

Review of the City of Toronto Act - Belinda Cole 2008

- Note: My research on the City of Toronto Act was done primarily to understand the legal framework behind how and by who the City is governed – especially with respect to parks and public, common spaces.
- My notes and questions are contained in italicized font in square brackets.
- The review did not look at the parts of the Act which deal with taxation (Part XI - Traditional Municipal Taxes, Part XII - Limits on Traditional Municipal Taxes, Part XIII - Collection of Traditional Municipal Taxes, Part XIV - Sale of Land for Tax Arrears (Real Property Taxes), nor the following: Part XVII-Other City Bodies (e.g. TTC, police services board, board of health continues, zoo, etc), Part XVIII - Transitions, or Part XIX - Miscellaneous Matters.

City of Toronto Act, 2006, Statutes of Ontario, Chapter 11, Schedule A

[see updated electronic version at http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_06c11_e.htm;

http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_06c11_e.htm;

The history of the legislation, including amendments to it, the date different provisions were proclaimed to be in force, etc. is available at: http://www.e-laws.gov.on.ca/html/tables/publicstatutesannotations/elaws_t_pu_st_an_t06c11.htm.

Part I – Interpretation

Preamble notes:

- 1st emphasis is on Toronto as an “economic engine” and notes City’s key role in:

- creating and supporting economic prosperity and
- **high quality of life** for people of Ontario

- the lawmakers recognize that the success of the city requires the active participation of **governments working together in a partnership based on respect, consultation and co-operation**

[these principles are repeated in the Interpretation section 1; interestingly, there is no corresponding mention of the importance of CITIZENS’ participation in either place]

- the lawmakers recognize the City as a government “**capable of exercising its powers in a responsible and accountable fashion**”

[to the extent that this is not citizens’ experience of the City, it would be interesting grounds for appeal to the legislature during the review of this legislation 2 years after it came into force on January 1, 2009. What was the

experience/evidence upon which this was based?]

s. 1. Governing principles of the Act:

- City **exists for purpose of providing good government**
- **Council is responsible and accountable**

s. 2. Purposes of this Act

- create broad framework of powers to allow City to do following things to provide **good government** including the following:

- determine what is in the **public interest** *[no mention of how this is done, or any explicit mention of the “public’s” role in defining its interest]*

- respond to the **needs** of the City *[as defined by whom? By what process?]*

- determine the **appropriate structure for governing** *[could be interesting for CELOS to define how citizen’s can take their key role in directing the city as to the needs/desires of citizens re: public space and parks]*

- ensure the City is **accountable to the public, and decision-making is transparent**

- determine appropriate mechanisms for delivering municipal services *[CELOS has a key role here to help the City fulfill its legislative mandate by providing a model for how services can work for the people for whom they are provided]*

- determine **appropriate spending levels & taxation** *[again, CELOS has a key role here to help the City determine what is appropriate in public space]*

- fiscal tools

s. 3. Definitions

“record” – information however stored.....

“system” – one or more programs or facilities of a person used to provide services and things to the person.... and includes administration

s. 4. Special Acts *[I’m not clear what these are]*

“special Act” – an Act which relates to the City in particular *[any relevance to CELOS?]*

- **The City** may act to override a special act re: the following powers:

- changing city name
- establishing, changing, dissolving wards
- changing composition of City council
- dissolving of changing local boards

[this appears, at first, to give very, very far-reaching power to city councilors to make fundamental changes to the way councillors are elected e.g. how many councilors, changes to ward boundaries) However, see s. which establishes which decisions can be made by Council and the procedure to be followed.]

s. 5. Review of the Act

This Act will be reviewed after 2 years (Jan. 1/09) and every 5 years onward.
[what is the process for this? is this a common provision in legislation? What is context/background of this?]

Part II. General Powers

s. 6. City's powers are to be interpreted broadly. *[repeated intent of legislation throughout the Act is to err on the side of conferring very broad powers on the City]*

s. 7. City has powers of a natural person *[standard clause that means that the City is actually, the corporate body, the City of Toronto]*

s. 8. (1) City has broad powers to **“provide any service or thing that the City considers necessary or desirable for the public”**.

s. 8. (2) the City's **general** by-law making powers:

1. governance structure of the City and its local boards
2. accountability and transparency of the City and its operations
3. financial management of the city
4. public assets
5. economic, social and environmental well-being of the city
6. health, safety and well-being
7. services and things the City is authorized to provide
8. protection of persons and property, including consumer protection *[consumer protection is typically the responsibility of the province]*
9. animals
10. structures, including fences and signs
11. business licensing

8. (3) **Scope of powers**

- a) regulate or prohibit
- b) require persons to do things respecting the matter
- c) provide for a system of licences “ “ “

[clearly, the City is the corporate body. See section which stipulate that it is the elected officials who can pass by-laws – see. s.21, Is it possible to prohibit an act without any corresponding means of enforcement?]

s. 9. City can **expropriate** land as per provincial legislation

s. 10. **By-laws** can be **general or specific** in their application and **may differentiate in any way and on any basis the City deems appropriate** *[what is the source/rationale of this section? does this relate to caselaw, or human rights matters? For CELOS purposes, it is certainly an argument which supports the current practice that different facilities in the city are treated differently.]*

s. 11. Where there is any conflict with provincial or federal legislation, orders, licenses, etc. these prevail over municipal by-law.

****s. 11 (2)** a by-law is without effect where there is **a conflict between a by-law and a provincial or federal law, regulation or where the by-law frustrates the purpose of the Act, regulation or instrument.** *[this could be of key importance to CELOS if there are laws enacted for purposes that contradict city by-laws]*

General Restrictions

s. 12. The City must follow all necessary procedural requirements, including **“conditions, approvals and appeals** that apply to the power and **any limits on the power contained in the specific provision.**
[what are these requirements? We need to be attuned to any particular processes required when by-laws are passed under any specific sections, other than ss. 7 or 8]

s. 12.(3) Nothing invalidates a by-law which was passed in accordance with the procedural requirements in force at the time it was passed.

s. 12(4) The procedural requirements must be followed regardless of the wording of ss. 7 &8.

*s. 12 (5) The procedural requirements don't apply to by-laws passed under ss. 7 or 8 re:

- fences, signs
- requiring people to shovel snow, ice
- require people to clear their land of debris
- require people to cut lawn and weeds,
- prescribing standards re: vacant buildings
- authorizing front yard parking
- providing for any project to provide housing, accommodation in the City, **including any public space or recreational, institutional, commercial or industrial facilities or buildings that, in the opinion of the City,** may reasonably necessary for that purpose
- other matters prescribed by Minister of Municipal Affairs and Housing
[I understand some of these circumstances as they are matters which can be seen as necessary to do promptly, but the bold part above seems very broad].

s. 13 Sets out **restrictions re: corporate and financial matters on the ss. 7 & 8 by-law making powers - these sections** cannot be used for:

- imposing taxes
- making grants or loans
- becoming bankrupt

s. 14 Restriction on the City's right to confer monopolies – “the exclusive right to carry on any business, trade or occupation” **unless the City is specifically authorized to do so under this or any other Act.** [*this section might apply to argue against the type of kitchen licensing issued at Christie Pits? To do: look in Act for provisions re: contracts to carry on businesses*]

Delegation of Powers and Duties

General Power to Delegate

s. 20 broad power of delegation under the Act **except for enumerated restrictions in section.**

[can anyone but city councilors, e.g. elected officials pass by-laws or in any way take on delegated powers of elected officials that are traditionally limited to those who are elected?]

s. 20 (2) Scope of power – rules which apply to a by-law delegating any of City's powers or duties:

- delegation can be revoked at any time (unless the power of revocation is specifically limited)
- delegation can't go beyond the term of Council
- delegation may be shared by both the City and person to whom the power is delegated
- regardless of delegation, City is always joint delegatee [*e.g. liable for the way the delegated powers are carried out*]
- Council can place any conditions or limits it wishes on delegations
- all delegated power must be exercised in the same way that non-delegated power is exercised, including all conditions, procedural requirements, etc.

**s. 20 (3) Conditions and limits Council places on delegation may include:

- requirement that delegate act by **by-law, resolution** or otherwise despite s. 132 (3) [*city council powers – check what this says – does this mean parties other than city councilors can pass by-laws?*]
- procedures delegate must follow
- accountability of the delegate and transparency of the delegate's actions

s. 21 Restriction of delegation of legislative and quasi-judicial powers

- these powers can be delegated only under specific Acts named in the regulations, a private Act re: the city [*example?*] or the Planning Act and, in these cases, only to:

- a) one or more city councilors or council committee
- b) body with at least two councillors, of whom at least 50 percent are:
 - councillors
 - individuals appointed by council, or
 - a combination of the two above
- or c) city employee, officer or agent [*check regulations to see in what kinds of cases city employees, etc. take on legislative or quasi-judicial functions?*]

s. 21 (3)

- there can be no delegation to a corporation created by the city (s. 148)

s. 21 (4)

Council can't delegate legislative power to an employee, officer or agent unless, in Council's opinion, the power is **minor in nature**. "minor" is determined by such factors as number of people affected, size of geographic area, and time period affected by the exercise of power.

s. 21 (5)

Details examples of "minor powers"

- temporary closure of highway
- power to issue and impose conditions on a licence
- powers of council described in old Municipal Act as of Dec. 31, 2002

[*look these up – s. 210, paras 107-110; s. 308, para 3; ss. 321(2), clauses 312(4)(a) 7 (b)*]

[*Very important legislative intent that would argue against the helmet policy or any other policy which has such broad effect – key CELOS argument*]

[*what is the legal method of delegating? Only by by-law?*]

Regulations

s. 25 - Provincial Cabinet can make **temporary** regulations imposing limits and conditions on City's broad by-law making power (ss. 7-8) or prevent the City from using its powers in clearly defined circumstances. [*this is an interesting section which sets out clearly that provincial powers - in one case, Cabinet, in the other, the Minister, can make regulations to check the city's powers to **make by-laws (ss. 7 & 8) and delegate its powers** (s. 22) e.g. if we wanted an 18 month moratorium re: any city's by-law re: public spaces, amenities and parks. this could be a temporary move, pending the legislative review*]

s.25 (2) - this power is viewed merely as a temporary measure, and the regulation would be automatically revoked in 18 months

s.25 (3) Cabinet cannot replace the expired regulation with one of similar effect [*presumably, this is a section designed to impose a check on City's use of its powers, in between times when the Act is reviewed*]

s. 25 (4) This type of regulation would render a city by-law inoperative.

[*how long does it take to get regulations passed? e.g is this section in any way viable or merely to be invoked for "emergency" situations?*]

s. 28 The Minister of Municipal Affairs can make regulations restricting or imposing conditions on how the city delegates its powers and duties.

Part III - General Powers : Limits and Additions

Towing cars from parks

s. 74.1 - gives parks authority to tow vehicles in parks **if a by-law has been passed to forbid parking, standing, placing of vehicle in park AND PROVIDED signs warning of removal are there.**

- this can be done by police, by-law officer or **anyone authorized under by-law**

s. 77. There must be a by-law in place to prohibit parking in order to tow/impound vehicles.

s. 81 City's authority to impose fines for parking violations

but a regulation must first be passed under s. 118 (general regulation making section of Part III) in order to impose a fine

Licences

s. 85 Definition of "business" for the purpose of the City's licensing powers [*City appears to have very wide discretion regarding the types of public activities upon which it will impose licencing requirements "business" includes: exhibitions, concerts, festivals and other organized public amusements held for profit or otherwise*]

s. 86 authorizes the city a wide range of powers re: licencing business and re: prohibiting businesses from carrying on without one, including the following:

- treating people/applicants involved in same activity differently [*this is one of many instances in the Act which authorizes the City to take different approaches to same/similar situations , e.g. special conditions on one business that other businesses in the same class are not subject to*]

- imposing **new conditions** at **any time** throughout the duration of licence

- imposing fines for failure to comply with licence conditions [*Act sets out certain cases where an "administrative penalty" may be imposed. Are "administrative penalties" and fines exactly the same? Also, look at administrative law re: these definitions and "offence".*]

s. 86 (2) City may suspend licences without a hearing **on the grounds of an immediate danger to the health or safety of any person or to any property** subject to the following:

- providing licensee with reasons for suspension and offering licensee an opportunity to respond

- suspension can be for a maximum of 14 days

[*this section could be used as a model to prevent the shutting down of public facilities, as in the case of the rink closure in December 2003, also the types of rink closures when shinny players or children pleasure skating decline to wear a helmet. Interestingly, this section is much more reasonable than the across the board ability of the Occupational Health and Safety Act to shut down workplaces*]

s. 85 (3) Regardless of (2), City can suspend a license without a hearing for not more than 28 days for the following reasons:

- to hold a special event

- property construction, repair, or maintenance

- to install, maintain, repair a public utility or service

- for **pedestrian, vehicular or public safety or public health**

[this is a strange section; s. 86 (2) provides a very narrow ambit for suspending licences and requires City to proceed very carefully, allowing party involved to be heard as to health and safety or property concerns. This careful process contrasts sharply to the seemingly unbounded powers of the City under the provincial Occupational Health and Safety Act. However, s. 86 (3) erodes, even almost negates this more careful approach by allowing suspension of licence for long period on almost any grounds with no opportunity for licensee to be heard]

s. 86 (4) Some of City's licencing powers can be used at the city's discretion, either as that grounds of the discretion are set out in by-laws or "**upon the grounds that the conduct of any person, ... affords reasonable casue to believe that the person will not carry on... or engage in the business in accordance with the law or with honesty and integrity**" *[this is a most surprising clause - is it truly legal legal to legislate re: honesty and integrity? in what types of situaitons might this be legitiate?*

s. 85 (5) "This section applies with necessary modifications to a system of liecnes with respect to any activity, matter or thing as if it were a system of licences with respect to a business". *[this is a curious section - what does it mean? Could it be used to shut down programs or activities at Dufferin Grove Park or other public spaces in the City? see broad defniinition of "business" above.]*

- City has broad powers of discretion re: its licencing powers, even extending to:

s. 87 In the event of a conflict with another Act re: licencing powers, **the section that is "less restrictive of the City's power prevails"**.

Health, Safety and Well-Being

s. 98 City's power to prohibit/regulate smoking in public places and workplaces. *[check by-law for definition of "public place". Is it applicable to CELOS/citizen definition?]*

s. 98 (4) City may require owner/occupier of the establishment to enforce the by-law and ensure compliance. *[interesting precedent, e.g. staff can be instructed as part of job duties to ensure compliance, as compared with general scheme of by-law enforcement officers - think about this].*

Trees

s.104 - If the City has passed a by-law re: trees, then this section comes into play, and lists situations when by-law won't apply.

s. 104(2) -If City passes tree by-law prohibiting or regulating the destruction or injuring of trees in **woodlands** (defined as woodlands of one hectare or more -

s. 104(4)), City "shall have regard to good forestry practices as defined in the *Forestry Act*. *[has the city passed a by-law? if so, content? presumably, if so, this might be grounds upon which city itself breaks by-law, e.g. planting without regard to need to water, etc.]*

s. 104 (3) - lists the things that the by-law does **not** refer to or regulate:

- activites that destroy/injure trees done under the authority of other Acts, e.g. licenes under Crown Forest Sustainability Act, 1994, Surveyors Act, Planning Act, Electricity Act, for pit/quarry, under Electricity Act, and for site plans, due to a condition of a permit,

General Powers: Limits and Additions

s. 118 Provincial Cabinet **may** make regulations re: parking penalties including:

- a) granting City power to make people pay administrative penalties
- b) imposing limits/conditions of City's powers re: these penalties
- c) providing that non-payment of fines can result in refusal to issue or validate vehicle permits

s. 118 (2) In event of conflict with regualtions made under another Act, these regs apply

s. 122 - Minister of Municipal Affairs and Housing may make regulations **prescribing conditions for** zoning by-laws (s. 113 (2))

Part IV- The City and its Governance *[this part is of pivotal importance to CELOS and people who live in the city. it clearly defines who is responsible for what and is the legal basis upon which to challenge the types of legislating re; city facilities that is currently happening at the city]*

Interpretation

s.124 "proposal for minor restructuring" - Minister determines what is minor

"restructuring"- annexing part of the City to another municipality or vice vers

City Council

s. 131 **Role of Council**

- represent public, consider **well-being and interests of the City**
- to **develop and evaluate policies and programs of the City**
- to determine the services the City provides
- to ensure that **administrative policies, practices and procedures** and controllership policies, **practices and procedures** are in place to **implement Council's decisions**
[staff only carry out the decisions of elected officials, they don't make the decisions. see the mirror provision below s. 136 re: role of officers and employees]
- to ensure **accountability and transparency** of City operations, including activities of **senior management**
- maintain **financial integrity**
- general section catch all

s. 132 The City's powers are **exercised by Council**

s. 132 (2) A power of the City **shall be exercised by by-law unless the City is specifically authorized to do otherwise.**

[as I understand this section, the only legitimate way to affect citizens' rights, e.g. helmet or stroller policy at rinks is by by-law. i haven't encountered any section in the Act which specifically permits proceeding in a different way.]

[check that this section/subsection is correct]

s. 133 **Mayor's role**

- chief executive officer
- leadership, preside over meetings so that business is carried out effectively and efficiently

s. 133 (2) **provide information and make recommendations re:**

- to ensure that **administrative policies, practices and procedures** and controllership policies, **practices and procedures** are in place to **implement Council's decisions**
- to ensure **accountability and transparency** of City operations, including activities of **senior management** (s. 131 (d)(e) above)

above all else, it is the Mayor's job to make sure that staff is carrying out Council's decisions, or making recommendations to Council, not making the decisions. I think that CELOS's letter should be to the mayor citing this section.]

s. 133 **Mayor's role as chief executive officer - the mayor shall:**

- uphold and promote the city's purposes
- promote public involvement** in the City's activities *[****transfer to notes re; legislation - Mayor's job to make sure this happens]*

s. 135 Council can change the composition of city council; there are certain requirements re:

composition of council, changes can't take effect until after an election.

s. 136 **Role of officers and employees**

- **implement Council's decisions and** establish **administrative policies and procedures** to carry out those decisions
- undertake research and **provide advice** to Council on the City's **policies and programs**
- other duties required under the Act

s. 137 City Clerk

- job to record all resolutions, decisions and other proceedings of Council
- record vote, if requested by Councillor
- keep copies of all by-laws and minutes of council proceedings
- other duties
- clerk and deputy clerk need not be city employee

s. 138 City Treasurer

s. 138 (d). must "maintain[ing] accurate records and accounts of the financial affairs of the City Section

s. 138 (e) must provide council "with such information with respect to the financial affairs of the city as it requires or requests".

- need not be city employee

s. 139 Appointing city auditor

- reports directly to council

s. 140 council **may** appoint a chief administrative officer responsible for the "general control and management" of city affairs

City Boards

council's power to appoint City boards

s. 143 (1) - "Council may give a city board the control and management of such municipal services and activities as the City considers appropriate and shall do so by delegating the powers and duties of the City to the board in accordance with this Act. [*very interesting section; this would permit the city to delegate the running of all of the city outdoor rinks to CELOS*].

s. 143 (3), Council can delegate its powers or responsibilities to City Boards **always subject to procedural requirements** that Council is bound to follow, and any conditions or limits on the delegation.

- City can form and dissolve City Boards (except for specified boards such as library, children services, police boards, etc.)

s. 148 Council can establish corporations which act within prescribed parameters. [*e.g. municipal housing corporations, what are other examples?*]

s. 152 Regulations

- the Mayor may hold a powerful position through regulation requiring him/her to: [*what regs have been made under this section?*]
 - appoint chairs and vice-chairs of specified committees of council and local boards
 - appoint deputy heads

- Chief Administrative Officer

-

- in some cases, CELOS might wish to see if regs have been passed re: the terms of delegation of duties to specified committees

Part V Accountability and Transparency [look at the whole of this part and summarize its overall trends/thrust later]

s. 158 - Integrity Commissioner's job is to apply the code of conduct re: Councillors and members of city boards - ethics

- reports to Council

- need not be employee

- can delegate powers in writing

s. 160 can hold an inquiry by request of another councillor or member of the public

s. 165 - city registry of people who lobby people who hold public office

s. 167 council can forbid people to work on a contingency basis (e.g. where the lobbyist gets paid all or partly based on degree of success of his/her lobbying efforts).

s. 170 **Ombud- City must appoint [is there one now? if so, who? is this a possible CELOS avenue re: policy, rink management + current hiring scheme + financial management, etc?]

- not required to be city employee

- reports to city council

s. 171 - job is to "investigate any decision or recommendation made or any act done or omitted in the course of the administration of the City, its local boards and city controlled corporations".

- Council can define which of its own powers that the Ombud is entitled to exercise and defines the Ombud's duties.

- **Ombud has overarching range of powers** to investigate any decision made by the city administration **even where** another provision states that these decisions are not reviewable, cannot be appealed or challenged.

- Ombud cannot become involved in any investigation until all of the available steps and recourse have been taken (e.g. if a decision can be appealed, it must first be appealed. if the applicant loses the appeal, at this point she can ask the Ombud to investigate the matter.)

[question - I would imagine that Council defines the Ombud's powers and duties and that people can then approach Ombud to do investigations, e.g. that council need not ask Ombud to investigate matters on a case-by-case basis.]

- s.171(5) - Ombud may delegate in writing to anyone other than councillor, **any of the Ombud's powers and duties** under this Part.

s. 171 (6) - at same time, s/he can continue to exercise the same duties as those delegated (joint project)

s. 172 - all investigations are done privately

- (2) can hear from anyone s/he chooses, and make any inquiries s/he sees fit, those s/he is under no obligation to hold a hearing and there is **no right or entitlement** to be heard

EXCEPT where Ombud judges that there may be sufficient grounds for a person to make a report or recommendation that may adversely affect the city - in this case, the Ombud **shall** hear the person's position [it would seem that this section would be sure grounds for CELOS to make reps to the Ombud; this might be the opportunity to do so, with a view to taking on the joint Ombud powers re: parks and public space]

- s.172 (3) - s. 19 of Ombudsman Act determine how Ombud must exercise her powers and duties [copy this section]

s. 173 - the Ombud and all people who are acting under her instructions must keep matter secret

s. 173 (2) - when Ombud reports, she can disclose any information she considers necessary to

found her conclusions/recommendations

s. 173 (3) this duty of confidentiality prevails over Municipal freedom of information legislation s. 173(3) [copy section]

s. 174 the Ombud's proceedings and decisions cannot be reviewed or challenged in court or otherwise **except on the grounds of a lack of jurisdiction

[very, very powerful position, decisions/process cannot be reviewed for lack of procedural fairness, etc]

s. 175 - Ombud can't be called into court on any matters s/he has heard, nor can anyone else acting under her instructions.

s.175 (2) - no information, documents or anything else supplied during an Ombud's investigation can be revealed in court - including a person instructed to provide information could not be compelled to give evidence in court on the same matter? [clearly, the Legislature is giving clear notice that the Ombud's decisions are not to be scrutinized by the courts. This avoids undermining the Ombud's powers and provides, at least in theory, for a much more flexible and potentially thorough, far-reaching approach to a problem.]

s. 176 - states that the Ombud route is **in addition to** any other legal rights which exist. [i don't understand the interplay between an ombud's process and court process, since presumably most of the information uncovered in an enquiry would be considered privileged and couldn't be produced in court. read this over with jutta and jane and try to figure this out]

s. 177 Auditor General

-not required to be city employee [i didn't think s/he could be employee?]

s. 178 job is to help city council and city administrators accountable for the quality of stewardship over public funds and achieving value for money in city operations

s. (5) can delegate any of his/her functions to another [not likely, but again, this would be good CELOS role for small piece, e.g. outdoor rinks]

s. 183 Minister may make regs prescribing local boards

Part VI - Practices and Procedures

s. 184 - first council meeting after both election and by-election must be held no later than 31 days after term commences

s. 188 - need quorum of majority of councillors

s. 189 - "committee" - is any advisory or other sub-committee or similar entity of which at least half of members are also members of council or local boards (except police services or public library board)

- "meeting" - any regular, special or other meeting of council

**s. 189 (2) - city and each local board has to pass procedure by-law re: calling, place and way meetings proceed

(2.1)- must provide for **public notice of meetings** [get copy of this - find out what is required re: notice and how this compares with what is happening at present]

(4) councillors can participate "electronically" as provided in the by-law, but this person can't be counted towards quorum

Meetings:

s. 190 - all meetings are public except if subject being considered is:

(2)

(a) the security of the property of the City or local board [what does this cover?]

(b) personal matters about an identifiable individual, including city or local board employee

(c) proposed or pending acquisition or disposition of land by City or local board

- (d) labour relations or employee negotiations [*this could be used very broadly*]
- (e) litigation or potential litigation , including matters before administrative tribunals, affecting the City or local board;
- (f) advice subject to solicitor-client privilege, including "communications necessary for that purpose"
- (g) matter of which council, board or committee or other body "may hold a closed meeting under another Act. [*Council discretionary power to invoke virtually unlimited grounds for excluding public from council meetings; how often does this happen, in practice? has it ever been in issue?]]*

s. 190 (3) meeting must be closed if required under Municipal Freedom of Information Act
 s. 190 (3.1) meeting may also be closed if both apply: it is for educating/training council, local board or committee members and "no member discusses or otherwise deals with any matter in a way that materially advances the business or decision-making" of the council, board or committee [*this section is very limited by the second criteria, but council still has virtually unlimited grounds upon which to exclude public*]

s. 190 (4) - sets process that must be followed if any meeting or part of meeting is to be closed:
 - must be **resolution** stating that:

- meeting is closed,
- **general nature of matter** to be considered at closed meeting
- if closed re: educational purposes, that it is being closed under s. 190 (3.1)

s. 190 (5) "meeting shall not be closed" during a vote

s. 190 (6) **unless** for one of the very broad reasons that Council can close it above **and "for giving instructions to officers, employees or City agents** [*these are very, very broad grounds on which to exclude people from a vote; in this case, people must access record through FOI process. s. 190 (10)]*

s. 190 (7) the section re: open meetings does **not apply to library or police services board** [this is true of many places in the Act - look at other legislation or procedures re: these situations]

s. 190 (8)(9) The city clerk must record all "resolutions, decisions, and other proceedings" whether it is opened or closed

s. 190 (10) [*look up s. 42(3)cl. 6 (1)(b) - FOI*]

s.190.1 - A **person can request an investigation by Ombud or investigator that council may appoint** re:

- whether Council has improperly closed a meeting or failed to comply with the correct procedures re: closing a meeting [*this would not likely be worth the trouble given Council's discretion and very broad grounds to close meetings*]
- rest of section details that Council will have powers/duties assigned by council
- the nature of the powers given to an investigator must reflect his/her independence, impartiality, the confidentiality of matter, and the credibility of her process.
- some powers (for this matter) similar to those of ombud
- s/he reports with opinion, reasons, recommendations
- these reports must be made public

s. 191 **Calling Meetings**

- subject to procedure by-law,
- Mayor may call special meeting **or**
- upon petition of majority of councillors - for purpose and at time mentioned

s. 192 - Mayor's duty to preside at council meetings or other designate

- mayor can expel any person for improper conduct

s. 194 - each councillor has one vote

- no secret ballots except to vote for mayor's designate to preside at meetings
- **tie vote = lost vote**
- **recorded vote** can be called for at any tie immediately before or after taking vote
- **failure** to lodge recorded vote deemed to be a **negative vote**

s. 195 By-laws

- must be published in both french and english
- also official plan
- council can conduct proceedings in English or both English and French

s. 196 Municipal Code

- if city passes a comprehensive general by-law which consolidates and includes earlier by-laws, the provisions are deemed to have come into force the day the original by-law was passed
- seems to state that if original by-law required any condition or approval, this had to be satisfied; if so, it is legitimate in general by-law

s. 197

every city by-law must be **sealed** and **signed by clerk and mayor or designate** who attended the meeting [*clearly indicates significance of council's by-law making powers*]

s.198 **by-laws upon application** - some by-laws must be signed by a required number of electors [*when does this happen and why?*]

Records

s.199 - Subject to MFIPPA, any person may, inspect records, including:

- by-laws and resolutions
- minutes and proceedings
- records considered at a meeting, except those considered during closed part of a meeting
- records of city council [*what does this refer to?*]
- statements of council members' remuneration/expenses

- can get certified copies for a fee

s.200 - records are to be retained/preserved in "**secure and accessible manner**"

s.200 (7) - "In this section, the **requirement to retain and preserve records in an accessible manner means that records can be retrieved within a reasonable time** and that the records are **in a format that allows the content of the records to be readily ascertained by a person inspecting the records.** "

s. 201 - city can't destroy records except copies (where original exists) except as approved by **city auditor**

Policies

s. 212 - City **must** make policies re:

- sale/other disposition of land
- hiring of employees
- procurement of goods/services
- when and how notice is given to public
- public accountability/transparency
- protection of property/civil rights, that people are fairly treated
- delegation of its powers/duties
- financing of capital works, including the limits on annual costs associated with financing

Quashing by-laws

s.213 - limits to scope of judicial review of by-laws- cannot apply to quash by-law on the basis of **unreasonableness or supposed unreasonableness** if it was made in good faith [*what is the context/case law behind this provision? would it stand up in court? surely it would be open to*

charter challenge depending upon the subject matter]

s. 214 - this leaves **illegality as the only basis upon which the courts can review the content of a by-law**

s. 214 (2) can hold inquiry for alleged contravention of s. 90(3) of Municipal Elections Act *[what is this?]*

s. 214 (3) court can order a stay on application of a by-law pending the court hearing and rendering its decision [this means that the by-law would have no effect during this time]

s. 214 (4) can apply to quash a **by-law, order or resolution** on basis of illegality **only within a year of time it is passed** *[what is legal definition of order, resolution? see council procedures - this could be a problem for challenging helmet policy if, in fact, it has been legally approved in one of these ways] [this section should be challenged by CELOS during review of legislation - what about "discovery of harm" principle in tort law as analogy- if by-law is illegal, but has not been known to people, or people have not yet been affected by it, a bar to challenging the illegality is foolish and deeply at odds to the principle of democracy]*

s. 215 **Judicial investigation**

City can request, by resolution, for Judge of superior court to investigate, inquiry into broad range of matters, including:

- supposed breach of trust or misconduct of city councillor, employees, or someone who has contract with city

- "any matter connected with "good government of the city", etc.

*[presumably, this section would be used for the **** inquiry - would mostly be used to look at past events, councillors are most unlikely to wish to inquire into mishandling for which they are currently responsible]*

- rest of section details judge's powers for inquiry

s.216 **Restricted Acts After Nomination Day**

- creates a freeze on Council's actions just before elections; council cannot:

- appoint/fire any city officer

- hire/fire any city employee

- dispose of any real or personal property greater than \$50,000 at time of disposal

- spend or incur liability greater than \$ 50,000.

except where disposition or liability was already approved by most recent budget before nomination day or **emergency**

- people with **delegated power** may **still exercise** these powers

s. 217 **Insurance**

"designated employee" is any salaried officer, or person employed by city or local board

- defines other terms

s. 218 **Insurance**

"Despite the *Insurance Act*, the city may be or act as an insurer" re: *[read act, to find out what "may be or act as" means - does it impose a duty, or is it merely permissive?]*

- *[sounds like the city **may** but is not obliged to insure itself and employees and councillors for liability, court awards and settlements]*

City can enter into reciprocal agreements with other municipalities [as per Part XIII of the Insurance Act]*[does the city in fact do this?]*

Any regulations enacted under section 256 are key to what can be done with surplus funds, etc.

[sounds like city can perhaps join with other municipalities to act as joint insurers - if any insurance questions arises, we'd need to very carefully look at these sections]

- City may also get insurance (and pay for all or some of the premiums] for local boards

s. 222 Remuneration and Expenses

- allows city to pay for all or part of pay/expenses of local boards
- can only pay city councillors' or employees actual expenses (or reasonable estimate of expenses) incurred in the course of duty
- can only reimburse **direct, not incidental** expenses

s. 223 - treasurer must provide a statement of all of the councillors' and designated appointees' expenses by March 31 (also board members)

[this section refers to situations in which councillors are acting in their capacity as officers or employees of the city - what is the difference?]

s. 223(2) -the statement **shall identify the by-law under which the** remuneration or expenses were authorized to be paid

s. 223 (4) - states clearly that **these statements are public records and that this overrides any provision of MFIPA**

[CELOS could lobby for these kind of sections in an amended city of t act to require that every action which has an impact on city residents and public spaces and park and public amenities identify the by-law under which it was authorized - need a section of the act "public space and public amenities, which sets a code of principle and processes for all acts and decisions which affect owners of city facilities]

- fo i - need a broad provision with an inclusive list of all of the documents that are **public documents** for the purpose of MFIPA - in our experience, the daily/spending/hiring/"operational" decisions of the city have much farther reaching effects on how people can enjoy the amenities they have paid to have built and pay to run, and how they recreate in public spaces than the spending of 44? councillors

s. 224 Review or Appeal re Delegated Authority

- council has power to provide for a review or appeal of decisions that have been delegated (even if properly delegated in first place)
- council can decide whom to appoint to do the review, person or body's powers, can set procedures, can "provide for rules for authorizing" the review person to "determine when decisions subject to review or appeal come into force, including a retroactive date not earlier than the day on which the by-law was passed".
- council cannot use this power if certain decisions are listed in regs under s. 226
- **person who made decision can reconsider his/her own decision** *[e.g. if issue is raised, this person can reconsider]*

Regulations re: policies

s. 225 Minister of Municipal Affairs and Housing may make regulations **prescribing "bodies for the purpose of the definition of "local board"** (restricted definition in s. 212 (3))

s. 226 Regulations re: review or appeal

Minister of Municipal Affairs and Housing may make regulations **prescribing** decisions involving review or appeal of delegated authority

Part VII - Financial Administration

s. 228 City must prepare and adopt a budget a year in advance with estimates of money needed, including

- money to pay all debts that come due
- amounts required for sinking funds or retirement funds
- amounts required for any board, commission, or other body

s.228 (2) in year following election, budgets are adopted (rather than year before in non-election years)

s. 228 (3) budget must have: estimated revenues, and estimated expenditures

s. 228 (4) City must:

- a) treat operating surpluses of any previous year as available revenue for following year
- b) provide for any operating deficit of any previous year **and for the cost of the collection of taxes and any abatement or discount of taxes**
- c) provide for taxes and other revenues that in the treasurer's opinion are **uncollectable**
- d) provide for taxes and other revenues estimated will not be collected
- e) may provide for such reserves **as the City considers necessary**

s. 228 (5) City can pass by-law re: time and form of budget reporting by boards, commission, and other bodies *[does this by-law exist? if so, does the city abide by the same requirements it exacts of other bodies?]*

s. 229 - City can prepare multi-year budgets for 2-5 years

Council can only make/approve budgets for years they hold power

s. 229 (6) multi-year budgets can be revoked/amended as required

City is obligated by law to levy taxes each year

Returns and Financial Statements

s. 230 The City must file an annual return with its financial statement to the Minister of Municipal Affairs and Housing each year *[how, if at all, does this information vary from that presented in city's budget materials? is this an additional source of information?]*

s. 231 - City's annual financial statements must be "in accordance with generally accepted accounting principles for local governments as recommended, from time to time, by the **Public Sector Accounting Board of the Canadian Institute of Chartered Accountants** *[get a copy - are these principles appropriate for public accounting and transparency? what was the process by which they were drafted? who, from the public, had a say? is this a possible "in" for celos - to make recommendations re: THIS?]*

Publication of financial statements, etc.

s. 232 (1) 60 days after it receives the City's audited financial statements, city treasurer must:

a) publish in newspaper:

- i) copy of audited financial statements, notes to the financial statements, the auditor's report and the tax rate information
- ii) notice that all of this information will be made available at no cost to any taxpayer or city resident, upon request

s. 232 (2) re-iterates that copy must be provided at no cost

Auditing of financial statements, etc.

s. 233 - city auditor audits the accounts and transactions of the city and local boards and expresses its opinion on the financial statements

s. 233 (2) - city auditor's reports are public records and may be inspected at clerk's office
s.233 (3) person may make copies by paying fee established by city clerk **which shall not exceed the lowest rate the clerk charges for copies of other records**

s. 234 "where the City audits a local board" [*clearly, this is not a requirement - under what conditions/circumstances is an audit conducted?*] City pays for cost of city auditor; this cost **may** be charged as debt to boards

Auditor's right of entry

s. 235 - city auditor has right of access at all reasonable hours to all City/local board records
[auditor has very broad powers]

s. 235 (2) the auditor may require information s/he considers necessary to carry out his/her duties from **current and former council members and boards, from current and former officers and employees and boards**

s. 234 (3) can require any person to give evidence under oath and has the powers of a commission under Part II of the *Public Inquiries Act* [auditor can take evidence in same way as in the context of a public inquiry]

s. 234 (4) can attend any council (or local board) meetings and is entitled to:

- a) receive all notices sent to councillors/local board members
- b) make representations on **any matter that concerns him/her as auditor**

General

Default in providing information

s.236 Minister of Finance may retain **any money payable to the City if the City or an officer of the City has not provided the Minister of Municipal Affairs and Housing with any information that the City is required to provide under Part VII.** [*what is city required to provide? anything beyond s. 230 financial returns?*]

Information re municipal operations

s. 237 (1) extended definition of a "local board" as "any body performing a public function: as designated by the Minister of Municipal Affairs and Housing

s. 237 (2) **The City and a local board... shall provide the** Minister of Municipal Affairs and Housing with information designated by the Minister which, in the Minister's opinion, relate to efficiency and effectiveness of the City's or local board's operations, at the times and in the manner and form designated by the Minister. [*what about a celos contract, or grant application re: these sections of the Act? bringing a public perspective to the Act, which is to be guiding principles for Councillors to interpret and govern according to "public interest"]*

s. 237 (3) The city and a local board **shall publish all or such portion of the information as may be designated by the Minister at the times designated by the Minister but in the manner and form determined by the City** [so Minister decides what information must be provided, and City can publish this in a form it chooses - "*publish*"presumably means in the *Gazette*? why published in form determined by City? this seems to erode the potential strength of the section]

s. 237 (4) **A designation** by the Minister under this section may be **general or specific** in its application. [*this allows for CELOS request for very specific information e.g. re: efficiency of running rinks*]

Financial Assistance

s. 238 (2) Minister of Municipal Affairs and Housing may make grants and loans "and other financial assistance" to the City, a local board or a First Nation [*first mention of a First Nation; what situations is this designed to cover?*]

s. 240 City sets a cap on the fees its collection agency can recover for collecting city debts.

Regulations

s. 241 If changes in the financial reporting requirements of the City or local board affect the operating surplus or deficit of the City or local board, the Minister may make regulations to phase in changes.

Regulations re reserve fund [Jutta, would celos have any interest in seeing reserve funds for maintenance of rinks/parks/playgrounds established - here again is precedent for hiving off money for certain purposes, perhaps to establish a pilot reporting/stewardship example of spending public funds]

s. 242 Minister of Municipal Affairs and Housing may make regulations:

- a) requiring City to establish a reserve fund for prescribed liabilities of the City which are incurred by not payable until later years;
- b) defining "liabilities" for a) above
- c) requiring the city to make payments into reserve fund in prescribed manner
- d) prohibiting the city from changing the purpose for which the reserve fund is designated
- e) prescribing how the City can change designation of all or part of a reserve fund or borrow from it

Regulations re financial information [*this might be a great provision re: all by-laws or proposed policies affecting public space + a direction that all policies must come from public request, not from a bureaucratic genesis*]

s. 243 The Minister of Finance may by regulation require the City to provide to the Minister of Finance, at the times and in the manner and form prescribed, copies of by-laws made under Parts XI and XII **and such other information as may be specified in the regulation.**

Regulations re financial assistance

s. 244 The Minister of Municipal Affairs and Housing may make regulations prescribing "**public functions**" for the purposes of the definition of "local board" (extended) as it pertains to financial assistance (s. 238 (1)). [*might be interesting to see the description of "public functions" in regs*]

*Part VIII - Finances

[* *Researcher's notes: I don't have a sufficient knowledge base re: finances to review thoroughly. If CELOS encounters a question re: finances, we'll need to look again at this re: issues of debentures, borrowing, etc.*

1. *This Part provides many examples of how funds can be earmarked for specific purposes.*
2. *The by-laws passed re: this Part and ss. 7 & 8 [the general by-law making sections] will tell the story of any **prescribed** financial activities (e.g. things the City cannot do re: borrowing, debentures, etc)*

s. 245 City can undertake a range of financial activities, including borrowing, investing money, selling debt, taking on debt without borrowing money (re: long term financing of any capital undertaking, making financial agreements to minimize costs or financial risk of debt/investments, or other activities set out in by-laws.

s. 246 City can borrow money for city school board that requires permanent improvements (as defined in Education Act)

s. 247 all debentures are ranked equally re: payment of principal and interest

s. 247.1 The term of a City debt (or debenture, etc.) can last only as long as the "lifetime of the undertaking" for which the debt was incurred to a maximum of 40 years [*what is the definition of "undertaking"? the process of building something or the lifespan of a facility, etc?*]

***s. 248 (1) Money received from long term borrowing must be applied to the **specific debt** for which it was incurred **and cannot be used to pay current or other City expenditures.** *[this seems to be a good potential model clause for park revenues being put directly back into the park in which they are generated]*

s. 248 (2) If more money is borrowed than is required for a project, this surplus must be applied to the **specific debt for which it was incurred, or used to repay other debt or capital expenditures**

Restrictions

s. 248.1 City can't change the by-law authorizing specific debts until the particular debt has been discharged

Use of sinking and retirement funds

s. 249 - Money raised for sinking and retirement funds cannot be used to pay current or other City expenses, except in cases in which debenture has been paid off. In this case, the surplus funds can be used to pay off other capital costs on principal or interest for other sinking/retirement funds or capital expenditure. After this has been done, City can transfer any surplus to its general fund.

Registration of debenture by-law

s. 250 (1) Clerk **may** register debenture by-law in land registry office within 4 weeks of passing by-law

s. 250 (2) If it does, debentures are valid according to the terms of the by-law unless quashed by a court or found to be illegal

s. 250 (6) If by-law does not received necessary assent of electors *[what kind of by-laws would require this and why?]*, or the by-law doesn't substantailly conform to requirements on its face, it is illegal *[contrast this with other sections which permit irregularities in by-laws]*

s. 251 If the interest on a debenture issued under by-law has been paid for one year or any part of the principal has been paid, the by-law and debenture are binding on city. *[could we think of similar clause e.g. if city of toronto funds have been applied to a community project for more than one year (or one arm of the city has approved a community project), the project will be considered valid and binding on the city (e.g. any changes required to plans, etc. must be paid for by the city) - to build in a disincentive for different parts of the city to act in opposing fashion]*

Agreements for municipal capital facilities

s. 252 (1) This clause deals with agreements City enters into to provide municipal capital facilities if the agreement provides for one or more of the following:

- lease payments in foreign currencies, or other things described below.

s. 252 (3) If someone provides capital facilities to the City, the City may provide financial assistance at no cost or small cost for cost of funding or running the facilities *[is this the type of flexibility relevant to using existing spaces as Jutta described to Rob?]*

s. 252 (6) City can exempt person from any or all taxes on property IF it the facility is entirely occupied and used for the service/function provided by the City

s. 252 (7) A person who offers capital facilities may also be exempted from some or all of development charges IF it the facility is entirely occupied and used for the service/function provided by the City

s. 252 (10) City can set up reserve funds for the maintenance of these non-City facilities *[wouldn't this be a precedent for funds to be set up for each city park and facility, both operating and reserve funds, in a way perhaps similar to the boards of management. e.g. require separate funds be allocated for each park, including any capital facilities. require accounting for all of the projects, etc in facility e.g. dufferin rink house - this budget must be for specific facilities (in a reporting format according to the types of information Jutta has sought, perhaps set up by DGP as a pilot, and available, upon request, by any community interested in overseeing the public spending on their facilities)]*

s. 252 (12) - s. 252 (14) school boards can also enter into similar agreements as City (above) for tax and development charges exemption

Offence re borrowing by-law

[interesting: this section has its own specific enforcement section - would this be a possible precedent re: activities, etc. of interest to CELOS and other people interested in parks and public space?]

Prohibition re temporary borrowing

s. 253 Every officer who has a duty to carry out any provisions of a borrowing by-law and neglects or refuses to do so is guilty of an offence EVEN IF person appears to have the authority to do this under a by-law which is "illegally attempting to repeal or amend the borrowing by-law" *[what is the context for this? does it relate to the Bellamy inquiry?]*

s. 254 If a regulation sets the maximum amount of permissible temporary borrowing for City's current expenditures and a councillor knowingly votes to permit borrowing more than the limit, this person is disqualified from holding municipal office for two years. (except re: Part III of Municipal Affairs Act)

Liability of members for diversion of funds

s. 255 (1) If council mis-applies any money **raised for a special purpose** or for a retirement or sinking funds to current or other expenditures, **each member who votes for the application**

a) is **personally liable** for the amount so applied which may be recovered in court and

b) is disqualified from holding municipal office for two years

[would we want to consider some of these provisions for cases in which councillors are advised of irregularities, lack of clarity and explanation re: spending/funds (e.g. Cinergy, rink spending, etc) and neglect to follow-up or enquire?]

Action by ratepayer

s. 255 (2) Ratepayer(s) can bring an action if council refuses to, or neglects to bring action within a month

s. 255 (3) If council neglects to levy amount required to fund retirement/sinking fund, **each member of council is disqualified from holding office for 2 years** unless member shows reasonable efforts to procure the levying

[it seems that these sections would be more effective as more general financial accountability provisions ; we need provisions that buttress the efforts of citizens who are aware of specifics re: city projects that affect their own community]

s. 255 (4) city treasurer must alert council to the amount of money required for sinking/retirement fund for following year

s. 255 (5) treasurer who fails to do this is guilty of an offence

Regulations re: financial activities

s. 256 Cabinet may make regulations re financial activities of the City

Regulations re municipal capital facilities

s. 257 Cabinet may make regulations

a) defining **municipal capital facilities** re s. 252

b) defining which facilities may/may not be subject of this type of agreement

c)- (f) prescribing rules, facilities for which city may and may not grant tax exemptions, or development charges exemptions, etc.

***Part IX - Fees and Charges**

This part gives the city the authority to charge fees for the use of city facilities

s. 258 - definition section - "by-law" includes resolution of a local board, "fees or charges" are established by by-law pursuant to ss. 7 & 8, "local board" - includes any prescribed body "performing a public function"

By-laws re fees and charges

s. 259 - specifies that ss. 7 and 8 authorize city to pass by-laws imposing fees or charges for: city services/ activities, use of city property [*possibility of a provision requiring a minimum of 50% free drop in services? e.g. to ensure rinks are not entirely permitted out, pools and gyms monopolized by city classes, etc? or, rather than legislative change, seek regulations under section 266*]

s. 259 (2) fee/charge may be imposed on people who don't receive an immediate benefit from services/activities but who **will** received benefit at some later time [*what is an example of this?*]

s. 259 (3) permits fee for **administrative, enforcement** and the establishment, acquisition and replacement of capital assets [*what are examples of enforcement costs, e.g. would they include helmet enforcement?*]

s. 259 (5) by-law under this Act trumps by-law made under another Act

s. 261 sets out restrictions on fees, charges [*e.g. can't be based on person's income except re: exemptions, can't base fees on how much a person buys, etc.*]

s. 261 (2) makes it clear that there can be different fees for different locations and facilities [*this section presumably permits existence of priority centres, etc*]

s. 263 if local board wants to impose fees/charges, city can pass by-law to say that these will not come into effect until the city passes a resolution to approve the local board's by-law

s. 264 if people don't pay fee/s charges, these constitute a debt to the city and can be added to the tax roll

Regulations re fees and charges [*this could be a very powerful section used to promote and enhance community facilities*]

e.g. 1) requiring a minimum of 50% free drop in services? e.g. to ensure rinks are not entirely permitted out, pools and gyms monopolized by city classes, etc?;

2) prescribing a cap on the amount of money that can be siphoned for administration and enforcement and require for clear line-by-line accounting of these costs. e.g. drafting " fees and charges can be levied in cases in which the administrative and all other ancillary costs % of the revenues generated by the fees" , except where approved by public plebescite"

3) if the city were to take over CELOS's money, we could draft a regulation how money could (not) be spent and mandating that this money must go back to the community facility

4) providing that the fees/charges for facilities in each community must be authorized by those people who attend a meeting of the community, at the community centre/facility in question and chaired by community

s. 266 - Minister of Municipal Affairs and Housing may make regulations re fee and charges in this part including:

a) providing city does not have the power to impose fees or charges for certain services/activities, for use of municipal property, etc.

b) imposing conditions/limits on city's powers to impose fees/charges

***Part X - Power to Impose Taxes**

s. 267 Allows city to impose direct taxes by by-law setting out the subject of the tax and tax rate and manner of collection

s. 267 (2) lists types of taxes the city cannot impose (e.g. sales tax, income tax, poll tax, etc)

s. 267 (4) by-law **may** provide for other matters, including:

f) audit and inspection powers *[this type of section could be drafted to permit citizens' audit of city projects under certain conditions e.g. request by minimum of ? people in community]*

Part XI - Traditional Municipal Taxes - Not reviewed as it is not pertinent to CELOS at this time

Part XII - Limits on Traditional Municipal Taxes - Not reviewed as it is not pertinent to CELOS at this time

Part XIII - Collection of Traditional Municipal Taxes - Not reviewed as it is not pertinent to CELOS at this time

Part XIV - Sale of Land for Tax Arrears (Real Property Taxes) - Not reviewed as it is not pertinent to CELOS at this time

****Part XV - Enforcement**

process - city passes by-law which states that breaking certain city by-laws = an offence, then refer to fines set up unders. 370

s.366 City has power to pass by-laws stating that someone who contravenes a city by-law (passed under city of t act) is guilty of an offence.

(2) police services board has same power

(3) can create by-laws that a director or officer of a corporation who **knowingly** concurs in contravening a by-law by corp is guilty of an offence.

s. 367 - creates two offences of obstruction :

(1) definition- ""No person shall hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising a power or performing a duty under this Act or under a by-law passed under this Act" (on public lands)

(2) doesn't apply to personal dwellings unless inspector has an order (s. 378), a warrant (s.379) or the delay necessary to obtain a s. 378 order or s. 379 warrant "would result in an immediate danger to the health or safety of any person **or the** City has given notice **and** entry is authorized by s. 63, 64 or 386 [if City has authority under law or by-law to require someone to do something, and they do not do this, the City can take the action at person's expense and can enter upon private land to do so]

(3) "No person shall neglect or refuse to produce any information or thing or to provide any information required by any person acting pursuant to s. 378 order [of judge]. If city by-law allows it, to undertake inspections in actual dwelling places.

(4) makes it an offence to attempt to, or hinder or obstruct, or fail to give information during court-sanctioned inspection on private land

(5) creates offence for director/officer who knowingly concurs in corporation's contravention

sources of city's authority to enforce against "offences" created under provincial legislation (e.g. the trespass act?, Provincial Offences Act etc?) or by-law.

The City can determine that a person who contravenes certain by-laws **is guilty of an offence.** [what contraventions are, in fact, offences?]

s. 368 - mandates that separate by-law re: disabled parking **must** provide a **minimum fine of \$ 300 on conviction**

[what is the conviction process; how are municipal by-laws enforced?]

s. 369 why are ss. 368-89 there - why referred to in prov legisl and not just the subject of city by-laws?

by-law **may** provide that vehicle owner is liable to the applicable fine for illegally parked, stopped/standing vehicle (even if not in his/her possession)

s.370- authorizes city to set up a system of fines for offences defined in City by-laws [has city done this?] **unless another Act already sets out fines for the contravention of the by-law s. 370 (4)**

(2) + (3) wide range of possibilities to define offences - a) continuing offences with minimum (not > \$ 500 day for minimum, not >\$100,000 for maximum fine;

b) multiple offences (not > \$ 500 day for minimum, not >\$10,000 for maximum fine) **note: total of all fines can be > \$ 100,000** total, except for single fines.

c) **escalating fines for second and subsequent convictions of the same offence**

d) establish **special fines** in addition to regular fine for offences designed to **eliminate or reduce any economic advantage or gain from contravening by-law**

s. 371 allows city to provide that someone who breaks adult entertainment establishment by-law may be liable to a year in jail in addition to any other applicable penalties'

s. 371.1 - officer/directors of corporations convicted of by-law offence re: disposing of ozone-depleting substances may be jailed for up to one year

s. 371.2 - deemed by-law re: ozone-depleting substances, sets out separate fines [does this come from actual situation or why isn't prov legislation used?]

s. 372 - **if city by-law is contravened AND a contravention entered**, the court can make an order prohibiting the continuation or repetition of the offence or requiring that the contravention be remedied in addition to fines provided

s. 373 establishes voluntary payment of fines for parking, animal by-law contraventions [usual parking fine payments]

s. 374 City is entitled to all fines for by-law contraventions **this is a clear model for monies generated from local endeavours to be used at local parks, etc.**

s. (2) looks like even proceeds from obstruction case are paid to the city [check Administration of justice Act, s. 2; Fines and Forfeitures Act, neither of which apply in this case]

s. 375 Powers of Entry

- can be used by employee, officer or agent of the city or police officer

- official must display proper i.d. on request

- official may be accompanied by a person "under his/her direction"

- must provide occupier of land **notice unless**

- by-law authorized inspection, court order, search warrant, licence condition, or consent

***s. 375(1) 5 - **requires city to restore land "so far as is practicable and shall provide compensation for any damages caused by the entry"**

- [clearly the city has the authority to enter upon its own land at any time, on grounds of both ownership, ohsa, and occ's liab, but can we make the argument that this principle of responsibility for any damage apply to any entry that, as in the case of the rink shut-down, is found to be groundless or frivolous and vexatious?]

s. 376 - **the city has the power of entry to conduct inspections re:**

- compliance with by-law,

- "**direction or order of the City made under this Act or under a by-law passed under this Act**" [what is def'n of direction or order?]

- condition of licence issued under city by-law

- clearly the city has the authority to enter upon its own land at any time, on grounds of ownership,

ohsa, and occ's liab, public health, but can we make the argument that this principle of responsibility for ensuring that it has the **fundamental authority to enter for intended purpose, e.g. enforcement - the reasons of helmet raids and other inspections - whatever city is seeking to enforce must first be grounded in legitimate, clear authority [possible to claim city is exceeding, mis-using and abusing its very clearly defined and limited authority to conduct inspections as part of its enforcement powers? - look at the weight of authority invoked to do these things - clearly, the greater the powers, e.g. closing down public's own facilities to citizens, is very serious and has tremendous consequences]**

(2) powers of inspection are **always defined in body of by-law and may include any of the following [e.g. in each case, need the by-law in question and read it to determine what powers are actually specified in it]**

- require production of documents, inspect/remove documents, require information from a person re: any matter related to the inspection, conduct examinations or tests, take samples or photos
- if samples are taken, must be divided in half and one half given to person being inspected
- if sample isn't left with person, s/he has right to a copy of the report re: sample

(5) **a receipt MUST BE PROVIDED** for everything removed and **promptly returned after copies/extracts are made**

s.377 - City can't enter someone's dwelling unless it has consent, or court order, warrant, etc.

s. 378 - city has to pass by-laws allowing its officials to undertake inspections or by court order [did city pass by-law permitting helmet inspections?] if not, again, this would be grounds for abuse/misuse of authority - as in s. 376]

s.380 ?don't understand this

s.381 - if person doesn't pay licence fees, can be subject to seizure under s. 316

s. 382 - "where a duty or liability is imposed by statute or agreement upon the city or **in favour of some of its residents, the city may enforce it"**

- **by AG proceeding, in a proceeding by the residents on their own behalf or on behalf of themselves and other residents"**

s. 384 - when a by-law is contravened, city can issue an order to discontinue the contravening activity

s. 385 - city can order person who contravened by-law to remedy any damages or can go in and remedy damages itself if person fails to do so (s. 386) at person's expense

s. 387 - penalty for **knowingly** failing to get a licence - **court** can order closure of place for up to 2 years

s. 388 - city can apply to court to order that some or all of premises be closed for **up to 2 years** on **balance of probabilities** if:

- activities constitute public nuisance

- detrimental impact on use/enjoyment of property, including:

trespass, increase in garbage, noise, or traffic or creation of unusual traffic patterns, activities that have significant **impact on property values**, increase in harassment, intimidation or graffiti
city needs police chief's consent which can only be refused on grounds of that application may affect the police's operations

s. 388 (2) City can enter into coordination of enforcement agreements with "a person or body in relation to matters of mutual interest for the purpose of co-ordinating the enforcement of by-laws, statutes or regs

s. 389 - Enforcement provisions of city of t apply to all other acts which allow city to pass by-laws

unless otherwise provided in the other acts

Part XVI - Liability of the City

s. 390 Immunity re policy decisions

"No proceeding based on negligence in connection with the exercise or non-exercise of a discretionary power or the performance or non-performance of a discretionary function, if the action or inaction results from a **policy decision of the city...made in good faith exercise of the discretion** against city, councillor, employee, agent, etc.

what this means is:

1) policy decision of the city exists (s. 131 states it is council's role to develop and implement policies and see that admin is properly carried out by bureaucracy); therefore, it requires that the City has approved the policy [what is the mechanism for approving policy, and when is this used in lieu of a by-law?]

2) policy decision must have been made in good faith [*in light of all of celos' stated concerns about legality of policy decision and total lack of any participation by the people subject to the consequences of policy, would be very hard to argue good faith; this would require finding of gross incompetence*]

2) policy sets out that certain powers or functions are **discretionary** and it is these powers that aren't exercised

[check wording of policy - any discretionary powers?] [i don't think this would be any bar to an action in negligence against the city re; helmet, campfire and other policies - need damages or administrative remedy]

s. 391 Immunity re performance of duty

No proceeding for **damages or otherwise** [presumably includes judicial] against councillor, city employee, etc. for "performance or intended performance of a duty or authority under this Act or a by-law passed under it or for any alleged neglect or default in the performance in good faith of the duty or authority". [this would clearly not discount an action for abuse of authority, as section contemplates only performance of **duty**; not going outside of duty into negligent or malicious actions]

-each time it begs the councillor's duties to make clear what is/is not within scope of bureaucracy's powers - what about a list of those circumstances which REQUIRE PUBLIC INPUT AND COUNCILLOR'S VOTE TO IMPLEMENT

(2) makes it clear that any action still remains in tort (e.g. as above, [*what exactly does section 391 do - think about this?*])

s. 392 - general immunity for city's actions re: maintenance of roads, bridges and installing traffic calming measures.

s. 393 - liability in water and sewage

Part XVII- Other City Bodies (e.g. TTC, police services board, board of health continues, zoo, etc). N/A

Part XVIII - Transitions N/A

Part XIX - Miscellaneous Matter (e.g. employment benefits, homes for aged, emergency measures)

s. 452- CHECK EMERG MEASURES

- s. 453.1 - social housing programs
- s. 454 - proof of by-laws,
- s. 456 - costs in legal proceedings

- x. 459 Admin - scope of regulations

Re: admin + municipal law – what is the real distinction between circumstances in which council passes policies [what is process for passing policy that affects people?] and makes by-laws? any judicial guidance on this? articles?

- periodicals search on law vs. policy in government - municipal, provincial, federal

jan. 21 - .5 hour - e-mails, called access toronto, secretariat re: procedure by-law, printed at internet cafe
1 hour review city of toronto act

feb 29 - 1:30 - - enforcement part xv+ part III

To do/follow up:

- think about grant application re: creating breathing spaces for democracy in the city - look for foundations, etc. compare vancouver and toronto; also compare practices in vancouver - e.g. fires at boundary bay, cob buildings, how parks board works, rationale for parks board,etc.

- write to clerk to request all by-laws made pursuant to ss. 369 (creating offences) and s. 370 (authority to set fines for offences) - look at breadth and range of authority, and effect and contrast this with the way that people can be pushed around and bullied in public space. look at the preferential

protection of money and commerce -the city's protection scheme

Jutta- can i get the binder that adam gave you? re council, how it works, etc? to look for info re how council conducts its business, etc.?

- find someone at legislature who can tell me about the review of the city of toronto act and how that will be undertaken
- **begin to draft provisions we want to see in an amended city of toronto act**
- **e.g. provision mandating councillors to look into alleged abuse/incompetence e.g. budget, running rinks,etc.**
- look for history of debates re act

- **get copy of Insurance Act** [*read act, to find out what "may be or act as" means - does it impose a duty, or is it merely permissive?*]
- also copy of trespass to property act

- get procedural by-law s. 189 (2) and review

s. 212 - City **must** make policies re: [*we need to get copies of these*]- e-mailed Ulli Watkiss at city on jan. 21/08 - **review these!!!**

- sale/other disposition of land
- hiring of employees
- procurement of goods/services
- when and how notice is given to public
- public accountability/transparency
- protection of property/civil rights, that people are fairly treated
- delegation of its powers/duties
- financing of capital works, including the limits on annual costs associated with financing

- make a chart setting out the law-making process for provincial vs. municipal laws

- legislative history, including specific sections:
- ss. 1-5,

re: s. 14 To do: look in Act for provisions re: contracts to carry on businesses] is city allowed to issue licenses like it did to the guy with the food license at Christie pits?

- look up Ombud on website, google her/him,etc.

- s. 190 (10) [*look up s. 42(3)cl. 6 (1)(b) - FOI*]

s.198 **by-laws upon application** - some by-laws must be signed by a required number of electors *[when does this happen and why?]*

Questions:

- under what, if any, conditions can a non-elected official pass a by-law?

s. 368 - mandates that separate by-law re: disabled parking **must** provide a **minimum fine of \$ 300 on conviction**
[what is the conviction process; how are municipal by-laws enforced?]

look up regs made under the Act re: how to make space for public space

- **General Powers: Limits and Additions** - *to do: look up these regs re: precedent for checks on city's powers to pass by-laws which infringe upon public space + principles we need to propose*

s. 118 Provincial Cabinet **may** make regulations re: parking penalties including:

- a) granting City power to make people pay administrative penalties
- b) imposing limits/conditions of City's powers re: these penalties

s. 122 - Minister of Municipal Affairs and Housing may make regulations **prescribing conditions** for zoning by-laws (s. 113 (2)) - might also be worth looking at as possible precedent

s. 122.1 **and regulations prescribing limitations re: zoning by-laws**

Regulations re: policies

s. 225 Minister of Municipal Affairs and Housing may make regulations **prescribing "bodies for the purpose of the definition of "local board"** (restricted definition in s. 212 (3))

s. 226 Minister of Municipal Affairs and Housing may make regulations **prescribing** decisions involving review or appeal of delegated authority

- **Grant application** : "Leaving space for democracy in municipal governance"

-wild spaces

- model provisions for different legislation - MFIPPA; City of T Act, "principles for public accounting and transparency"

- aboriginal title space of no regulation

- exempting spaces from regulation; waiver for people who wish to use space; the rules here are different - this is what you give up, this is what you gain

- alter to public safety; tribute to freedom

Do as I say, not as I do - look for examples of how the city presumes to regulate other people, or hold people or other bodies to certain standards that it does not, itself, maintain, etc. and h

s. 228 (5) City can pass by-law re: time and form of budget reporting by boards, commission, and other bodies

Possible additional sources of information?

Returns and Financial Statements

s. 230 The City must file an annual return with its financial statement to the Minister of Municipal Affairs and Housing each year *[how, if at all, does this information vary from that presented in city's budget materials? is this an additional source of information?]*

- also, check to see if the Minister has prescribed a form for this budget reporting
- get copy of this report for last year for Jutta?

Information re municipal operations - to do: get copy of this form and reporting done in response; look at what information we want captured on specific issues

s. 237 (1) extended definition of a "local board" as "any body performing a public function: as designated by the Minister of Municipal Affairs and Housing

s. 237 (2) **The City and a local board... shall provide the** Minister of Municipal Affairs and Housing with Minister of Municipal Affairs and Housing

information designated by the Minister which, in the Minister's opinion, relate to efficiency and effectiveness of the City's or local board's operations, at the times and in the manner and form designated by the Minister. [*what about a celos contract, or grant application re: these sections of the Act? bringing a public perspective to the Act, which is to be guiding principles for Councillors to interpret and govern according to "public interest"]*

s. 237 (3) The city and a local board **shall publish all or such portion of the information as may be designated by the Minister at the times designated by the Minister but in the manner and form determined by the City** [so Minister decides what information must be provided, and City can publish this in a form it chooses - "publish" presumably means in the Gazette? why published in form determined by City? this seems to erode the potential strength of the section]

s. 237 (4) **A designation** by the Minister under this section may be **general or specific** in its application. [*this allows for CELOS request for very specific information e.g. re: efficiency of running rinks*]

[to do: get form and comment upon it]

Regulations re financial assistance

s. 244 The Minister of Municipal Affairs and Housing may make regulations prescribing "**public functions**" for the purposes of the definition of "local board" (extended) as it pertains to financial assistance (s. 238 (1)). [*might be interesting to see the description of "public functions" in regs - get copy?*]

to do:

Petty trespass act

Model city of provisions for a city that works for the people who enjoy and frequent public space
- for legislative review and generally

Regulations:

The city has passed the following regulations pursuant to the Act.

Re: administrative penalties that are required by the City in respect of the parking, standing or stopping of vehicles and referred to in section 81 of the Act. O. Reg. 611/06, s. 2.

Regulations re: financial activities

ONTARIO REGULATION 610/06

FINANCIAL ACTIVITIES

Consolidation Period: From June 15, 2007 to the [e-Laws currency date](#).

Last amendment: O. Reg. 265/07

This Regulation is made in English only.

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**PART I
LONG-TERM AND CURRENT BORROWING**

GENERAL

Long-term borrowing

3. The City may for its purposes borrow money to obtain or provide long-term financing for any capital work by,

- (a) issuing debentures;
- (b) issuing revenue bonds;
- (c) entering bank loan agreements. O. Reg. 265/07, s. 1.

Temporary borrowing for long-term debt

4. (1) The City may authorize temporary borrowing for a capital work or permanent improvement to be financed in whole or in part by the issue of debentures or by entering bank loan agreements if,

- (a) it has approved the issue of debentures or entering a bank loan for a capital work; or
- (b) it has approved the issue of debentures or entering a bank loan for a capital work or permanent improvement for another municipality or a school board.
O. Reg. 610/06, s. 4 (1).

(2) The City shall only authorize temporary borrowing for a work or improvement under subsection (1) if,

(a) the City applies the proceeds of the borrowing only for the purposes for which the debentures are to be issued or the bank loan entered; or

(b) the other municipality or school board, as the case may be, agrees with the City to only apply the proceeds of the borrowing for the purposes for which the debentures are to be issued or the bank loan entered. O. Reg. 610/06, s. 4 (2).

(3) The City shall not require any lender to be responsible for ensuring the proceeds of temporary borrowing under subsection (1) are used for the capital work or permanent improvement for which the temporary borrowing was authorized. O. Reg. 610/06, s. 4 (3).

(4) If the City has approved the issue of debentures for another municipality or a school board but has not sold them, it may authorize the municipality or board to use the debentures as security for temporary borrowing to meet expenditures made by the municipality or board in connection with the capital work or permanent improvement to be financed in whole or in part by the debentures. O. Reg. 610/06, s. 4 (4).

Borrowing for current expenditures

5. (1) At any time during a fiscal year, the City may authorize temporary borrowing, until the taxes are collected and other revenues are received, of the amount council considers necessary to meet the current expenditures of the City for the year, including amounts required in the year for,

(a) sinking and retirement funds;

(b) principal and interest due on any debt of the City;

(c) school purposes;

(d) other purposes that the City, by law, is required to provide for; and

(e) the amount of principal and interest payable by a person or municipality primarily liable for a debt, if the City has guaranteed the debt and the debt is in default. O. Reg. 610/06, s. 5 (1).

(2) Except with the approval of the Ontario Municipal Board, the total amount borrowed at any one time plus any outstanding amounts of principal borrowed and accrued interest shall not exceed,

(a) from January 1 to September 30 in the year, 50 per cent of the total estimated revenues of the City as set out in the budget adopted or readopted for the year; and

(b) from October 1 to December 31 in the year, 25 per cent of the total estimated revenues of the City as set out in the budget adopted or readopted for the year.

O. Reg. 610/06, s. 5 (2).

(3) Until the budget is adopted in a year, the limits upon borrowing under subsection (2) shall temporarily be calculated using the estimated revenues of the City set out in the budget adopted or readopted for the previous year. O. Reg. 610/06, s. 5 (3).

(4) In subsections (2) and (3), estimated revenues do not include revenues derivable or derived from,

(a) any borrowing, including through any issue of debentures;

(b) a surplus, including arrears of taxes, fees or charges, or a transfer from the capital fund, reserve funds or reserves. O. Reg. 610/06, s. 5 (4).

(5) The City shall not make any lender responsible for establishing the necessity of temporary borrowing under this section or the manner in which the borrowing is used. O. Reg. 610/06, s. 5 (5).

Long-term borrowing for other municipalities and school boards

6. (1) If any Act authorizes one or more other municipalities and the City to provide money for any capital work jointly, the City may borrow money for that purpose by issuing debentures or entering bank loans. O. Reg. 610/06, s. 6 (1).

(2) The City may borrow money for the purposes of a school board under section 246 of the Act by issuing debentures or entering bank loans. O. Reg. 610/06, s. 6 (2).

(3) The City shall not issue a debenture or enter a bank loan under subsection (1) or authorize another municipality to issue a debenture or enter a bank loan for a joint capital work of the City and the other municipality unless the debenture or loan is a joint and several obligation of the City and the other municipality. O. Reg. 610/06, s. 6 (3).

(4) The City shall not issue a debenture or enter a bank loan under subsection (2) unless the debenture or loan is a joint and several obligation of the City and the school board. O. Reg. 610/06, s. 6 (4).