shares in companies for municipal purposes; create not-for-profit organizations; make grants; enter into public private partnerships; or otherwise act in the nature of a corporation with full and natural person powers.

DIVISION 2 – GENERAL POWERS

- Municipalities may opt for either *broad powers* or *spheres of jurisdiction*.

(1) Broad Powers

- Under *broad powers*, municipalities may:

(a) enact bylaws and pass resolutions,

(b) act or perform or exercise powers, duties or functions,

for municipal purposes, including the purposes of the municipality provided for under the Part entitled “Purposes”. In other words, such municipalities would have all the powers of the Province or Territory delegated to them, subject to “clawback” provisions elsewhere in the Charter itself and not in other legislation (eg. – control over mines).

(2) Spheres of Jurisdiction

- Municipalities ought to be able to opt for broad powers, as described, or the less empowering spheres of jurisdiction. Under *spheres of jurisdiction*, the council may enact bylaws and pass resolutions, and the municipality may act, perform or exercise powers, duties or functions (in addition to the regulatory and licensing powers under Division 4). The spheres can be general and broad as in the case of the Alberta *Municipal Government Act* or more detailed and specific as in the case of the British Columbia *Community Charter*. FCM prefers more general and broad language that is comparable to the way provincial jurisdiction is set out in the *Constitution Act, 1867*.

DIVISION 3 – SERVICES

Services:

- The council may provide for or provide through another party any service for municipal purposes (“service” includes any activity, work or facility undertaken or provided by or on behalf of the Municipality).

Services Outside Area:

- The council may, by bylaw, provide a service outside the area of the municipality, but if the area is within the boundaries of another local government, and that government has power to provide the service, the council or board of the other government must consent to the municipality providing the service in that area.

DIVISION 4 – REGULATIONS

Regulations:

- The council may in its bylaws or in exercising its other powers:
 - regulate persons, property, things or activities,
 - in relation to a service, or a regulation contained in a bylaw, impose a requirement respecting persons, property, things or activities,
 - direct that a matter or thing required by the council to be done must be done by a person at the person's sole cost within a reasonable time provided for in the bylaw,
 - make different provisions for different classes of persons, places, activities, animals or things, other than a class of one or more named individual persons,
 - make different provisions for different places, times or circumstances,
 - provide for an exception or exemption in respect of any class,
 - establish terms or conditions,
 - make different provisions for different terms or conditions,
 - without limitation, regulate, prohibit or impose requirements in respect of matters where civil or common law rights are affected.
- The power to regulate includes the power to prohibit, authorize, control, inspect, limit and restrict, and to make rules respecting what must and must not be done.
- The power to regulate, require or licence is subject to any specific conditions or restrictions set out in the Charter.

Requirements:

- The council must, by bylaw, in relation to its regulations:
 - provide for the form and content of any notice, petition, application or other document referred to in a regulatory bylaw,
 - provide for procedures and criteria for complying with municipal bylaws,

- provide for procedures for the making of applications under municipal bylaws, and establish the information to be submitted on the making of applications,
- provide for the form and content of information to accompany applications, and the procedures for completing and filing the information,
- require officers or employees to notify applicants of the disposition of their applications.

Licencing:

- The council may, by bylaw, provide for a system of licences, permits or approvals, including:
 - requiring a licence, permit or approval in respect of any development, activity, industry, business, matter or thing,
 - providing for the granting of licences, permits and approvals,
 - prohibiting any development, activity, industry, business, matter or thing until a licence, permit, or approval has been granted,
 - establishing conditions that may be imposed on any licence, permit, or approval, the nature of the conditions, and who may impose them,
 - establishing conditions that must be met before a licence, permit, or approval is granted or renewed, the nature of the conditions, and who may impose them,
 - establishing the duration of licences, permits, and approvals,
 - subject to a right to reconsideration or appeal, providing for the refusal, suspension or cancellation of licences, permits or approvals for failure to comply with a bylaw, the terms of a licence, permit or approval, or a condition under a bylaw.

Standards:

- The council may, by bylaw, provide for, by reference in whole or in part, with any changes the council considers necessary or advisable, a code or standard made or recommended by Canada or a province/territory or a recognized technical or professional organization, and require compliance with the code or standard; the bylaw may provide that if the referenced document changes, the changes apply without any amendment of the bylaw.

Provincial/Territorial Regulations:

- A bylaw, or a provision of it, is of no force and effect and is deemed to be repealed if it is

inconsistent with the Charter or a provincial/territorial statute, regulation or order.

- A municipal bylaw is not inconsistent with a provincial/territorial statute, regulation or order if a person who complies with the bylaw does not, in so doing, contravene the provincial/territorial law.
- Otherwise, a municipal bylaw, or a provision of it, is of no force and effect and is deemed to be repealed if it purports to deal directly and specifically with, and is contrary to or at variance with, a provincial/territorial law that is enacted for the express purpose of pre-empting municipal jurisdiction after the Charter comes into force, unless the bylaw is approved by the responsible minister.
- This would require the government to contemplate laws in respect of which it wishes to “claw back” power and jurisdiction from that delegated to municipalities under the Charter. This is similar to the way powers of major American “home rule” cities are established in relation to the powers of the states.
- Examples of areas in respect of which the Province/Territory would likely wish to have exclusive jurisdiction by way of expressly legislative language are:
 - human rights,
 - access to information, protection of privacy,
 - mining, minerals.

DIVISION 5 - HIGHWAYS

Highways:

- The ownership, right of possession and control of every highway (other than a provincial arterial highway) are vested in the municipality, subject to limits and exceptions in the land title legislation and to privately held interests or rights.
- Adverse title cannot be acquired by mere possession. The municipality may, by bylaw, close or transfer title to all or part of a highway.
- A transfer of highway land is not effective unless the council publishes two (weekly) newspaper notices and files the bylaw in the land registry.
- These highway provisions do not apply in relation to provincial arterial highways, public rights of way on private land, highways owned by Canada or highways on a reserve.

DIVISION 6 - PROPERTY

Reservation or Dedication:

- The council may, by bylaw adopted by an affirmative vote of 2/3 of the members in

office, reserve, or dedicate, for a public purpose, real property owned by the municipality.

- A reservation may be removed by a bylaw with the assent of the electors and an affirmative vote of 2/3 of the members in office.
- Before reserving, dedicating or removing a reservation, the council must give public newspaper notice twice (weekly).
- Bylaws, uses and works must be consistent with the property reservation or dedication.

Parks:

- The municipality is entitled to the ownership, possession and control of real property that is reserved, dedicated, held or owned on trust conditions respecting public park purposes.
- The council must not grant an option on, or transfer or grant an estate or interest in, real property that is reserved or dedicated or established as a park.
- Park land may be exchanged for other suitable park land with the assent of the electors (or proceeds may be placed to the credit of a park reserve fund).
- Any park exchange or sale requires public newspaper notice twice (weekly).

Real Property Disposal:

- In regard to other land, if the grant or transfer is for less than fair market value or if the property is held for pleasure or recreation, public notice must be given in a newspaper twice (weekly) (unless the transaction is with a “public authority”, which includes a government, school board, library board, Crown corporation, etc.).

Expropriation and Injurious Affection:

- Expropriation and injurious affection are subject to the compensation and procedural requirements of the applicable expropriation legislation and regulations, such that the power to expropriate is the same for the municipality as for the Province/Territory.

DIVISION 7 - EMERGENCY

Emergency:

- If an emergency arises with respect to a service provided by the municipality, the council may declare that the emergency exists and provide for the necessary powers to deal with the emergency.

PART 4 – THE PUBLIC

Increased powers and autonomy must be balanced with increased public participation and expanded accessibility, accountability, transparency and democracy. In this regard, the Charter must balance power with responsibility, ethical conduct and public participation.

There are two models for building a Charter. In the United States, prospective “home rule” cities work with residents to develop municipal enabling legislation under quasi-constitutional procedures established under a state statute designed for the purpose; generally, the proposed municipal legislation becomes law after the city holds a referendum on it. The British Columbia *Community Charter* was developed by a Community Charter Council created by provincial/territorial legislation; the Council represented the Province/Territory and the municipalities affected. Amendments to a Charter could be subject to the same process.

DIVISION 1 –AMENDMENT OF CHARTER

Amendment of Charter:

- The council may, by bylaw, recommend amendments to the Charter to the Legislative Assembly.
- The minister (or Charter council if applicable) must consult with the municipality under Part 10 respecting any amendment contained in a bylaw that recommends amendments to the Charter.
- The amendment could be subject to assent of the electors if the Charter was first in force as a result of electoral assent.
- The council must initiate a public review of the Charter every five years.

DIVISION 2 - ELECTIONS

Election of Member:

- An election for the mayor and all councillors must be held under applicable provincial/territorial election provisions the year the Charter comes into force, and then every four years.
- By-elections must be held to fill vacancies (the Charter lists circumstances where vacancies may occur).
- A by-election is not required if the vacancy occurs within one year of a required general election in the case of a mayor or within six months of a required general election in the case of a Councillor.

DIVISION 3 – PUBLIC PARTICIPATION IN COUNCIL DECISIONS

Assent of Electors:

- Assent of the electors is obtained only if a majority of the votes counted as valid are in favour of the question or bylaw. (Applicable provincial/territorial election provisions will govern). Consideration should be given to an alternative to assent, such as a counter petition opportunity under which the electors have 30 days to petition against a proposal, and if, say, 15% are effectively opposed, the matter is defeated or must go to the assent process.

Referendum:

- The council may provide for a referendum to obtain the electors' opinion on a question that the council believes affects the municipality, but the result is not binding on the Council (Applicable provincial/territorial election provisions will govern).

Petitions to Council:

- A petition to the council is deemed to be presented to the council when delivered to the clerk and must include the full name and address of each petitioner.
- The sufficiency and validity of a petition must be determined by the clerk, who must record the determination by certificate. The clerk's certificate is final and conclusive.
- No person may withdraw his or her name from, or add a name to, a petition after it has been certified.

Petition for Work or Service:

- Owners may petition for a service, facility or work for a specified area:
 - it must be signed by 2/3 of the owners,
 - the signatories are the owners of parcels having a value of at least 50% of the value of all parcels liable to be specially charged.

Council Initiative Plan:

- The council itself may initiate a service, work or facility in regard to a defined area if the council delivers notice to the affected owners and if, within 60 days after the publication and delivery of the notice, a majority of the owners representing at least 30% of the value of the parcels do not petition the council not to proceed.

Bylaw Initiative:

- The electors may propose a bylaw by delivering a bylaw initiative petition to the council signed by the electors equal in number to 30% of the total votes cast for all candidates for mayor in the last general election.
- The clerk certifies the petition (as in the case of all petitions).
- If the bylaw initiative passes, the council must either enact the bylaw without alteration within 20 days or immediately submit the proposed bylaw, without alteration, to the electors to obtain electoral assent. If a majority of the electors vote in favour of the bylaw, the bylaw is deemed to be enacted.
- Such a bylaw may not be repealed or amended except by bylaw adopted with the assent of the electors.

DIVISION 4 – OPEN MEETINGS

Public Attendance:

- A meeting of the council must be open to the public, except as expressly provided in the Charter.
- The council may exclude the public, or the public and officers or employees, from the part of the meeting in which the subject matter being considered is, or relates to:
 - the security of the property of the municipality,
 - personal information about an identifiable individual,
 - the acquisition, disposition or expropriation of land or improvements,
 - labour relations or other employee matters,
 - litigation or potential litigation,
 - a hearing or potential hearing of a tribunal constituted by or under an enactment or the laws of Canada if the municipality is a party or intervenor involved in the hearing,
 - law enforcement,
 - the reception of advice that is subject to solicitor-client privilege,
 - consideration or negotiation of an agreement if, prior to executing, the council gives the public notice as to the parties, nature of the agreement, and places where the agreement may be inspected,
 - a matter that is debated in a meeting where no decision is made, if the decision is made on some subsequent day and if the matter relates to new policy or a draft bylaw,
 - a document that would otherwise be exempt under a statute,
 - information prohibited from disclosure under a statute,
 - consideration of a request by a person to attend the council meeting or obtain a document pursuant to the “inspection of records” provisions of the Charter,
 - a matter prescribed by the Lieutenant Governor in Council,
 - a matter that, under another enactment, is such that the public may or must be excluded,
 - the consideration of whether the council will exclude the public on one of these grounds,
 - matters on an agenda for a retreat, if held not more than twice a year,
 - consideration of confidential information related to negotiations with another government.

- Before closing a part of a meeting, the council must state by resolution, in public, or by public notice, the fact of the holding of the closed meeting and the designation of the matter to be considered.
- A bylaw must be enacted in a public meeting.
- The public access provisions apply to committees, commissions, bodies that are exercising council or municipal powers, and any advisory bodies established by council.

Expulsion:

- The presiding member may, by order, expel or exclude from the council chamber a person, other than a council member, who is guilty of improper conduct, and this may be enforced by the applicable police force.

DIVISION 5 - NOTICE

Notice:

- The Charter provides for how public notice is to be published.
- Every Charter provision requiring public notice refers to this notice provision.

Inspection of Records:

- The Charter provides for public access to records of the municipality. This provision does not supersede but augments applicable access to information legislation.

DIVISION 6 - HEARING

Hearing:

- The council may, by bylaw, provide for reasonable procedures and requirements for giving notice for and holding a hearing, except hearings such as those required for zoning bylaws where the procedures and requirements are set out in the Charter.

DIVISION 7 – ANNUAL REPORT AND MEETING

Annual Report:

- Prior to June 30, the council must prepare and deliver to the clerk for public inspection, and to the Legislative Assembly, a public report of the municipality containing detailed information about its operation and services; the audited financial statements; the required business plan; a report on goals, objectives and outcomes; information about any conflict of interest contraventions; disclosures made under the financial disclosure provisions of the Charter; total remuneration, expenses or benefits paid to council members; and gifts received by council members.

Annual meeting:

- The council must hold an annual meeting open to the public to receive the annual report, consider submissions and questions from the public, and consider other matters referred to on the agenda.
- The council must give the public notice of the meeting at least one month before the annual meeting.

DIVISION 8 – COMPLAINT TO CHIEF ADMINISTRATIVE OFFICER

Complaint to Chief Administrative Officer:

- An elector, resident or ratepayer may complain in writing to the chief administrative officer with respect to a matter of municipal administration, unless the matter is, at the time, subject to some other formal statutory proceeding.
- The complainant must deliver a written copy of the complaint to the municipality and to any member, officer or employee named in the complaint.

DIVISION 9 – ACCOUNTING COMPLAINT

Accounting Complaint:

- An elector, resident or ratepayer may complain in writing to the chief administrative officer or to the municipal auditor if the elector considers that any transaction is not authorized under any statute or that there has been a theft, misuse or other misappropriation or irregularity.
- If a complaint is made to the chief administrative officer, the chief administrative officer must give notice to the auditor.

- If a complaint is made to the municipal auditor, the auditor must give notice to the chief administrative officer.
- The auditor must report to the council and the complainant on the matter and the council must make the report public.

DIVISION 10 – PERFORMANCE MEASUREMENT

Business Plan:

- The council must prepare a business plan every year.
- The business plan must contain information required by bylaw as well as detailed information required by the Charter.

Goals and Objectives:

- The annual report must include information required by bylaw; a description of the extent to which the municipality achieved its goals and objectives; a description of the reasons goals and objectives were not achieved; a description of the reasons goals and objectives cannot be achieved; and the steps the municipality plans to take as a result of these outcomes.

DIVISION 11 – CONFLICT OF INTEREST

The increased powers and jurisdiction of a municipality must be balanced by increased accountability and ethical rules. The Charter sets out a comprehensive conflict of interest code, some of highlights of which are as follows:

Gifts:

- A member must not accept a gift as a consequence of the performance of the member's duties of office (except a gift having a value of less than an amount established by council if the gift is received as a incident of the protocol or social obligations that accompany the functions of a member; lawful campaign contributions; or compensation authorized by law).

Benefits and Lobbying:

- The council must not award a contract or grant a benefit to a member, “associate” (e.g., a spouse) of the member, or former member unless:
 - council first resolves at a public meeting that there is no other person reasonably capable of performing the contract,
 - the contract is a contract of employment of an associate, or
 - in the case of a former member/associate, 12 months have expired from the date he or she ceased to hold office.

Repayment:

- A member, associate or former member who contravenes provisions under this Division must pay the amount of the benefit to the municipality and compensate the municipality for any damages and costs arising from the contravention.

Court declaration and order:

- The municipality or an elector may apply to court for a declaration and order that the person pay and compensate the municipality.

Influence and insider information:

- A member must not use the member's office to influence or attempt to influence a decision, recommendation or other action to be made by the council, a committee, an officer or an employee if the member or an associate has a pecuniary interest in the matter.
- A member must not use information or a record that is obtained in the performance of the member's office, and not available to the general public, to derive a pecuniary interest.

Disclosure:

- A member who has a pecuniary interest in a matter must disclose the interest, leave the meeting and not participate in any way.

Disqualification:

- A member who contravenes “influence and insider information” or “pecuniary interest disclosure” provisions is disqualified from office.
- The Charter sets out a number of exceptions to the disqualification rule, including where the member’s pecuniary interest is based on his or her being, for example, a volunteer who receives an honorarium.

Disqualification of Member:

- The court may declare vacant the office of the council member on a number of grounds, including failure to take the oath, employment with the municipality, influence or insider information, failure to make disclosure of a pecuniary interest, voting for a bylaw or resolution authorizing an expenditure contrary to the act, or disqualification under the *Local Authorities Election Act*.
- The Charter provides that the court may disqualify the member if requested by a petition of 10 or more electors of the municipality or that is approved by resolution of the municipal council.

PART 5 – ALTERATION OF MUNICIPAL BOUNDARIES
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Alteration of Municipal Boundaries:

- The Lieutenant Governor in Council may alter a municipality’s boundaries only if the municipality consents or requests the alteration.
- The Charter sets out a comprehensive process for preparation of a feasibility report and obtaining the assent of the electors in the event of a boundary change.

PART 6 - GOVERNANCE

DIVISION 1 – COUNCIL MEETING PROCEDURES

Council Composition:

- The council is composed of a mayor, and not fewer than 6 and not more than 18 councillors.
- At least 180 or more days before the next general election, the council may, by bylaw, change the number of councillors, subject to public notice in a newspaper. As an alternative, this change may be made subject to assent of the electors.

Wards:

- The councillors are to be elected on the basis of wards, the areas of which are set out in a schedule to the Charter.
- Council can only change or eliminate the wards by bylaw and with the assent of the electors.

Quorum:

- A quorum is a majority of the number of members of the council provided.
- The Charter provides for circumstances where a quorum is not possible (e.g., conflict of interest, vacancies, etc.)

Inaugural and Regular Meetings:

- The Charter provides for the first council meeting to be held after an election, and, otherwise, the Council must, in its procedure bylaw, set the times and places for regular meetings.

Special Meetings:

- The council may hold a special council meeting, other than an inaugural or a regular meeting, pursuant to a public notification process set out in the Charter.

Action or Proceeding:

- A council action or proceeding is not valid unless authorized or enacted by bylaw or resolution at a regular or special meeting.
- If the Charter provides that the power may be carried out by bylaw, that power may only be exercised by bylaw.

Procedure Bylaw:

- Council must, by bylaw, enact rules of procedure for meetings of the council, committees, commissions and community bodies, and to be followed in adopting bylaws.

DIVISION 2 - MEMBERS

Role of Members:

- The Charter sets out the roles and responsibilities, and the terms of office, for the mayor and council members.
- The Charter also provides for a speaker to preside when in attendance at council meetings and a deputy mayor and deputy speaker to act in the event of the absence, illness or other disability of the mayor or the speaker, as the case may be.

DIVISION 3 - BYLAWS

Bylaw:

- The Charter sets out the procedures for adopting bylaws.
- There are procedures to allow council to consolidate bylaws, revise bylaws, and correct errors.

DIVISION 4 – COMMUNITY BODIES

Committees and Commissions:

- The Charter provides for the establishment of committees to advise and make recommendations to the council.
- Council may also establish, by bylaw, a commission to advise and make recommendations to the council, operate services, undertake operation and enforcement in relation to the municipality's exercise of its regulatory authority, and manage property held by the municipality.
- The council, a committee or commission, has the protection, privileges and powers of an inquiry commissioner under the Province's/Territory's inquiry legislation.

DIVISION 5 - DELEGATION

Delegation:

- The council, by bylaw enacted by an affirmative vote of at least 2/3 of the members in office, may delegate its powers, duties and functions to any committee, commission, community body established by the council, or an officer or employee.
- Council may not delegate the enactment of a bylaw; a power or duty exercisable only by bylaw; the hearing of an appeal or reconsideration of a matter; or the power or duty to approve, accept or consent to an action, decision or other matter.
- Council may not delegate to a corporation.
- The Charter sets out procedures for delegating a hearing to one or more members of council.

DIVISION 6 – OFFICERS AND EMPLOYEES

Officers:

- The council may by bylaw establish officer positions and set out their duties.
- The Charter provides for termination, and termination procedures.

Chief Administrative Officer:

- The council must establish the position of and appoint a chief administrative officer of the municipality who must carry out functions and perform duties set out in the Charter and by bylaw.

Clerk:

- One of the officer positions established under the officer bylaw must be assigned the responsibility of clerk, which includes the powers, duties and functions set out in the Charter and by bylaw.

Treasurer:

- One of the officer positions established under the officer bylaw must be assigned the responsibility of treasurer, which includes the powers, duties and functions set out in the Charter and by bylaw.

PART 7 – FINANCE

- The financial responsibility, audit and accountability provisions are as rigorous as those set out in the existing legislation governing the municipality.
- As well, the municipality must prepare a financial plan covering every upcoming five year period.
- Consideration should be given to a municipal finance authority such as exists in British Columbia to provide for a system of predictable, certain, and advantageous borrowing rates.
- [Note: Tax exemptions or other incentives to attract capital should not be implemented, as United States cities learned that these exercises are heavily subsidized by residential ratepayers and other businesses, and that tax reductions in one city will result in a “race to the bottom” for tax rates in the surrounding region.]

PART 8 – REVENUE

DIVISION 1 – REVENUE UNDER BYLAWS

Revenue Under Bylaws and Enactments Respecting Moving Violations:

- The Charter provides that all taxes, levies, charges, fees, tolls and other impositions, fines and penalties assessed, levied, imposed and collected under a municipal bylaw must be paid to the municipality as part of the revenue of the municipality.
- As well, the province/territory must pay annually to the municipality from the consolidated revenue fund without an appropriation other than under the Charter, all fines and penalties collected by the province/territory in respect of motor vehicle moving violations committed within the boundaries of the municipality.

DIVISION 2 – MUNICIPAL TAX

Imposition of Taxes:

- The municipal tax comprises the property value tax; the water rates and assessments and sewage rates and assessments; the water tax, sewage tax or sewage treatment tax; or any combination of them.
- It is proposed that the property assessment process be upgraded to require properties to be assessed annually at fair market value.

DIVISION 3 – FEES AND CHARGES

Fees and Charges:

- The council may, by bylaw, impose fees and charges that are in the nature of a tax.
- This enables the council to structure fees and charges for specific services, works or facilities, in relation to particular areas; to recover administration and overhead; to provide for replacement; to provide for repair and maintenance; to provide for future development/extensions, etc.; and, in some cases, to “educate” the public with respect to the use of the service, work or facility (e.g., user fees related to what is deposited in the sanitary sewer system).

DIVISION 4 – WATER AND SEWAGE TAX

Water and Sewage Tax:

- The council may, by bylaw, impose a water tax, a sewage tax, a sewage treatment tax, or any combination of them.
- The Charter provides for a number of modalities for imposition and collection.

DIVISION 5 – SPECIFIED SERVICE AREAS

Specified Service Areas:

- The council may, by bylaw, undertake a service for the special benefit of a specified service area of the municipality.
- The cost of the service determined by the council and specified in the bylaw must be borne by the owners of real property within the specified service area or the users of the work or service, or both, and for that purpose the council may levy, or impose within the area any charge, fee, tax or levy provided for in the Charter.
- A specified service area establishment is subject to assent of the electors, a sufficient petition, or an initiative.

DIVISION 6 – PARCEL TAXES

Parcel Tax Bylaw:

- The council may, by bylaw, impose a parcel tax in accordance with the provisions of the Charter to provide all or part of the funding for a service.
- The parcel tax may be set up as a frontage tax based on the taxable frontage of the parcel.

DIVISION 7 – FUNDING

Funding by Provincial/Territorial Government:

- The provincial/territorial government must allocate new financial or other resources required by the municipality to exercise or perform a new power, duty or function arising from consultation between the municipality and the province/territory on the subject of the municipality taking responsibility for a government program or where the government proposes to change or eliminate a program that may be taken over voluntarily by the municipality. Funding by statute without further appropriation is consistent with principles of local self government while ad hoc grants or funding by agreement without appropriation would be subject to cancellation and therefore uncertain.

Funding by Federal Government:

- Federal grants must be used for the purpose stipulated by the federal government, and not clawed back by the Province/Territory.

DIVISION 8 – SOIL DEPOSIT AND REMOVAL

Soil Deposit and Removal:

- The municipality may charge royalties in respect of soil removal (e.g., gravel removal).

DIVISION 9 – EXTRAORDINARY USE OF HIGHWAYS

Extraordinary use of Highways:

- If a highway is liable to damage through extraordinary traffic, the council may, by bylaw, enter into an agreement with the user for the payment to the municipality of compensation for the damage or expense that may be caused by the extraordinary traffic.

DIVISION 10 – TRANSFER OF INCOME AND SALES TAX

Income and Sales Taxes:

- The Charter makes provision for the transfer of a portion of provincial/territorial income tax and sales tax based on a provincial/territorial revenue sharing program. See Division 7 respecting the need for statutory provision with appropriations.

DIVISION 11 – HOTEL/ENTERTAINMENT/RESORT TAX

Hotel/Entertainment/Resort Tax:

- On the request of the municipality, by bylaw, the minister of finance must pay out of the consolidated revenue fund to the municipality, without an appropriation other than under the Charter, amounts equivalent to the net revenue collected under the hotel room tax in the municipality. The Charter could also authorize a resort tax in resorts and an entertainment tax aimed at visitors and conventioners.

DIVISION 12 – FRANCHISES

Granting of Franchises:

- The municipal council may, by bylaw, enter into an agreement with a person to grant to the person an exclusive or limited franchise, for a term.
- The council may establish the rates for supplying franchise services, and reserve or create power to establish them.

DIVISION 13 – UTILITIES

Utilities:

- The municipal council may enter into an agreement with a utility (e.g., natural gas, telephone, cable vision, etc.), to construct and install works and services in, on, over or under municipal property.
- The Charter provides for payment to the municipality of reasonable consideration for the occupation of the municipality's property and the municipality's administration of the agreement.

DIVISION 14 – PARKING TAX

Parking Tax:

- The council may, by bylaw, impose a parking tax on taxable parking area of parking sites and taxable parking spaces of parking sites, with the proceeds going to transport, transportation systems, traffic, parking or other services permitted under the Charter.

DIVISION 15 – FUEL TAX

Fuel Tax:

- The municipal council may, by bylaw, impose a motor vehicle fuel tax, calculated at the pump and collected by province/territory and remitted to the municipality, with the proceeds going to transit, transport, transportation systems, traffic, parking or other services permitted under the Charter.

DIVISION 16 – CUSTODY OF DETAINEE

Custody of Detainee:

- The Minister of Finance must reimburse the municipality out of money appropriated for that purpose by paying an amount prescribed by the Lieutenant Governor in Council for the expense of the care and custody of a person who is detained in a place of detention and is within a class prescribed by the Lieutenant Governor in Council.

DIVISION 17 – BUSINESS TAX

- The council may, by bylaw, impose a business tax on businesses or business activities or both.

DIVISION 18 – DEVELOPMENT COST CHARGES

Development Cost Charges:

- The council may, by bylaw, impose development cost charges on persons who obtain subdivision approval or building permit issuance, for the purpose of providing funds to assist council to pay the capital costs of providing, constructing, altering or expanding sewage, water, drainage and highway facilities, and providing and improving park land.
- The Charter sets out complex and detailed rules governing the imposition and collection of development cost charges.
- The Charter requires the municipality to provide the public with details of the calculation of the charges, which must be collected only for purposes related to the development.

DIVISION 19 - COLLECTIONS

- The Charter provides for a number of modern and efficient mechanisms for collecting taxes or other monies due and owing to the municipality, subject to “administrative fairness” rules set out in the Charter.

PART 9 – ACTIONS AND PROCEEDINGS

DIVISION 1 – ENFORCEMENT OF BYLAW

Enforcement Bylaw:

- The Charter provides for the enforcement of the municipality’s bylaws.
- The Charter provides for “information and summons by ticket”.
- There is provision for council to take action in the event it believes there is nuisance, a safety problem, or a contravention of a bylaw.
 - This enforcement may be by way of direct action taken by the municipality in default.
- There is clear authority for the municipality to enter on property at reasonable times for purposes set out in bylaws, subject to the Charter or Rights and Freedoms and the

common law rules relating to entry on private property.

DIVISION 2 – CHALLENGES TO BYLAWS

Attacks on Bylaws:

- The Charter provides for rights of action on illegal bylaws.

DIVISION 3 – CIVIL LIABILITY

Limitation Period for Actions Against Municipality:

- The Charter sets out limitation periods for actions against the municipality, including, generally, commencement of the action within 6 months after the cause of action first arose and notice to the clerk within 2 months from the date damage was sustained (subject to an appeal to a superior court if there is reasonable excuse).

Indemnification Against Proceedings:

- The council may indemnify council members, officers or employees.
- The council may seek indemnity against a council member, officer or employee if the claim arises out of the gross negligence of the individual or if the individual willfully acted contrary to the terms of his or her employment, or an order of a superior.

Personal Liability of a Municipal Public Officer:

- No action for damages lies or may be instituted against a council member, officer or employee in relation to the performance or intended performance of their duties or powers, neglect or default in the performance or intended performance of their duties or powers, unless the individual has been guilty of dishonesty, gross negligence, malicious or willful misconduct or libel or slander.

Municipality Not Liable:

- The municipality is not liable for loss or damages sustained as a result of:
 - failure to enforce a bylaw,

- nuisance or escape of dangerous substances if the damages arise out of the breakdown or malfunction of a sewer system, water or drainage system, or a highway or dike.

Joint and Several Liability:

- The municipality is liable only for the proportion of damages or costs awarded by a court or alternate dispute resolution scheme, and is not liable jointly and severally.

Certified Professionals:

- The council may, by bylaw, establish a system to permit an architect or engineer recognized as qualified by the municipality and retained by a person seeking a building permit, to certify that plans comply with the building regulations and the building as built conforms to plans.
- The municipality may require the certified professional to become certified according to an educational program related to the building regulations.
- The certified professional must carry adequate insurance.
- If the municipality's building inspector accepts the certificate of a qualified architect or engineer under the certified professional scheme, the municipality is not liable for loss, damage or expense caused or contributed to because a building is unsafe or does not comply with the building regulations or other applicable enactments.

DIVISION 4 – NOTICE TO MUNICIPALITY

Notice to Municipalities:

- All notices are to be served on the municipal clerk.

PART 10 – INTERGOVERNMENTAL RELATIONS

Provincial/Territorial Procedures:

- Every minister responsible for an applicable provincial/territorial matter must, before
 - introducing a bill in the Legislative Assembly,
 - making, amending or repealing a regulation, or
 - starting, changing or eliminating a provincial/territorial government program,give written notice and a consultation opportunity to the municipality, if the matter will directly and specifically affect the municipality.
- The minister may require a person to take an oath or affirmation of confidentiality before he or she participates in the consultation.
- The provincial/territorial government must not transfer new powers, duties or responsibilities to the municipality, or require the municipality to act in relation to a matter in respect of which the provincial/territorial government acts or otherwise exercises power at the time the law comes into force, unless the minister responsible first gives notice and a consultation opportunity to the municipality with respect to the provision by the provincial/territorial government of financial or other resources required by the municipality to perform the new duty or function or to take the required action.
- The municipality's bylaws (including bylaws imposing taxes, fees, levies, changes and assessments) apply to provincial/territorial crown corporations and agencies.
- The Charter contains dispute resolution mechanisms to help resolve issues in lieu of court actions paid for by the same taxpayers.
- There will be no forced amalgamations as the Charter requires assent of the electors in each target municipality.

Provincial/Territorial Government Regulations:

- The Lieutenant Governor in Council may make regulations.

Land Use and Heritage:

- Provisions may be included in the Charter or in a separate law.

SCHEDULE 1 - DEFINITIONS

- The Charter contains a number of definitions and interpretation provisions for greater certainty.