Report to: Mayor and Members Committee of the Whole
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SUBJECT: City Interest in Proposed Changes to the Municipal Act (CMO6008) - (City Wide)

RECOMMENDATION:

That the Ministry of Municipal Affairs and Housing be advised that the City of Hamilton requests the added powers and authorities found in Bill 53 as described in Schedule “A” to this report.

Glen Peace
City Manager

EXECUTIVE SUMMARY:

Reforms proposed for Toronto, along with other recent provincial activity and tabled bills, suggest the Municipal Act may soon be reformed for other municipalities. The City of Hamilton gets its powers primarily through the content of the Municipal Act. This report discusses and recommends changes found in Bill 53 (A Stronger City of Toronto for a Stronger Ontario Act), for Council to consider and request for Hamilton in future municipal reforms. Some of the new Bill 53 powers may find their way into the Municipal Act in the future. Schedule “A” to the report deals with recommended improvements of municipal powers, but the report discusses other changes which Council may wish to add list or seek further information on in provincial/municipal discussions.

BACKGROUND:

Bill 53 is still under debate and is not yet law, and appears to be leading to municipal reform starting with Toronto. Along with Bill 53, Bill 37 (now law as the Respect for Municipalities Act, S.O. 2005, c. 27) and Bill 51 dealing with planning powers suggest municipalities will have new powers, including a new taxing power. Bill 53 contains several areas of change, but many appear to be tailored for Toronto needs in structure
and economies of scale. Hamilton would benefit from new flexibility and options proposed for Toronto and the recommendation will show Council’s interest.

The general content of Bill 53 is:

Bill 53 is currently under debate in the Legislature at second reading. The Bill is not yet law, and only the first reading version is available for review, to be called the Stronger City of Toronto for a Stronger Ontario Act if enacted.

The Bill would give Toronto new powers and moves that City slightly ahead of other municipalities as compared to the Municipal Act 2001 though the two acts are very similar, even identical in most parts.

The “stronger” references are suggested by Bill 53’s greater flexibility in municipal operation and revenues, though the public benefit is currently being debated and no regulations are available for further details. These debates are focusing on whether the benefits are material. Provincial controls remain in the Bill similar to those placed on other municipalities, but the Bill would allow Toronto to exercise the new powers. Further the Province has included additional requirements on Toronto in the Bill to ensure public accountability and transparency, with new levels of bureaucracy taken from the provincial realm and imposed on Toronto. For example Toronto would be required to have its own ombudsman, integrity commissioner and auditor, and be required to develop and implement its own policies in several areas including disposal of land, code of conduct for elected officials and staff, accountability, transparency, protection of civil and other rights of the public. The increased flexibility in many areas may be provided for the unique needs and structures desired for Toronto (i.e. community councils), and the revenue issues will raise new and likely political concerns in the sense of whether they will replace or add to current revenue sources and who will bear the cost of a new taxing power.

Under General Headings, the Bill is compared to the Municipal Act, 2001:

**A) General Powers of the City**

Bill 53 takes the same approach to municipal empowerment as the Municipal Act, 2001 in giving natural person powers and broad subject matters of jurisdiction. Much like private corporations, the City is treated as a legal person and has greater decision making power for the purposes and subject matters specified. The specified purposes for Toronto include a focus on the City’s public interest and particular needs, but with the obligation to ensure accountability to the public and transparency of its decisions. There is a focus in the general powers on financial issues, including determining the appropriate level of spending and taxation, and using fiscal tools which support the activities of the City.

Spheres of municipal jurisdiction have few differences between Bill 53 and the Municipal Act 2001, the primary change being the suggestion of governance and financial flexibility. It particular the Toronto will have broad power to set the governance structure for itself and a class of local boards, which change is likely tied to particular Toronto
structures and interests arising out of its size, historical boards, and amalgamation of
that City. There are specific limits elsewhere in the Bill which prevent the delegation or
exercise of certain powers other than by council. Financial management is its own
sphere, but again subject to extensive content in the Bill which suggests more limited
powers which will have to await the unannounced regulations before the full benefits
could be determined. The financial management sphere and content suggest increased
flexibility in financial tools including wider debt and investment powers.

Municipalities currently have several specific areas on public protection and regulatory
power specified. Bill 53 provided instead general spheres of jurisdiction over health,
safety or wellbeing of the public, protection of persons and property, including consumer
protection and business licensing. Subsections 8(1) and (2) of the Bill in effect give
greater flexibility in municipal regulation and a broad decision making power as to what
service or thing the City considers necessary or desirable for the public. The Bill
suggests greater flexibility but subject to provincial control (below), and pursuing similar
amendments for Hamilton would be recommended.

In order to carry out structural changes, there is a specific power to delegate powers
under the Bill or other Acts to new and existing structures, persons and bodies. There
are several restrictions on the power to delegate, such as limits on delegating legislative
(by-law making power) and quasi-judicial powers (hearing requirements) to bodies with
council membership, limits on delegating powers to individuals unless minor (i.e.
encroachments, temporary highway closures and licence conditions). Taxing powers,
adopting or amending a budget, appointing or removing officers, official plans, and
zoning by-laws are examples of matters which cannot be delegated by Council.

B) Specific Activities

There are several examples of specific powers which add a new municipal power, and
countless minor changes which either suggest small changes or no change other than
improved wording for clarity over what is provided for in the Municipal Act 2001.

Particular changes include:

(1) Authority to enter into agreements with the Crown in Right of Canada, being the
federal level of government in respect of matters within its jurisdiction. This power
is found in subsection 1(4) of Bill 53. The power granted may allow the City to
take advantage of federal programs, funding or assistance without delay or
provincial control. An example may be for federal funding of sporting or other
events of national significance, as well as federal assistance in tax collection if
the opportunity arises from a new tax power.

(2) The provision of higher fines for municipal by-laws (Section 365 of Bill 53). Under
section 365 of Bill 53 maximum fines of up to $100,000 dollars may be
established for municipal by-laws, as compared to most by-laws which currently
have a $5000 maximum. Additional provisions allow the setting of daily fine
amounts for continuing offences up to $10,000 per day. Special fines over and
above these amounts may be added to prevent an offender from keeping
economic advantage or gain arising from their breaching a by-law. The fine
provisions here do not apply if a different fine structure is required under another statute (i.e. property standards or the Building Code Act). The improvement from increased fines levels may not be revenue. Instead the higher fine amounts are likely to increase compliance and are recommended for that reason. The revenue potential of this point is limited by the fact that maximum fines are rarely awarded by courts, and further that the higher fines would tend to deter and reduce the number of offences.

(3) Future replacement of current licensing and parking enforcement processes with administrative penalty processes. (Sections 81 and 86 of Bill 53). Administrative penalties would be those imposed administratively rather than through court conviction or process. Currently parking and licensing enforcement relies to some extent on court process. Under Bill 53 the Province may enact regulations to establish administrative procedures the municipality must create to replace the court processes. Depending on the cost of implementation and operation this change may show increased revenue over current licensing and parking enforcement. This change also suggests possible savings and efficiencies in freeing up court resources for other Provincial Offences Act matters, from which municipalities derive revenue. The flexibility and option may be helpful for Hamilton given court resource issues that the Province has been unwilling or unable to correct.

(4) Slightly increased business licensing powers, although many are special to Toronto history (i.e. airport taxi issues). The minor changes are not a substantial benefit over existing powers. A clear improvement is the power to impose temporary suspensions for municipal needs, public events, public health, safety or persons or property, prior to a licence hearing. Currently a licence hearing must be held for suspension or revocation regardless, and Hamilton has no powers to suspend business activity for events, road repairs or other public needs.

(5) The power to bonus commercial or industrial enterprise is altered in a very limited way, perhaps to support using a separate economic development body or corporation. Use of bonuses within community improvement plans without requiring ministerial approval is one improvement. Regulation in this area is not yet announced, but the flexibility may be helpful to Council.

(6) Powers to require and regulate green roofs, which are rooftop vegetation growing on rooftops for water and energy conservation benefits. The content of the Bill suggest this change is in advance of Building Code Act regulation, so it is likely that this power will come to the City in the form of standardized provincial regulation rather than through Municipal Act amendments. For that reason the new power is not included in Schedule “A” to this report.

(7) Planning or land use control powers. Toronto is given an expanded or direct role in certain land use planning. This includes powers to set up appeal bodies in respect of certain minor planning decisions, replacing the Ontario Municipal Board to some extent in these areas. As well, there are additional powers in site planning, height, density, and exterior design. These powers affect for instance the process for residential unit demolition or conversions, and in zoning by-laws respecting height or density, appeals from the Committee of Adjustment or in respect of certain consents under the Planning Act. Some of these powers deal with the replacement of the OMB take some consideration; they are of benefit if
the object is to avoid OMB hearing delays, they may be of no benefit where the OMB appeal process is replaced by a City appeal process in that there must still be a hearing under required standards of independence by the appeal body who can make a decision based on planning principles not in accordance with staff/council wishes. Many of these powers are provided for in Bill 51 which is being considered for all municipalities, so Schedule “A” only recommends those additional powers not found in Bill 51, which include control of residential conversions and demolition.

(8) Expanded power to dispose of or sell things removed from the roadway where the owner fails to claim them. Recommended as compared to limited powers we currently have to deal with vehicles and perishables. Also lien and cost recovery rights for removal, storage and disposition of advertising devices including signs.

(9) New powers of entry and warrant in respect of entry for municipal enforcement, which are mainly a clarification and re-wording of existing powers. One part not recommended for enforcement reasons is the new wording in Bill 53 for warrants. Instead Schedule “A” recommends the existing warrant provisions in the Provincial Offences Act be maintained for municipal enforcement. The wording in section 374 of Bill 53 is similar to Planning Act warrants, which are not sufficient in most cases to allow entry for investigative purposes.

(10) Power to incorporate corporations may be slightly expanded, although provincial regulations yet to be announced will certainly limit this activity as do several pages of restrictions on corporate changes. It may be that specific Toronto needs for economic development corporation(s) may be behind this change but Hamilton can pursue the flexibility and decide later if there is benefit before it exercises this specific power.

C) Fiscal and Financial

The Bill suggests increased flexibility in financial matters, but much is expected to be limited by unannounced regulation. Details on financial changes were provided previously in Finance and Corporate Services Report No. FCS06020. The appendix to that report deal with a total comparison of the Municipal Act 2001 to Bill 53. The most significant financial change that can be commented on is the increased flexibility and options in financial processes and powers. A potentially significant revenue source, being a new direct taxing power, is discussed below in the Alternatives section of this report. In the current situation of not having regulations to compare it is difficult to provide specific rationale on each recommended change, except that the improved flexibility, potential new revenue sources, and powers may give a municipality added financial benefits at the expense of some financial risks (i.e. new investment powers).

Significant items of interest for financial purposes include:

(a) Increased Power to Impose Municipal Fees and Charges (Part IX of Bill 53):

The current Municipal Act gives all municipalities powers to set fees and charges to cover the provision of some services, activities, use of property and costs incurred by a municipality. Bill 53 adds new sources of fees and charges and removes a few limitations in the existing municipal powers to impose them for Toronto. It is important to
note the intent of the fee/charge provisions is cost recovery other than through property tax. Bill 53 allows new areas or flexibility in setting fees and charges, including:

- Bill 53 allows Toronto to base fees or charges on the administration, enforcement, establishment, acquisition and replacement of capital assets (per subsection 254(2)). This power may suggest the cost of acquiring and building new facilities may be included in the user fees for existing facilities.
- Allows fees or charges to be created for non-mandatory services, activities, payment of costs or use of City property
- Allows any fee or charge set by by-law to prevail over conflicting fees even if the other fees exist in other by-laws, provincial Acts or regulations
- Bill 53 also removes some of the by-law content requirements for setting fees and charges

The first two points above, based on other content of the Bill and other provincial statements, may include fees and charges for the maintenance, improvement and beautification of City-owned land, building and structures in an area, or to promote a business of shopping area, or as suggested may include the building of reserves for new facilities and capital assets.

Note that relevant regulations again have not been announced, and many or most of the traditional municipal restrictions on setting fees and charges can be expected to be continued in regulations. Expect these restrictions would prevent fees and charges being set for the Crown, provincial agencies, schools boards, electrical, natural gas, telecommunications providers. Further expect most of the restrictions on fees and charges would remain which prevent fees or charges being used to tax based on income, revenue, sales and poll taxes, or any charge related to natural resources.

(b) Increased Financial Flexibility (various parts of Bill 53):

Here especially the publication of regulations will be necessary, and when published a thorough analysis by financial staff may be required to find potential benefits. The Bill as compared to the Municipal Act 2001 does indicate that short-term and long-term borrowing and debenture financing will be more flexible with fewer restrictions. While this is not necessarily revenue producing, the flexibility may allow cost reduction in both our processes and through access to better rates. The new powers include a general provision in subsection 8(2) of the Bill to pass by-laws respecting the financial management of the City and its local boards Ss. 8(2). The financial powers mentioned in any part of this report will be subject to specific content of the Bill, such not being used to create a new tax. Borrowing, investing and entering into financial agreements are powers generally stated for Toronto in section 240 of Bill 53, and appear to be without some restrictions found in the current Municipal Act, 2001. Note the Bill does have extensive restrictions throughout, similar to current Municipal Act requirements (i.e. debenture requirements in the Bill), and certainly there will be provincial regulation of these powers in many respects.

D) Toronto Governance, Accountability and Transparency
Again there are several specific areas of change, and these should be looked at more in the sense of provincial requirements that Toronto control its new structures and operations rather than as new and better powers. In effect these differences are mostly the strings that the Province has tied to the new powers in the Bill, some of which may be applied to Hamilton by the Province.

1. The power to delegate has been mentioned above, in General Powers.
2. To aid in the design and implementation of new structures for the City’s governance and operation, there is broad power to establish City boards, including neighbourhood committee’s and community councils, which may include boards to control and manage municipal services and activities.
3. Expanded or slightly refined role for Mayor. This gives the Mayor a more defined role in respect of the public involvement and the City’s involvement in participating and fostering economic, social and environmental well-being of the City and its residents.
4. Requirement to establish codes of conduct for members of Council and City Boards. Not optional in Bill 53 as opposed to the Municipal Act 2001 and may be required to apply existing conduct issues (like conflict of interest) already found in other municipal laws.
5. Requirement for an Integrity Commissioner, with power to investigate, hold a public inquiry and including the power to suspend a Council members pay or suspend their participation as a Council member.
6. Requirement for a municipal ombudsman with powers of investigation. This replaces the provincial ombudsman role and City Council role overseeing administrative operations.
7. Requirement for a municipal Auditor General replacing to some extent but not completely the existing provincial oversight. The officers role is to ensure accountability for and control over public funds and value for money issues.
8. New requirements for City policies on sale or disposition of lands, public notice, accountability and transparency, ensuring protection of rights including civil rights are fairly protected in decisions, delegation of powers and duties, and financing of capital works. Here particularly expect provincial requirements or regulations to be extensive as these policies would be replacing existing provincial legislation to some extent.

E) Provincial Control

The Province would review the Act after two years and again five years after the initial review. This suggests that provincial amendment or regulation of municipal decisions is likely even beyond the controls in the Act and future regulations.

Generally, every new area of power in the Bill allows a new provincial control through regulation of specific or general nature, so for example the power to delegate by Council is subject to provincial regulation limiting or removing the power to do so as the Province may feel necessary.

In several areas there are regulation making powers, and it is clear the Province will impose similar or identical restrictions on Toronto, as compared to other municipalities.
Particularly in the financial area, one can expect to see limits imposed by regulation that substantially narrow new fiscal powers and suggesting the end result will provide marginal improvement in new financial, debt and investment powers.

Note as well the obligations throughout the Bill for the City to determine and ensure transparency, accountability and protection of the public in municipal activity as the strings attached to the greater flexibility granted Toronto, which may or may not be imposed on other municipalities. There will be cost, staffing and complexity attached to these obligations, as compared to having these matters provided in current provincial regulation and oversight.

**ANALYSIS/RATIONALE:**

Hamilton may benefit from improved powers and authorities in several areas. The expression of interest in the items in Schedule “A” to this report may help the Province decide which amendments to pursue for Hamilton and other municipalities in future reforms. Not all requested changes may be considered, and some changes may be imposed in the discretion of the Province. The items in Schedule “A” are recommended as improvements in flexibility for local control and decisions, and Council may wish to add further items as time or interest allow. There is however a timing limitation suggested by Provincial discussions, so that further delay may result in reforms not being made.

**ALTERNATIVES FOR CONSIDERATION:**

Bill 53 also contains a new taxing power which would give municipalities a fresh revenue source, with details below. Council may wish to consider adding this new tax to the list of amendments for Hamilton in Schedule “A”. If the power is granted to other municipalities in this form as perhaps suggested by Bill 37, there is a substantial reservation. This reservation is that the power will not address any funding inequality between municipalities. The example would be social service funding, where the new taxing power will not help an under-funded municipality or its citizens. In particular the municipality would still be bearing a greater proportion of social service costs, and further be relying on a new taxing power over its citizens when fewer of those persons may able to pay the new tax given a higher proportion of needy citizens. Without that reservation, a new revenue source on its own would give a municipality new power to afford current or expanded service levels and improve its financial situation with potential tradeoffs that come with new direct taxing powers. Council might add the taxing power as an item to Schedule “A” with reservations and/or seeking clarification if the new tax is replacing any existing provincial funding or other City revenue in further discussions with the Province. With the passage of Bill 37, it appears the Province intends to give municipalities some new taxing power regardless of a request from Hamilton.

The new tax would be a direct tax, being a tax paid by the person assessed. The current municipal property tax is an example of a direct tax. This would be compared to an indirect tax, like the GST, which the person assessed passes on to the consumer of goods and services.
Part X of Bill 53 will allow direct taxation by Toronto, subject to contents of the Bill and regulations yet to be provided by the Province. The Bill suggests Toronto will have the ability to tax land, add sales taxes for liquor, tobacco and the price of admission to amusements, and to tax a class of assets. The new taxing power is in addition to the current municipal property tax (which tax is an example of a direct tax). A “direct tax” is generally defined as a tax demanded from the person whom the government intends should bear the cost of the tax. The opposite of a direct tax is a tax like the GST which is charged to a manufacturer or retailer, and which in turn is passed on and paid by the ultimate consumer through increased costs of the goods or services. Ordinarily a direct tax might be charged on either real property like land or personal property (moveable property like vehicles). Bill 53 however places several limits on the types of taxes, especially for personal property (i.e. general sales taxes are not allowed although some sales taxes are permitted which may be significant). The specific types of tax that are not permitted under Bill 53 are:

- no sales tax on personal property or intangibles. However bill 53 does permit a tax on the purchase of admission to places of amusement, the price of liquor for use or consumption, for the production of beer or wine at a brew on premise facility which is for use or consumption, and the purchase of tobacco for use or consumption.
- no income or revenue taxes (including profits, receipts, etc.)
- no tax on capital, wealth or inheritance
- no taxes on equipment or machinery used in research and development, or in manufacturing or processing, used to enhance productivity including computer hardware or software
- no tax on services whether by the provider or purchaser
- no tax on persons for lodgings
- no tax on any gas or liquid that may be used for the purpose of generating power by internal combustion, or on any additive to the same substances
- no tax on a person’s use or consumption of energy including electricity
- no tax on the total value of assets, or of two or more classes of assets owned by the person, or on any monetary assets
- no poll tax (being one imposed on an individual merely because of their presence or residence in the municipality)
- no taxes on the generation, exploitation, extraction, harvesting, processing, renewal or transportation of natural resources
- no tax on the supply of natural or artificial gas
- no tax on the use of a highway by a person in respect of equipment placed under, on or over the highway for the purpose of supplying a service to the public

The new taxing power would require Toronto to create general tax processes for collection, penalty, inspection, and dispute resolution. Agreements may be made with other levels of government to collect the tax where practical.

Certain persons and bodies are exempt from the new tax under Bill 53:
- the Crown and generally any crown agency or authority, and their officers and directors appointed by the Province
- boards of education
The new tax would not have special lien priority status under the Municipal Act, so collection would have to be made through different processes than the existing property tax system and its enforcement procedures.

New taxing powers are likely to raise policy issues that the municipality was not previously familiar with, and policy development may need to proceed before new taxes are created, likely with further information from the Province on the nature of taxes intended to be permitted by the above criteria.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

Financial implications are discussed throughout.

Staffing Implications: Some of the content of Bill 53, if imposed by the province, would require new positions to be staffed.

Legal Implications: New authorities and powers would have to be exercised within the limits set by the Province. Many of the provincial restrictions will be unknown until regulations are passed in respect of Toronto, and until the Province decides whether to give the new powers and authorities to Hamilton with the same limits. Generally each exercise of the power will have to be provided for in the statute, or require a specific by-law of Council, and as a result many may be entirely optional.

**POLICIES AFFECTING PROPOSAL:**

Current polices may be impacted in several ways, by the need to include new powers and options. Council may need to consider and create entirely new policies, for example in respect of the application of a new taxing power.

**RELEVANT CONSULTATION:**

Corporate Services (Finance)
Planning and Economic Development

**CITY STRATEGIC COMMITMENT:**

Increased flexibility and new authority have the potential to impact every strategy, goal or objective of the City.
By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Community Well-Being is enhanced. ☑ Yes □ No
Environmental Well-Being is enhanced. ☑ Yes ☐ No

Economic Well-Being is enhanced. ☑ Yes ☐ No

Does the option you are recommending create value across all three bottom lines? ☑ Yes ☐ No

Statutory changes that allow efficiency and provide increased options and flexibility to develop local solutions to local problems will support the triple bottom line goals.

Do the options you are recommending make Hamilton a City of choice for high performance public servants? ☑ Yes ☐ No

The potential efficiency and creativity in developing local solutions may make employment with the City more attractive.
City Interest in Proposed Changes to the Municipal Act

1. Authority to Contract with the Crown in Right of Canada, s. 1(4).
2. Broader purposes for decision making, determining structure and needs of the City, and financial/fiscal decisions and tools, s. 2.
3. Broader authority and by-law-making powers, including determining services and things necessary for the public, structure, financial management, public assets, economic, social and environmental well-being, health, safety and well-being of persons, protection of persons and property, and business licensing, s. 8.
4. Increased power to delegate Council powers and duties to persons and bodies, s. 20 through 24 and power of Council to provide for review or appeals, s. 219.
5. Impounding and selling objects on or near highway, s. 51.
6. Administrative penalties for parking and licensing as an option, s. 81 and s. 86.
7. Any enhanced economic development purposes and powers, including those as may be permitted under sections 2, 8, and 82 through 84, 147 and 153.
8. Broader licensing powers, including the power to temporarily suspend licences, s. 85 and 86.
9. Liens and cost recovery for removal, care, storage and disposal of advertising devices, s. 110.
10. Enhancements of planning and land use powers not otherwise found in the Planning Act and Bill 51, including the power to prohibit and regulate the demolition and conversion of residential rental properties, community improvement plans, control of area, density and height, zoning conditions and site planning, sections 111 through 115, and including any new tax flexibility that may be provided in respect of community improvement plans under s. 328.
11. Expanded role for Mayor, including the promotion of public involvement in City activities and to participate in and foster activities which enhance the economic, social and environmental well-being of the City and its residents, s. 134.
12. Authority to establish City Boards and corporations and to provide for their governance, section 140 through 147, and s. 153.

13. Financial changes and new fiscal tools, including section 224 (ability to pass a multi-year budget and treatment of surplus), the broader flexibility on notice requirements, debt limits and repayment limits as may be suggested by s. 207, the flexibility and new options in Part IV – Finances, including s. 240 (broader borrowing, investing and debt), s. 244 (broader use of sinking and retirement funds). Elimination of the efficiency and effectiveness reporting is supported.

14. Broader range of fees and charges, Part IX.

15. Broader area rating ability, s. 282

16. Increased flexibility in traditional municipal taxes, including the manner of certifying the tax roll, s. 300, in tax write-offs, s. 314, minimum tax s. 316, removal of the two-year limit in apportioning taxes for parcels, s. 317, and clarifications in section 324 and 326 for rebates for charities and vacant units.

17. Broader enforcement, order and inspection powers under Part XV, including the ability to pursue directors and officers of corporations per s. 361, added obstruction powers in s. 362, setting fine structure and higher fines under by-laws in s. 364, added powers of entry and inspection, but not including section 374 (warrant). Instead for warrants Hamilton prefers the warrant provisions in the Provincial Offences Act.

18. That the City continues to have discussions with the Province on the development of the regulations and have further discussions to add new powers that may be deemed desirable through subsequent reports to City Council.