November 2002

CREATING LIVABLE COMMUNITIES:

A SUBMISSION TO THE MINISTER OF COMMUNITY, ABORIGINAL AND WOMEN'S AFFAIRS ON PHASE I OF THE DRAFT COMMUNITY CHARTER

Deborah Curran
Staff Lawyer
West Coast Environmental Law

TABLE OF CONTENTS

EXECUTIVE SUMMARY

The purpose of the Draft Community Charter is to provide more autonomy to, and require accountability from, municipalities. This allows municipalities to craft place-specific solutions that respond to local conditions. While the Draft Community Charter is a positive step in many directions, West Coast Environmental Law has a number of concerns regarding the revocation of municipal powers in the environmental sphere, and a lack of accountability in a number of areas.

In summary, West Coast Environmental Law submits the following recommendations to ensure that the Charter better meets the needs of municipalities and the citizens who live, work and play in their communities.

1. INCLUDE CITIZEN REPRESENTATION IN DEVELOPING THE DRAFT COMMUNITY CHARTER

We note that the Draft Charter was developed by the Community Charter Council. While the Council is composed of well-qualified individuals, it did not include any non-governmental community or citizen representatives. We strongly recommend that formal representation of citizen interests be included in future work on the Community Charter.

2. BROADEN THE ACCOUNTABILITY MECHANISMS IN THE DRAFT COMMUNITY CHARTER

The Draft Charter realizes the goals of autonomy and flexibility for municipalities. Less visible are accountability mechanisms that create public processes through which municipal action can be measured. West Coast Environmental Law proposes several additional accountability mechanisms used in North America, including provincial community development objectives, municipal monitoring of conflict of interest, and a local government appeal board.

3. ENACT AND BRING INTO FORCE THE ENTIRE COMMUNITY CHARTER AT THE SAME TIME

It is difficult to evaluate the effect of the different phases of the Draft Community Charter without seeing it as an entire package of municipal governance. The use of transitional provisions and consequential amendments is an inefficient framework under which local governments will be expected to operate.

4. CREATE PROVINCIAL COMMUNITY DEVELOPMENT OBJECTIVES

Within the broad principles of municipal governance, authority and flexibility, the interests of citizens in British Columbia to livable communities are nowhere enumerated. Section 2(f) provides explicitly that authority of municipalities is balanced by the responsibility of the Provincial government to consider the interests of citizens of British Columbia, generally. It is within overarching integrated provincial goals that municipalities should be permitted to exercise broad authority. The benefit of a proactive provincial framework is that the

conditions for livable communities can be found in one place, rather than scattered throughout local government legislation.

5. ENABLE MUNICIPALITIES TO DEVISE LOCAL ENVIRONMENTAL SOLUTIONS

The Draft Community Charter proposes concurrent regulatory authority of the Provincial and municipal governments in the areas of public health, protection of the natural environment, buildings and other structures, and soil removal and deposit (prohibitions only) [s.7(3)(k-n)].

The current Draft falls short of allowing municipalities to determine their public interest with regard to environmental and green building matters. The Community Charter is rescinding some broadly-held local powers for dealing with environmental protection and replacing them with more cumbersome and potentially narrower spheres of authority. Local governments should be empowered to meet or exceed provincial standards as the regulation meets each municipality's public interest. Municipalities are best placed to determine what type of approach is most appropriate in a particular locale.

6. MAINTAIN THE REQUIREMENT FOR ELECTOR ASSENT FOR IMPORTANT MUNICIPAL ACTION

We support the important provisions that require approval of the electors [exclusive or limited franchises for the provision of public transportation, water and energy (section 22); disposal of water, sewage, energy, transportation, or telephone works, unless to another municipality (section 28), incur liabilities under agreements over five years in length [section 158(2)], and borrow over the long term (section 163)].

7. MAINTAIN STRONG AND FLEXIBLE PARK AND TREE PRESERVATION MECHANISMS

West Coast Environmental Law supports the strong park protection mechanisms contained in the Draft Community Charter.

8. RETAIN ELECTOR APPROVAL THRESHOLD AT FIVE PERCENT

The proposed increase in number of electors required to initiate the Alternate Approvals Process under the Draft Charter (from five to ten percent) will make it impossible for cities to use this democratic mechanism. The threshold must either remain at five percent, or a more equitable formula based on population and proportional fairness be developed.

9. MAINTAIN OPEN MEETINGS

In Sections 74 to 78 the Draft Charter expands the ambit of meetings that may be closed to the public. While labour relations and personal information should clearly be discussed in private, some of the enumerated subject matters that may be subject to closed meetings under section 75 are exactly the types of issues that require public debate.

10. REQUIRE PUBLIC ACCESS TO MUNICIPAL RECORDS

We recommend that where required by law councils should be required to provide public access to non-in camera records

11. STANDARDIZE MUNICIPAL REPORTING

We strongly support a standardized approach that is legislatively mandated for annual municipal reporting. Standardization amongst municipalities will produce more useful information and will also reduce the burden on smaller municipalities in developing a reporting system.

12. REQUIRE LOCAL GOVERNMENTS TO MONITOR AND REPORT ON CONFLICT OF INTEREST

The new ethics requirements clarify conflict of interest situations and expand them to include non-pecuniary interests. However, these changes bolster the present conflicts approach that relies solely on the self-audit of individual council members. No independent and impartial mechanism exists to assist with conflict situations at the municipal level. We support a more standardized and open administrative mechanism for monitoring conflict issues. This could include a conflict of interest commissioner situated within an existing administrative body.

13. ENSURE NEW TAXES PROVIDE BOTH INCENTIVES AND ALLEVIATE PROBLEMS

In general, West Coast Environmental Law supports a broad and diverse tax base for communities. In many communities, the paramountcy of property taxes encourages competition to attract large-scale homogenous developments without adequately assessing long-term costs and benefits to residents. A more finely-tuned tax base would allow municipalities to tailor taxation schemes to provide both incentives and alleviate problems. In this context, we favour targeted taxation where a portion of it can justifiably pay for some basic services.

14. ALLOW NEIGHBOURHOOD IMPROVEMENT AREAS

Section 198 authorizes the granting of money to improve municipal services, conserve heritage property, and encourage business in business improvement areas. This grant must be recovered by a local service tax [s.198(3)]. A similar provision for residential neighbourhoods could help alleviate local problems such as parking and traffic where densities are increasing and commercial areas are adjacent.

15. RETAIN PROVINCIAL AUTHORITY FOR PROVIDING TAX EXEMPTIONS FOR INDUSTRIAL ENTERPRISES

Authority for municipal business tax exemptions raises the concerns of competition between municipalities in a "race to the bottom" to attract industrial enterprises or retain inefficient industries, and unfairness to existing business. Significant research exists in the U.S. demonstrating that business tax exemptions often do not result in net increases in economic activity. To ensure that industrial business tax exemptions or incentives steer the economy

in a consistent direction towards jobs in emerging sectors in British Columbia, we recommend that the ability to grant incentives be retained by the Provincial government.

16. CREATE A LOCAL GOVERNMENT APPEAL BOARD

Many jurisdictions in North American have municipal, land use, or zoning boards of appeal that act as a first level of appeal from enumerated local government decisions. They provide a more accessible and less expensive means of defending or challenging municipal bylaws. This administrative tribunal could serve several rights of appeal, including building code (as the Building Code Board of Appeal has been abolished by the Draft Charter), zoning, variance, subdivision and tax assessment.

17. STRENGTHEN AUTHORITY TO SET AND ENFORCE FINES

West Coast Environmental Law supports broadened authority to set fines (sections 250 to 253), and supports a dedicated forum for bylaw enforcement as discussed by the Ministry of Attorney General.

18. REQUIRE MUNICIPAL BYLAW ENFORCEMENT POLICY

It is fair and practical to require municipalities to adopt a policy indicating how they will be exercising bylaw enforcement discretion. Similar to a council procedures bylaw, a bylaw enforcement procedures bylaw would give notice of municipal priorities to the public and affected parties.

19. CREATE NO NEW INTERGOVERNMENTAL CONSULTATION BODIES

West Coast Environmental Law does not support the creation of a permanent Community Charter Council. Sufficient guarantees of consultation exists in the Charter with the provincial/UBCM consultation provisions in sections 276 to 277

.

INTRODUCTION

The Community Charter is put forward by the Provincial government and the Union of B.C. Municipalities (UBCM) as the next step in realizing the vision set out in UBCM's 1991 *Local Government Bill of Rights*. This vision includes recognizing local governments as an order of government who are autonomous from the Provincial government and responsible and accountable to their citizens. To realize this autonomy and accountability, local governments require broad governance powers and more financial resources.

The Community Charter Council has consulted with local governments across the province and has developed Phase I of the Draft Community Charter.[1] This initial Draft Community Charter aims to create "…a new legislative framework that frees municipalities to better serve the interests of their citizens by ensuring that they have the authority to make local decisions locally."[2] The hallmarks of this regime include broader, empowering general municipal authority, more local government autonomy, and more financial flexibility. Most fundamentally, the Draft Community Charter allows greater flexibility in local decision-making, an approach that acknowledges that communities across B.C. have diverse social, economic and environmental qualities

Regulatory flexibility is also a key tenet of smart growth, which includes land use and development practices that enhance the quality of life in communities, preserve ecological integrity, and consume fewer tax dollars and resources overall. Smart growth includes densifying and diversifying urban areas, managing on an ecosystem- or watershed-based scale, increasing transportation choices, protecting resource lands, and ensuring adequate affordable housing. Development that enhances the natural environment benefits everyone – business, local governments and citizens. Natural open space has a positive effect on real estate values, which translates into higher property tax revenues for municipalities. The natural environment is the basis for the tourism industry in British Columbia. Finally, many developers and municipalities are saving money and increasing the marketability of projects by integrating ecological considerations into development.[3]

---

1 Phase II of the Community Charter process will deal with regional districts, regional growth strategies, planning, and land use.

2 Province of British Columbia, Ministry of Community, Aboriginal, and Women's Services, The Community Charter: A New Legislative Framework for Local Government (May 2002) at 6.

3 See, for example, Auger, P.A. (1995), Does Open Space Pay? (Durham, New Hampshire: University of New Hampshire Cooperative Extension); Benson, E.D., J.L. Hansen, A.L. Schwatrz Jr., G.T. Smersh (1998), "Pricing Residential Amenities: The Value of a View," Journal of Real Estate Finance and Economics, 16:1, 55-73; Breffle, W.S., E.R. Morey and T.S. Lodder (1998), "Using Contingent Valuation to Estimate a Neighbourhood's Willingness to Pay to Preserve Undeveloped Land," Urban Studies, 35: 4, 715-727; Diamond, D.B. Jr. (1980), "The Relationship Between Amenities and Urban Land Prices," Land Economics 56:1, 21-32; Rocky Mountain Institute (1998), Green Development: Integrating Ecology and Real Estate (New York: John Wiley & Sons, Inc); Seattle Office of Planning (1987), Evaluation of Burke-Gilman Trail's Effect on Property Values and Crime (Seattle: Seattle Office of Planning); United States National Park Service (1995), Rivers, Trails and Conservation Assistance, Economic Impacts of Protecting Rivers, Trails, and Greenway Corridors, (Fourth Ed.)

To achieve smart growth objectives, flexibility and innovation at the local government level are crucial. However, such flexibility must be exercised within an ongoing public interest framework where citizens have ample opportunity to remain involved in planning and development beyond formal legislative consultation requirements such as voting in the municipal elections and attending public hearings. Devolution of powers and broader accountability for local governments must necessarily include greater public discussion about decisions that affect the shape and economy of a community. This is the hallmark of democracy. It includes being meaningfully involved in the ongoing discussions about creating one's community – whether that be in the development of a financial plan, or when considering a proposed development.

In general, the Community Charter supports innovative and engaged communities. Our support of those principles, with a focus on ongoing community involvement in local government processes, is based on promoting livable communities and smart growth. We support the general direction of the Community Charter and the more flexible regime. Flexibility is crucial for tailoring community development to different economic, social and environmental circumstances of local governments across the province. However, that flexibility must be exercised within a visible framework that promotes all aspects of community livability and places openness and accountability on an equal footing with local control.

GENERAL COMMENTS

West Coast Environmental Law welcomes the opportunity to comment on the Draft Community Charter. We have three overarching concerns about both the process and substance of the Draft Charter.

1. INCLUDE CITIZEN REPRESENTATION IN DEVELOPING THE DRAFT COMMUNITY CHARTER

We note that the Draft Charter was developed by the Community Charter Council. While the Council is composed of well-qualified individuals, it did not include any non-governmental community or citizen representatives. In each municipality across the province citizens take an active interest in the development of their communities. They have a different view on the efficiency of municipal government. They also have a significant stake, which for some includes their life's earnings, in smart growth and healthy communities. We strongly recommend that formal representation of citizen interests be included in future work on the Community Charter.

2. BROADEN THE ACCOUNTABILITY MECHANISMS IN THE DRAFT COMMUNITY CHARTER

The Draft Charter realizes the goals of autonomy and flexibility for municipalities. Less visible are accountability mechanisms that create public processes through which municipal action can be measured. The only direct accountability process is the approval of the electors, which is more limited that what is provided for under the *Local Government Act*. The conflict provisions and reporting requirements are important steps to creating more open government. However, in application they will be largely reporting mechanisms without any requirement for follow-up.

West Coast Environmental Law proposes several additional accountability mechanisms that are integral parts of other local government regimes in North America. Discussed below, these include provincial community development objectives, municipal monitoring of conflict of interest, and a local government appeal board.

3. ENACT AND BRING INTO FORCE THE ENTIRE COMMUNITY CHARTER AT THE SAME TIME

It is difficult to evaluate the effect of the different phases of the Draft Community Charter without seeing the entire package of municipal governance. The use of transitional provisions and consequential amendments is an inefficient framework under which local governments will be expected to operate.

PRINCIPLES AND INTERPRETATION

Sections 1 and 2 establish broad principles of municipal governance and municipal-provincial relations. We support the "one size does not fit all" approach of the Draft Charter and the ability of municipalities to determine the public interest of their communities, within a legislative framework that supports balance and certainty in relation to the differing interests of their communities" [section 1(b)]. We note that the requirement under section 3 for a broad interpretation of the Draft Charter follows the tenor of recent Supreme Court of Canada cases on municipal authority.[4]

4. CREATE PROVINCIAL COMMUNITY DEVELOPMENT OBJECTIVES

Within the broad principles of municipal governance, authority and flexibility, the interests of citizens in British Columbia to livable communities are nowhere enumerated. Section 2(f) provides explicitly that authority of municipalities is balanced by the responsibility of the Provincial government to consider the interests of citizens of British Columbia, generally. In the development of regions, communities and neighbourhoods many overarching goals can be identified. It is against those integrative provincial goals that municipalities should be permitted to exercise broad authority.

For example, the state of Oregon has had Statewide Planning Goals since the mid 1970's. The nineteen goals and attendant regulations provide a framework within which community plans and public participation occurs.[5] Goal 9 calls for the diversification and improvement of the economy, including providing an inventory of commercial and industrial lands and zoning for future needs. Goal 14 addresses urbanization and requires cities to estimate future growth and needs for land and to zone for those using an urban growth boundary. Goals 3 and 4 require agricultural and forest lands to be supported through farm and forest zoning.

The benefit of this proactive approach is that a provincial framework for livable communities can be found in one place, rather than scattered throughout local government legislation. The Provincial government can then work with municipalities to improve economic, social and environmental performance, rather than being forced into a role as mediator between

---

[4] See, for example, *Nanaimo (City)* v. *Rascal Trucking Ltd.*, [2000] 1 S.C.R. 342, 76 B.C.L.R. (3d) 201, 9 M.P.L.R. (3d) 1 (municipal statutes should be given a broad and purposive interpretation in light of the scheme of the Act as a whole) and *114957 Canada Ltee (Spraytech, Societe d'arrosage)* v. *Hudson (Town),* [2001] S.C.C. 40 (June 28, 2001) (local government "omnibus" powers should be interpreted broadly, and federal and provincial enactments supersede local government bylaws only if there is a direct conflict or where provincial legislation precludes local government regulation in the field). Other legislation affecting local governments is also interpreted broadly. See, for example, the interpretation of the Islands Trust Act, R.S.B.C. 1996, c. 239 in *MacMillan Bloedel v. Galiano Island Trust Committee* (1995) 10 B.C.L.R. (3d) 121, (lve. to appeal to S.C.C. dism'd).

[5] Available at http://www.lcd.state.or.us/goalsrul.html.

municipalities or jurisdictional enforcer. Provincial goals allow all sectors and citizens to work within a common framework to craft local solutions.

MUNICIPAL PURPOSES AND GENERAL POWERS

This part sets out the purposes and broad powers of municipal governments. We support the majority of the powers conferred on municipalities as this flexibility will allow them to more effectively respond to local conditions. In particular, we support:

- the broad powers delegated in section 12 where council may establish terms and conditions in bylaws and in exercising other powers. More specifically, a bylaw may differentiate between different areas, times, circumstances or conditions, establish different classes of activities, and make exceptions. This will allow municipalities to better tailor developments to specific ecological conditions and long-term housing and economic development goals.

- the ability to create inter-municipal regulatory schemes through bylaw (section 14). This is an important foundational tool for coordinating action on cross-boundary issues and for implementing regional growth strategies. This will also allow municipalities to increase efficiencies in the provision of services.

- The ability for council to regulate by adopting a standard, code or rule published by a government body or standards association [section 15(4)]. Again, this allows municipalities with few resources to research and promulgate standards to realize significant efficiencies as they are enabled to adopt credible standards of other organizations or bodies.

- The power to enter on or into property (section 16) will facilitate the enforcement of bylaws and development permit requirements.

However, we oppose the creation of concurrent jurisdiction for some spheres of regulatory authority. This separation is not in keeping with the tenor of the Draft Community Charter, and it does not promote the Provincial government's interest in maintaining provincial standards.

5. ENABLE MUNICIPALITIES TO DEVISE LOCAL ENVIRONMENTAL SOLUTIONS

The Draft Community Charter proposes concurrent regulatory authority of the Provincial and municipal governments in the areas of public health, protection of the natural environment, buildings and other structures, and soil removal and deposit (prohibitions only) [s.7(3)(k-n)]. The exercise of any authority in these areas of concurrent authority is subject to approval by the Minister responsible, in accordance with an agreement with a municipality, or by regulation that enables municipalities to act according to more specific conditions and restrictions that limit the matters to which this section applies.[6]

[6] The restrictions involving the areas of concurrent jurisdiction do not apply to a bylaw permitted under the fundamental powers sections [7(3)(a-j)] or that is specifically authorized in the Charter or another act. For example, s.60(b) deals expressly with the regulation or

We support the direction in the Draft Community Charter to provide more general powers to municipalities to determine their public interest and a broad grant of authority for environmental protection.[7] However, the current Draft falls short of allowing municipalities to determine their public interest with regard to environmental and green building matters. The Community Charter is rescinding some broadly-held local powers for dealing with environmental protection and replacing them with more cumbersome and potentially narrower spheres of authority. Provincial government approvals can take many months.

In keeping with the subsidiary principle underlying much of the Draft Community Charter, and in keeping with the Supreme Court of Canada's most recent statement about local government authority, local governments should be empowered to meet or exceed provincial standards as such regulation meets each municipality's public interest.[8] If the provincial government has not regulated in a particular sphere, municipalities are best placed to determine what type of approach is most appropriate in a particular locale.

Lawmaking and implementation are often best achieved at a level of government that is not only effective, but also closest to the citizens affected and thus most responsive to their needs, to local distinctiveness, and to population diversity. In no sphere of regulation is this more appropriate that in environmental regulation and the promotion of efficient green buildings.

We recommend that the proposed areas of concurrent jurisdiction be included within the areas of general municipal powers. The Provincial government always retains paramount authority in all areas in which it operates, and in establishing provincial standards. See, for example, section 10 that specifically validates municipal action that is in accordance with provincial statutory requirements and allows municipalities to exceed these requirements. Municipalities must meet provincial standards. They should have the ability to exceed these standards if it is in the best interest of the community.

We support the broad powers to "protect the natural environment" and to regulate in relation to "buildings and other structures," however these should be general fundamental powers as municipalities must always regulate within a context set by the provincial government.

---

prohibition of "odour" and section 60(d) deals with waste disposal and recycling. While there relate to environmental protection, they do not attract the additional requirements for ministerial approval, regulation or agreement.

[7] Currently, municipal jurisdiction regarding environmental protection is spread throughout the Local Government Act and other legislation. Most notably, a municipality may protect trees and regulate tree cutting (ss.708-714), regulate or prohibit the removal and deposit of soil (s.723), proscribe nuisances (s.725), and protect waterways (s.725.1). The land use planning and zoning jurisdiction of municipalities also contain specific authority for environmental protection and smart growth measures. These areas will be addressed in Phase 2 of the Community Charter process.

[8] In her judgement in *Spraytech* v. *Hudson (Town)* (2001) S.C.C. 40 case, Madame Justice L'Heureux-Dube embraced the subsidiarity principle and that "…local governments [should be] empowered to exceed, but not to lower national norms."

ADDITIONAL POWERS AND LIMITS ON GENERAL POWERS

6. MAINTAIN THE REQUIREMENT FOR ELECTOR ASSENT FOR IMPORTANT MUNICIPAL ACTION

We support the important provision that exclusive or limited franchises for the provision of public transportation, water and energy be approved only with the approval of the electors (section 22). One of the strongest arguments for privatizing municipal services is the promise of cheaper rates due to business competition. However, when an exclusive franchise is granted the benefits of competition are nullified and quality control is one step further away from citizen input. In addition, citizens will be affected by such changes and other sections of the Draft Community Charter require notice and an opportunity to be heard where individual rights may be affected (for example in section 40 relating to permanent closure and removal of highway dedications). Privatization warrants a public discussion.

Likewise, the assent of the electors is also crucial when a municipality proposes to dispose of water, sewage, energy, transportation, or telephone works, unless to another municipality (section 28), incur liabilities under agreements over five years in length [section 158(2)], and borrow over the long term (section 163).

7. MAINTAIN STRONG AND FLEXIBLE PARK AND TREE PRESERVATION MECHANISMS

The Draft Community Charter emphasizes the importance of parks to municipalities and livable communities in several ways. Section 27 requires the approval of the electors when parkland will be disposed of in exchange for other land suitable for parkland, or when parkland is disposed of and the proceeds will placed in a parkland acquisition reserve fund. Section 30 allows the reservation and dedication of municipal land as parkland, and any bylaw that removes the reservation or dedication must be approved by the electors. We support these strong park protection mechanisms.

8. RETAIN ELECTOR APPROVAL THRESHOLD AT FIVE PERCENT

The counter petition process under the *Local Government Act* (s.172.2) allows citizens to have certain far-reaching municipal decisions considered by the electorate at large. It is triggered when five percent of electors indicate that they want to challenge certain proposed local government bylaws, actions or other matters [s.172(2)(b)]. As a democratic accountability mechanism, it is an important tool for communities to discuss highly contentious issues. It is also an important means for council to check with citizens about fundamental changes in the municipality.

For city jurisdictions it is extremely difficult to obtain the support of five percent of the electors, and this process is not often successful.

This counter petition process has been replaced by an Alternate Approval Process under section 73 of the Draft Charter, which increases the threshold trigger to ten percent of the electors. This increase in number of electors required to initiate the process will make it impossible for cities to use this democratic mechanism. The threshold must either remain at

five percent, or a more equitable formula based on population and proportional fairness be developed. This could include thresholds of up to ten percent for small municipalities, with thresholds of descending magnitude as populations increase.

PUBLIC PARTICIPATION AND COUNCIL ACCOUNTABILITY

9. MAINTAIN OPEN MEETINGS

In Sections 74 to 78 the Draft Charter expands the ambit of meetings that may be closed to the public. While labour relations and personal information should clearly be discussed in private, some of the enumerated matters that may be subject to closed meetings under section 75 are exactly the types of issues that require public debate. This is true whether or not they are in the preliminary stages or not.

For example, s.75(l) allows discussions relating to municipal objectives, measures and accomplishments for the purposes of annual municipal reports to be closed to the public. For those measures to be most relevant to the public and accurately report on what is important to citizens in a municipality, the definition of these objectives must be developed and reported through a public process

Finally, section 78 deems that the open meeting rules are applicable to other bodies such as committees and boards (as are procedural rules under section 130). However, subsection 282(2)(b)(ii) enables the Lieutenant Governor in Council to make regulations excluding a specified body from application of these sections. The open meeting and procedure sections are fundamental to public and accountable municipal governance. Other bodies should not be exempt from the requirement of sections 78 and 130.

10. REQUIRE PUBLIC ACCESS TO MUNICIPAL RECORDS

Under subsection 80(1) of the Draft Charter, council may, by bylaw, provide for public access to its records and establish procedures respecting that access. We recommend that where required by law [section 80(2)], for agreements requiring electoral approval or assent (section 81) or for the records enumerated in section 82, councils should be required to provide public access to non-in camera records.

11. STANDARDIZE MUNICIPAL REPORTING

The requirement for annual municipal reporting under section 83 of the Draft Charter, and the presentation of these reports to the public at an annual meeting where council will consider submissions and questions from the public (section 84) are important accountability mechanisms that will assist councils to adhere to their goals and objectives. Citizens will also have the opportunity to review and take pleasure in the progress of their community. Providing this type of information in one place is an important means to generate interest in, and understanding of, municipal priorities.

Councils should be required to make the annual report public at least 30 days before the annual public meeting to provide adequate time for review and comment.

We understand that the Provincial government has agreed to establish a committee, composed of representatives from the UBCM, Local Government Managers Association, and the Government Finance Officers Association, business and other groups to develop a standardized document for the annual reporting. Information from different municipalities will be comparable. We strongly support a standardized approach, mandated in the Draft Charter, because it will produce more useful information and will also reduce the burden on smaller municipalities to develop a reporting system. We look forward to being involved in the development of the reporting process.

This is a timely opportunity to make the annual reporting broader than a financial accountability mechanism. Dozens of innovative jurisdictions across North America are instituting annual "quality of life" or "progress indicators." These reports include statistics and key findings for a range of subjects such as community infrastructure, demographics, environment and economic performance. By providing a baseline and trends, these reports allow municipalities to set more accurate priorities and address problems before they are acute.

The Federation of Canadian Municipalities has been working on developing a standardized set of indicators.[9] In British Columbia both the Capital Regional District and Resort Municipality of Whistler have detailed reporting programs.[10]

These new rules for council accountability and openness are applauded as the development of a community should be an ongoing and open discussion amongst all parties. However, providing information to citizens does not necessarily create livable communities. Unless residents have the means to ensure that contradictory council action is changed in response to the results of the reports and public feedback, the municipal annual reports and meetings will result in pro forma reporting

12. REQUIRE LOCAL GOVERNMENTS TO MONITOR AND REPORT ON CONFLICT OF INTEREST

The new ethics requirements clarify conflict of interest situations and expand them to include non-pecuniary interests. We support these changes that help council members, board members and the public to determine when individuals may be in a conflict situation.

However, these changes bolster the present conflict approach that relies solely on the self-audit of individual council members. No independent and impartial mechanism exists to assist with conflict situations at the municipal level. Likewise, council has no explicit role in monitoring or taking a proactive approach to interest issues. While citizens may apply to the Supreme Court to have a council member declared disqualified under section 96, this is an onerous first means to challenge council accountability.

---

[9] *reference requested from FCM*

[10] See Resort Municipality of Whistler, *Whistler Resort Community Monitoring Report 2000*, available at http://www.whistler.ca/reading/documents/2000monitrpt.pdf; Capital Regional District, Report on the Environment: Monitoring Trends in the Capital Regional District (Phase 1 and 2), available at http://www.crd.bc.ca/rte/report/cover.htm.

The good intentions of elected officials are at the heart of a functioning democracy. In furtherance of the Charter's goals to create more openness and accountability, this is a key area where new mechanisms are required to assist council or board members to fulfill their obligations under sections 85 to 98. It is not unreasonable to expect that a public institution such as a municipality would take some responsibility in identifying conflict issues rather than leaving it up to individual members or the public to address.

We support a more standardized and open administrative mechanism for monitoring conflict issues. This could include a conflict of interest commissioner situated within an existing administrative body. At minimum, councils must be required to monitor declared conflicts of interests and to report on them in detail as part of the annual reporting requirements.

MUNICIPAL GOVERNMENT AND PROCEDURES

West Coast Environmental Law supports the explicit mayoral and council roles in developing policies and programs (sections 100 and 101), particularly in light of the annual reporting requirements.

FINANCIAL MANAGEMENT

We support the public consultation on five year financial plans under section 149. The development of financial priorities often determines what can be achieved in Official Community Plans and shapes how land use occurs. Public involvement in setting priorities will help citizens to understand the constraints municipalities face when residents ask for increased services.

MUNICIPAL REVENUE

The Community Charter Council has asked specifically for comments on proposed new taxation authority and the ability to provide tax exemptions for certain industrial enterprises. Within this context, it is noted that section 182 of the Draft Charter enables the Lieutenant Governor in Council to make regulations regarding tax rates that may be established by an annual property tax bylaw. The exercise of this authority to limit property tax should not detract from the ability of municipalities to achieve public policy objective under any new taxation powers.

13. ENSURE NEW TAXES PROVIDE BOTH INCENTIVES AND ALLEVIATE PROBLEMS

The Provincial government is exploring the possibility of including additional revenue sources for municipalities under section 175 of the Draft Charter. The proposed new taxation authority includes road tolls, hotel room revenue tax, fuel tax, local entertainment tax, resort tax, parking stall tax, and fees as tax.

In general, West Coast Environmental Law supports a broad and diverse tax base for communities. In many communities, the paramountcy of property taxes encourages competition to attract large-scale homogenous developments without adequately assessing the long term costs and benefits to the residents. A more finely-tuned tax base would allow municipalities to tailor taxation schemes to provide both incentives and alleviate problems.

In this context, we favour targeted taxation where a portion of it can justifiably pay for some basic services.

For example, road tolls, fuel taxes and parking stall taxes can shift transportation patterns to alleviate traffic and its attendant pollution. However, the revenue from those taxes must be dedicated to improving public transit and other forms of transportation, as well as upgrading road infrastructure to accommodate pedestrians, cyclists and buses. It is now well-accepted in the transportation sector that unless efficient and convenient alternatives are provided when taxes are imposed, the taxes will not achieve their desired non-revenue raising policy objectives. Likewise, hotel room revenue and resort taxes can assist in upgrading community water and waste disposal facilities, as well as encouraging the tourism sector.

14. ALLOW NEIGHBOURHOOD IMPROVEMENT AREAS

Section 198 authorizes the granting of money to improve municipal services, conserve heritage property, and encourage business in business improvement areas. This grant must be recovered by a local service tax [s.198(3)].

A similar provision for residential neighbourhoods would help alleviate local problems such as parking and traffic where densities are increasing and commercial areas are adjacent. The fees from parking meters in these residential areas, with residents only required to pay lower annual fees, could be dedicated to neighbourhood improvements such as traffic calming. This scheme would discourage parking in residential areas and provide a neighbourhood with funds to alleviate the effects of commercial activities and higher density living.

15. RETAIN PROVINCIAL AUTHORITY FOR PROVIDING TAX EXEMPTIONS FOR INDUSTRIAL ENTERPRISES

West Coast Environmental Law supports sections 207 and 208 providing authority for municipalities to exempt certain land or improvement from taxation. More specifically, this maintains the potential tax exemptions for eligible heritage and riparian properties.

More contentious is section 209 of the Draft Charter that enables tax exemptions for industrial enterprises that are new, expanding or need help.[11] Council may enter into an agreement with the enterprise and specify conditions of the exemption. Under section 210, Council must give notice of such a permissive tax exemption and specify how long it will last and how much revenue will be foregone.

Authority for municipal business tax exemptions raises the concerns of competition between municipalities in a "race to the bottom" to attract industrial enterprises or retain inefficient industries, and unfairness to existing business.

[11] Improvement on industrial and business property are exempt from property tax levies up to $10,000 of the assessed value, under the Industrial and Business Property Exemption Regulation (B.C. Reg. 485/83).

Significant research exists in the U.S. demonstrating that business tax exemptions often do not result in net increases in economic activity.[12] The State of California is attempting to counteract the negative effects of business tax exemptions by legislating against inter-municipal competition for businesses. [13] California legislators, concluding that subsidies for big box retailers resulted in the loss of public funds for public purposes, passed a law to discourage retailers from creating competition between local governments in the same market area.[14]

Other jurisdictions are attaching job quality or living wage standards to development subsidies, including property tax abatements.[15] The purpose is to reduce the likelihood that subsidized jobs will generate hidden taxpayer costs, produce largely low paying jobs, and create few jobs for existing residents as new workers often flood in from outside the jurisdiction. To stimulate economic development, local governments are choosing high paying, high skilled enterprises.

To ensure that industrial business tax exemptions or incentives steer the economy in a consistent direction towards jobs in emerging sectors in British Columbia, we recommend that the ability to grant incentives be retained by the Provincial government. This is an issue of macro economic policy as it relates to industries. This topic has generated significant debate in the business community, and the majority of municipalities do not support this additional responsibility.

LEGAL PROCEEDINGS AND BYLAW ENFORCEMENT

16. CREATE LOCAL GOVERNMENT APPEAL BOARD

Under the Draft Charter section 244, an elector or interested person may apply to the Supreme Court to set aside all or part of a bylaw or resolution for illegality. This maintains the current appeal mechanism from the *Local Government Act* (s. 262), and is a daunting first right of appeal, particularly for many residents without the financial means to challenge bylaws on public interest grounds.

Many jurisdictions in North American have municipal, land use, or zoning boards of appeal that act as a first level of appeal from enumerated local government decisions. They provide

---

[12] These reports include Anthony M. Rufolo and J. O'Shea Gumusoglu, Literature Review of Business Development Tax Incentives, prepared for the Oregon Department of Economic Development (1995) and Timothy J. Bartik, Who Benefits from Local Job Growth, Migrants or Original Residents? Regional Studies 27:4 (1993) 297-311

[13] For example, the City of Oxnard in California spent $30 million in tax money on a parking garage to attract Costco away from Ventura, another local government in the region. Aaron Glantz, California Governor Vetoes Bill Banning Superstores, 65 Planning (Oct. 1999) at 22.

[14] The bill, 1999 AB 178 was passed by the legislature nearly unanimously. This bill is in effect until January 1, 2005 at which time its implementation will be reviewed.

[15] G. LeRoy, F. Hsu and S. Hinkley, The Policy Shift to Good Jobs (Institute on Taxation and Economic Policy, 2000).

a more accessible and less expensive means of defending or challenging municipal bylaws. This administrative tribunal could serve several rights of appeal, including building code (as the Building Code Board of Appeal has been abolished by the Draft Charter), zoning, variance, subdivision and tax assessment.

17. STRENGTHEN AUTHORITY TO SET AND ENFORCE FINES

West Coast Environmental Law supports broadened authority to set fines (sections 250 to 253), and supports a dedicated forum for bylaw enforcement as discussed by the Ministry of Attorney General.

18. REQUIRE MUNICIPAL BYLAW ENFORCEMENT POLICY

Broadening municipal authority to set fines and enforce bylaws is only half of the equation of dealing with effective laws. A commitment to enforce bylaws is also required. Municipalities possess considerable discretion to determine when they will or will not enforce a bylaw, and that discretion is often exercised on the basis of the availability of resources to enforce bylaws. Municipalities do not have the financial resources, nor would it be practical, to enforce all bylaw infractions. However, when municipalities enact bylaws citizens expect those bylaws to be enforced.

What is fair and practical is to require municipalities to adopt a policy indicating how they will be exercising bylaw enforcement discretion. Similar to a council procedures bylaw, a bylaw enforcement procedures bylaw would give notice of municipal priorities to the public and affected parties. Citizens could determine under what circumstances the municipality would take bylaw enforcement action, and what steps municipal staff would take.

GOVERNMENT RELATIONS

We support the rule against forced amalgamations [s.279]. However, municipalities also need to work together more comprehensively to address the needs of business and the environment that transcend municipal boundaries. We recommend below several mechanisms for incorporation into Phase II of the Draft Community Charter that will significantly contribute to regional efficiency and livability.

19. NO NEW INTERGOVERNMENTAL CONSULTATION BODIES

Finally, we do not support the creation of a permanent Community Charter Council as proposed on pages 23-24 of *The Community Charter: A New Legislative Framework for Local Government*. The UBCM acts as a strong advocate for local governments and is effective in having its views implemented. Indeed, the UBCM and its members were the only bodies formally consulted prior to the development of the Draft Community Charter. Sufficient guarantees of consultation exists in the Charter with the provincial/UBCM consultation provisions in sections 276 to 277.

CONCLUSION

The Draft Community Charter provides a new approach to municipal governance. Its purpose is to enable councils to exercise their powers within a broad jurisdictional framework, the aim of which is to foster more creative and accountable solutions. However, in a number of areas the Draft Charter does not adequately address its local autonomy and accountability goals.

Most starkly, the Draft Charter rescinds some municipal power to protect the natural environment, and requires councils to obtain the approval of the Provincial Government or to act in accordance with specific provincial regulation dealing with municipal environmental authority. This approach does not foster innovation nor autonomy. Municipalities should be encouraged to exceed provincial environmental standards as an integral part of creating healthy and livable communities.

While the Draft Charter strikes a fine balance between efficient and accountable government in such areas as annual municipal reporting and potentially increasing municipal taxation authority, it does not contain adequate public accountability mechanisms to ensure that heightened municipal autonomy is properly responsive to the long-term needs of a community.

APPENDIX I
PHASE II OF THE DRAFT COMMUNITY CHARTER

West Coast Environmental Law staff include below our initial submission on Phase II of the Community Charter process dealing with land use and regional districts. The Provincial Government has a unique opportunity to strengthen efficient land use patterns that will preserve the livability of B.C. communities and also promote more compact, diverse and vibrant neighbourhoods.

1. CREATE PROVINCIAL COMMUNITY DEVELOPMENT OBJECTIVES

Section 2(f) of the Draft Community Charter provides explicitly that authority of municipalities is balanced by the responsibility of the Provincial government to consider the interests of citizens of British Columbia, generally. In the development of regions, communities and neighbourhoods many overarching goals can be identified. It is against those integrative provincial goals that municipalities should be permitted to exercise broad authority.

For example, the state of Oregon has had Statewide Planning Goals since the mid 1970's. The nineteen goals and attendant regulations provide a framework within which community plans and public participation occurs.[16] Goal 9 calls for the diversification and improvement of the economy, including providing an inventory of commercial and industrial lands and zoning for future needs. Goal 14 addresses urbanization and requires cities to estimate future growth and needs for land and to zone for those using an urban growth boundary. Goals 3 and 4 require agricultural and forest lands to be supported through farm and forest zoning.

The benefit of this proactive approach is that a provincial framework for livable communities can be found in one place, rather than scattered throughout local government legislation. The Provincial government can then work with municipalities to improve economic, social and environmental performance, rather than being forced into a role as mediator between municipalities or jurisdictional enforcer. Provincial goals allow all sectors and citizens to work within a common framework to craft local solutions.

2. STRENGTHEN REGIONAL GROWTH STRATEGIES

Regional Growth Strategies have the potential to be a very important pro-smart growth tool. A key aspect of promoting more dense and clustered development in regions is through the use of urban containment boundaries (UCB's). UCB's support working agricultural and forested lands, concentrate development in already-built centres, and decrease municipal infrastructure costs. We submit that a provincially-mandated urban containment boundary in each region would stimulate economic growth in centres and preserve working lands.

[16] Available at http://www.lcd.state.or.us/goalsrul.html.

3. STRENGTHEN EXISTING LIVABLE COMMUNITIES PROVISIONS

As a baseline, the existing provisions that allow municipalities to tailor developments to fit site- and neighbourhood-specific requirements must remain available. These include the use of Development Permit Areas, Development Information Areas, and Approving Officer sign off on subdivisions.

4. MAINTAIN STREAMSIDE PROTECTION REQUIREMENTS

Over the long-term, streamside enhancement is a key strategy to integrating development into natural systems and effectively using any streams as a part of any municipal stormwater system. This includes allowing municipalities to act on the Streamside Protection Regulation (B.C. Reg. 10/2001)].

5. MAINTAIN NO COMPENSATION DUE FOR THE EFFECTS OF LAND USE BYLAWS

Section 914 of the Local Government Act is essential for the orderly planning and development of a community. Even in the United States, where property rights are constitutionally protected, planning and limitations on land use are recognized as cornerstones to creating livable communities and maintaining property values at both the local and regional scale.[17]

6. ESTABLISH A LOCAL GOVERNMENT APPEAL BOARD

Many jurisdictions in North American have municipal, land use, or zoning boards of appeal that act as a first level of appeal from enumerated local government decisions. They provide a more accessible and less expensive means of defending or challenging municipal bylaws. This administrative tribunal could serve several rights of appeal, including building code (as the Building Code Board of Appeal has been abolished by the Draft Charter), zoning, variance, subdivision and tax assessment.

7. ALLOW DEVELOPMENT COST CHARGES TO BE CALCULATED ON A SQUARE FOOT BASIS

Development cost charges (DCCs) are calculated on a per unit basis. In the residential sphere, the rationale for this approach is that it treats all developments, big or small, equally. However, in practice it distorts the economics of land development because it does not recognize that larger developments or houses pose greater costs to municipalities. The current DCC structure favours sprawl over compact communities, and creates disincentives for secondary suites in compact houses. West Coast Environmental Law recommends that the Community Charter explicitly allow DCC's to be charged on a square foot basis.

---

[17] See, for example, *Tahoe-Sierra Preservation Council* v. *Tahoe Regional Planning Agency*, No. 00-1167, April 23, 2002 (U.S.).

8. ALLOW DCC'S TO FUND ROAD, TRANSIT AND OTHER NON-MOTORIZED TRANSPORTATION IMPROVEMENTS

Section 933 of the Local Government Act allows municipalities to impose DCC's to cover the capital costs of providing roads to service developments. It does not allow DCC's to fund transit, even though (outside Greater Vancouver and Victoria) transit services are partially funded by local government, and are provided under agreements between local government, BC Transit, and private operators. As residents of new developments will be using transit and relying on non-motorized transportation modes, DCC's should also fund these core services.

9. REMOVE DCC EXEMPTIONS FOR BUILDING PERMITS WITH LESS THAN FOUR UNITS

DCCs charged as an equal amount per subdivision lot tend to encourage larger lot sizes because the DCC forms a smaller portion of overall development costs. For this reason, DCCs based on floor space are often advocated as better for encouraging smart growth. However, the *Local Government Act* may encourage municipalities to impose DCCs on the basis of subdivision units rather than floor space. Under section 933(4), building permits for less than four units are exempt from payment of DCCs, but no similar exemption applies to subdivision units. Section 933(4) thus encourages use of DCCs based on subdivision units.

10. ALLOW MUNICIPALITIES TO ESTABLISH LOWER DCC'S FOR DEVELOPMENTS THAT HAVE LOWER SERVICING COSTS

Subsection 933(11) of the *Local Government Act* prohibits local governments from waiving or reducing DCCs. The Community Charter could allow officials to negotiate case specific reductions in DCCs for developments that incorporate innovative methods that reduce demand on local services. In the past charges were negotiated under Land Use Contracts, but this system was replaced by DCCs to avoid what developers perceived as 'gouging' by municipalities — forcing developers to pay amounts unrelated to the costs imposed by their development. A system of negotiating partial waivers from standardized fees, so long as it is based on clear criteria, should be workable.

11. ALLOW DEVELOPER CASH PAYMENTS IN LIEU OF PARKING SPACE TO BE SPENT ON TRANSPORTATION DEMAND MANAGEMENT OR TRANSIT

Section 906 (parking space requirements) provides that developers' payments of cash in lieu of parking space requirements are restricted to provision of off-street parking. This could be amended to allow investment of such funds in transit or transportation demand management services.

12. ENABLE MUNICIPALITIES TO REQUIRE BONDING FOR SITE CLEAN UP FOR DECONSTRUCTION

A combination of factors makes deconstruction less attractive than demolition: (a) demolition is faster than deconstruction, (b) delays are expensive for developers, especially when carrying financial cost, and (c) some municipalities will not issue a demolition permit (for the purpose of deconstruction or demolition) prior to issuance of a building permit. This barrier could be mitigated if *deconstruction* (not demolition) permits were issued prior to building permits; however, municipalities are concerned that this could lead to sites with

partially demolished buildings or vacant lots being abandoned. Allowing municipalities to require bonding from contractors to complete deconstruction within a reasonable time and remedy unsightliness within a reasonable time frame, would help overcome this problem.

13. ALLOW DEVELOPMENT VARIANCE PERMITS TO ACCEPT PRESCRIBED VARIATIONS IN DENSITY

For more significant variations in zoning requirements, councils can issue development variance permits under s. 922. Development variance permits do not, however, allow variations in density or use. Minor increases in density (within limits prescribed by bylaw) could be allowed under development variance permits, or through administrative approvals. For instance, under the *Vancouver Charter*, the Director of Planning can allow density increases (but may not allow multifamily projects in single family zones).

14. AUTHORIZE "PERFORMANCE-BASED ZONING"

Multiple uses compatible with neighbouring uses can be facilitated through performance standard zoning (e.g. allowing discretionary approval of uses that are not designated as allowable, but meet certain criteria such as traffic generation, hazards, noise, vibration). This approach is used in several US cities and in Saskatchewan. However, the *Local Government Act* currently does not allow performance based zoning.[18] This approach streamlines approvals for multiple use, and was recommended by a 1997 Ministry of Municipal Affairs report, "Tools of the Trade, Local Government Planning in British Columbia"

I:\Projects\Smart Growth and Municipal\dc28-11-02CommCharterbrief.doc

[18] Arguably the Act allows municipalities to allow uses that meet certain criteria; however, this may be difficult to implement without an administrative approval process, and is open to attack that an activity or business is in being regulated, not land use itself.