

TO: UBCM Members
FROM: UBCM Executive
DATE: September 6, 2002
RE: **RESPONSE TO COMMUNITY CHARTER**

**POLICY PAPER
#1**

2002 Convention

1. DECISION REQUEST

For the UBCM Convention to make recommendations to the provincial government on the content of a Community Charter.

2. INTRODUCTION

The Executive have prepared this policy paper in response to the Community Charter discussion paper and draft legislation.

Using the workbooks from the June conference and the regional meetings as a primary source, and referencing other sources such as resolutions and correspondence, issues have been identified where a significant policy change should be considered. These are contained in section 3 of this paper.

As a matter of balance, the many positive aspects of the Charter raised by UBCM members should be mentioned. There appears to be general agreement to move ahead in these areas, so that even though there may be some minor “tweaking” needed, there would be no major policy changes.

OVERWHELMING SUPPORT

- duty of confidentiality
- ability to invite “others” to closed meetings
- role of council

GOOD/SIGNIFICANT SUPPORT

- disqualification for conflict until after the next general election
- range of penalties for conflict other than disqualification
- role of the mayor

MAJORITY SUPPORT

- Charter principles (other than offloading)
- inter-municipal regulatory schemes
- pursuing alternative revenue sources, including hotel tax, fuel tax and road tolls
- dispute resolution

The balance of the paper deals with the major issues where it is recommended the Charter be amended.

3. RECOMMENDATIONS

OVERALL RECOMMENDATION

That the provincial government proceed to introduce Community Charter legislation based on the draft prepared by the Community Charter Council and on the specific recommendations of the 2002 UBCM Convention.

RECOMMENDATIONS IN RESPONSE TO DISCUSSION PAPER ISSUES

Additional Revenue Sources

The discussion paper asked for feedback on the revenue options. There was considerable discussion of the options, their appropriateness and implications.

That the provincial government:

- a) develop legislation in consultation with UBCM and its members that would provide communities the option to implement the most promising new revenue options; and***
- b) work with UBCM to identify additional revenue sources that would assist a broader range of municipalities, including a return to a form of provincial revenue sharing.***

Business Tax Exemptions

The discussion paper asked for further direction on these questions:

- Should we have business tax exemptions?
- What is the best way to provide for exemptions?
- What checks and balances could be provided to deal with the perceived negative side effects of such a scheme?

This issue attracted much discussion among members.

That the Community Charter not include the proposal for a business tax exemption but that government consider a variation similar to the existing heritage and riparian tax exemptions that could apply to new improvements in a designated area of a municipality for a limited time period, (such as a downtown or industrial improvement area).

Fostering Positive and Constructive Local-Provincial Relations

The discussion paper outlined three options for managing future government to government dialogue and asked:

- which approach to managing provincial-local relations is preferred?
- is it important to ground government relations in law?

The three options were:

- to rely on existing organizations.

- set up a consultative body by agreement.
- establish a consultative body, such as a permanent Community Charter Council under statute.

Responses were mixed – but with a majority preferring more structure than simply using existing methods.

That a Community Charter Council continue to oversee the implementation of the Community Charter and subsequent phases of legislative reform in the next 2 to 3 year period.

That the UBCM continue to its role in all other dealings with the provincial government.

OTHER RECOMMENDATIONS

Downloading

The New Era document promised to outlaw offloading. The *Community Charter Council Act* contains a principle that reflected this direction.

While the Community Charter principles appear to enjoy overall support, the off-loading or downloading principle was the focus of much discussion.

That the "downloading" principle [section 2(2)(c)] be strengthened to protect the local government interests.

That the "consultation" principle [section 2(2)(b)] be strengthened to promote the local government interests.

The Executive will also be presenting a Special Resolution (SR1) that reflects members' concerns regarding downloading and consultation, including changes to provincial government services. This is informed by resolutions placed in section C of the Annual Report and Resolutions book (C20-C34).

Binding Arbitration

Section 287 provides for binding arbitration of intermunicipal disputes involving transecting highways, intermunicipal bridges or watercourses. This provision basically replaces a Ministerial determination of disputed matters with an arbitration process. Interestingly, there was much interest in expanding the matters to which arbitration could apply but there were few suggestions of specifics.

That the Community Charter include a provision to expand items to which binding arbitration could apply if requested by UBCM.

Closed Council Meetings

The Charter proposed a new exception to the open meeting rule:

- *discussions with municipal officers and employees respecting municipal objectives, measures and accomplishments for the purpose of annual municipal reports.*

This was intended to provide some latitude for informal "shirt-sleeve" sessions between council and staff. There was criticism that the new proposal was too restrictive. On further consideration of the municipal and public interests in this issue, the Executive concluded that the provision should be workable and does not recommend any broadening of the proposal.

Penalties for Breach of Confidentiality

There was significant support for the new provision on protecting confidentiality. Breach of this provision would be an offence under the *Offence Act*. The question was asked if there ought to be other penalties and the response was strongly supportive.

That the Community Charter include a statutory recourse to recover damages if the release of confidential information resulted in financial loss to the municipality.

Concurrent Jurisdiction

The Charter contains a provision on concurrent regulatory jurisdiction. It recognizes that in certain fields both local and provincial government have interests in regulating. There appears to be some discomfort that the proposal would reduce current municipal power, particularly with respect to building regulation. In order to specifically address that concern it is recommended:

That a concurrent jurisdiction model ensure that there is no loss of current municipal regulatory authority.

OTHER MATTERS

Liability protection and regional district legislation were two issues that were raised repeatedly and must be acknowledged as serious concerns. The first is being addressed as part of the Attorney General's initiatives on civil liability and recommendations in that regard will be considered by the 2002 UBCM convention in a separate report. Review of regional district is understood to be a subsequent phase. No specific recommendations are advanced at this time however it is important to signal to the provincial government now some expectations about that process.

That the provincial government follow an open and inclusive process for the review of the regional district legislation, including first consulting on the scope and time-frame for such a review.

Regional District members should note that proposals on consequential amendments to the *Local Government Act* (LGA) that will affect regional districts will be circulated to regional districts and considered at a 2002 Convention session.

Finally, there was some discussion regarding the Community Charter restriction on prohibiting existing businesses. The Charter allows municipalities to regulate but not prohibit business. This a continuation of basic LGA powers. The Charter does allow business prohibition in relation to regulation of any other sphere (e.g. noise, nuisance) provided there is a public meeting, which is a new power. The Executive concluded that it would accept the Charter provisions.

CONTINUING WORK

There were a number of items identified as "continuing work" where if appropriate, the conclusions might be incorporated into legislation. In addition to building regulation liability mentioned above, these included:

- Annual Reporting of Objectives and Accomplishments
- Conflict of Interest and Other Ethical Conduct Issues
- Financial Liability Limits and Procedures
- Updating Tax Sale Provisions
- Forum for Bylaw Infractions
- Land Use Bylaws Applying to Crown Corporations

An update on this work will be provided at convention.

4. DRAFTING AND OTHER AMENDMENTS

Numerous suggestions have been received to improve the legislative drafting. These have not been outlined here because they do not alter the policy direction but in most cases serve to amplify the policy direction.

UBCM has had direct and unprecedented access to the Legislative Counsel on drafting of the Charter and it is the Executive's firm intention to see this involvement continue.

5. SUMMARY RECOMMENDATIONS

It is recommended:

1. That the provincial government proceed to introduce Community Charter legislation based on the draft prepared by the Community Charter Council and on the specific recommendations of the 2002 UBCM Convention.
2. That the provincial government:
 - a) develop legislation in consultation with UBCM and its members that would provide communities the option to implement the most promising new revenue options; and
 - b) work with UBCM to identify additional revenue sources that would assist a broader range of municipalities, including a return to a form of provincial revenue sharing.
3. That the Community Charter not include the proposal for a business tax exemption but that government consider a variation similar to the existing heritage and riparian tax exemptions that could apply to new improvements in a designated area of a municipality for a limited time period, (such as a downtown or industrial improvement area).
4. That a Community Charter Council continue to oversee the implementation of the Community Charter and subsequent phases of legislative **reform** in the next 2 to 3 year period.
5. That the UBCM continue to its role in all other dealings with the provincial government.
6. That the "downloading" principle [section 2(2)(c)] be strengthened to protect the local government interests.
7. That the "consultation" principle [section 2(2)(b)] be strengthened to promote the local government interests.
8. That the Community Charter include a provision to expand items to which binding arbitration could apply if requested by UBCM.
9. That the Community Charter include a statutory recourse to recover damages if the release of confidential information resulted in financial loss to the municipality.
10. That a concurrent jurisdiction model ensure that there is no loss of current municipal regulatory authority.
11. That the provincial government follow an open and inclusive process for the review of the regional district legislation, including first consulting on the scope and time-frame for such a review.

6. FURTHER RECOMMENDATIONS

At the time of publication of this paper the Executive expects it may receive other suggestions from Area Associations or members on the Charter Council. In response, the Executive may table additional recommendations that will be included in the materials distributed to delegates at the time of registration at the convention.

Referred Resolutions – Appendix A

The following resolutions were referred for consideration in the preparation of this policy paper. After completing the report, the Executive suggests the following disposition of the resolutions.

C 43	Included in the draft Charter
C 44	To be addressed in separate Government initiative
C 45	Does not appear to be addressed
C 46	Included in the recommended amendments to the Charter (Financial Liabilities)
C 47	Addressed in part by the Charter
C 48	The intent will be accomplished
C 49	Land use planning review will be pursued in a subsequent phase
C 50/51	Regional distant legislation will be addressed in a subsequent phase
C 52	Not addressed in the Charter
C 53	Addressed in UBCM policy paper
C 54	Recommended for amendment to Charter
C 55	Addressed in UBCM policy paper
C 56	Addressed in UBCM policy paper
C 57	The Gaming Act, not the Charter, governs the ability to establish casinos
C 58	Do not recommend - there will be some voter assent required but villages could establish higher thresholds
C 59	Addressed in UBCM policy paper
C 60	Intent will be achieved
C 61	Now being pursued through a parallel process – intent supported