

CITY COUNCIL AGENDA

Consolidated as of February 21, 2014



Council Chambers, Guelph City Hall, 1 Carden Street

DATE February 24, 2014 – 7:00 p.m.

Please turn off or place on non-audible all cell phones, PDAs, Blackberrys and pagers during the meeting.

**O Canada
Silent Prayer
Disclosure of Pecuniary Interest and General Nature Thereof**

PRESENTATION

- a) Michael Scott, Chief Executive Officer and Will Mueller, Oversight Analyst of Waste Diversion Ontario presentation of the Ron Lance Memorial Award to the City of Guelph in recognition of achieving the best waste diversion rate in 2012.
- b) Presentation of heritage designation plaque for 83 Essex Street (BME Church) to the Guelph Black Heritage Society, represented by Marva Wisdom, President and Denise Francis, Secretary/Treasurer.

CONFIRMATION OF MINUTES (Councillor Guthrie)

“THAT the minutes of the Council Meeting held January 27, 2014 and the minutes of the Closed Meeting of Council held January 27, 2014 be confirmed as recorded and without being read.”

CONSENT REPORTS/AGENDA – ITEMS TO BE EXTRACTED

The following resolutions have been prepared to facilitate Council's consideration of the various matters and are suggested for consideration. If Council wishes to address a specific report in isolation of the Consent Reports/Agenda, please identify the item. The item will be extracted and dealt with separately. The balance of the Consent Reports/Agenda will be approved in one resolution.

Consent Reports/Agenda from:

Audit Committee			
Item	City Presentation	Delegations	To be Extracted
AUD-2014.2 2014 Audit Committee Work Plan			

AUD-2014.4 Internal Audit 2014 Work Plan			
AUD-2014.7 Independence Notification – External Auditor			

Adoption of balance of Audit Committee First Consent Report - Councillor Guthrie, Chair

Closed Meeting of Council			
Item	City Presentation	Delegations	To be Extracted
CMC-2014.6 2014 Citizen Appointments to Council Remuneration – Citizen Review Committee			
CMC-2014.10 Citizen Appointments to the Guelph Cemetery Commission			
CMC-2014.11 Citizen Appointment to the Downtown Guelph Business Association			

Adoption of balance of the Closed Meeting of Council First Consent Report –

Community & Social Services Committee			
Item	City Presentation	Delegations	To be Extracted
CSS-2014.3 Conceptual Master Plan for Jubilee Park			

Adoption of balance of Community & Social Services Committee First Consent Report - Councillor Dennis, Chair

Corporate Administration, Finance & Enterprise Committee			
Item	City Presentation	Delegations	To be Extracted
CAFE-2014.1 Budget Impacts per Ontario Regulation 284/09 & 2014 Budget PSAB Reconciliation			

Adoption of balance of Corporate Administration, Finance & Enterprise Committee First Consent Report - Councillor Hofland, Chair

Operations, Transit & Emergency Services Committee			
Item	City Presentation	Delegations	To be Extracted
OTES-2014.4 By-law Review – Disabled Parking By-law			
OTES-2014.5 Business Licence Fees 2014			
OTES-2014.6 Royal City Brewing Company – Manufacturer’s Limited Liquor Sales Licence Application			

Adoption of balance of Operations, Transit & Emergency Services Committee First Consent Report - Councillor Findlay, Chair

Planning & Building, Engineering and Environment Committee			
Item	City Presentation	Delegations	To be Extracted
PBEE-2014.1 Approval of Water and Wastewater Long-Range Financial Plan 017-301 (2014) as Required Under Ontario Regulation 453/07	<ul style="list-style-type: none"> • Peter Busatto, General Manager Water Services 	<ul style="list-style-type: none"> • Hugh Whiteley 	✓
PBEE-2014.2 2014 Development Priorities Plan	<ul style="list-style-type: none"> • Katie Nasswetter, Senior Development Planner 	<ul style="list-style-type: none"> • Hugh Whiteley 	✓
PBEE-2014.3 Outside Water Use By-law Review – Recommended Revisions and Revised By-law Approval			
PBEE-2014.4 City Owned Property at 141 Fountain Street East – Land Exchange Involving 150 Wellington Street East			
PBEE-2014.5 Outstanding Motions of the Planning & Building, Engineering and Environment Committee			

Adoption of balance of Planning & Building, Engineering and Environment Committee First Consent Report - Councillor Bell, Chair

Council Consent Agenda			
Item	City Presentation	Delegations	To be Extracted
CON-2014.15 95 Willow Road Proposed Zoning By-law Amendment (File ZC1316) – Ward 3			
CON-2014.16 City Owned Property at 65 Delhi Street – Former Delhi Community Centre			
CON-2014.17 Bill 69 – Prompt Payment Act, 2013			

Adoption of balance of the Council Consent Agenda – Councillor

ITEMS EXTRACTED FROM COMMITTEES OF COUNCIL REPORTS AND COUNCIL CONSENT AGENDA (Chairs to present the extracted items)

Once extracted items are identified, they will be dealt with in the following order:

- 1) *delegations (may include presentations)*
- 2) *staff presentations only*
- 3) *all others.*

Reports from:

- Audit Committee – Councillor Guthrie
- Closed Meeting of Council – Mayor Farbridge
- Community & Social Services Committee – Councillor Dennis
- Corporate Administration, Finance & Enterprise Committee– Councillor Hofland
- Operations, Transit & Emergency Services Committee – Councillor Findlay
- Planning & Building, Engineering and Environment Committee– Councillor Bell
- Council Consent – Mayor Farbridge

SPECIAL RESOLUTIONS

- a) Councillor Findlay’s motion for which notice was given January 27, 2014:

That the following be referred to the Corporate Administration, Finance & Enterprise Committee:

That staff be directed to provide a full cost accounting for development projects for Council approval.

- b) Councillor Guthrie’s motion for which notice was given January 27, 2014:

That the following be referred to the Governance Committee:

That the matter of a “tip line” regarding comments and concerns for the Corporation of the City of Guelph, for both concerned employees and concerned citizens be investigated by staff and reported back to the Governance Committee for consideration.

BY-LAWS

Resolution – Adoption of By-laws (Councillor Hofland)

“THAT By-law Numbers (2014)-19696 to (2014)-19709, inclusive, are hereby passed.”

<p>By-law Number (2014)-19704 A by-law to authorize the execution of a Partial Release of Development Covenants and Restrictions with respect to Part of Lot 1, Registered Plan 680, designated as Part 1, Reference Plan 61R4800, City of Guelph.</p>	<p>To authorize a partial release of development covenants and restrictions.</p>
<p>By-law Number (2014)-19705 A by-law to amend By-law Number (1995)-14864, as amended, known as the Zoning By-law for the City of Guelph as it affects property known municipally as 95 Willow Road and legally described as Lot 9, Plan 593, City of Guelph (ZC1316).</p>	<p>To amend the Zoning By-law as per Consent Report CON-2014.15.</p>
<p>By-law Number (2014)-19706 A By-law to authorize the execution of release of a Development Agreement with respect to property described as: Lots 1 to 11 inclusive, and Donnington Street (closed by Judges Order Instrument No. 10W-4790), Plan 272,</p>	<p>To authorize the release of a Development Agreement.</p>

<p>Lots 2 and 6, Part Lot 1 and Part Block "A", Plan 136, designated as Parts 2, 3, 4 and 5, Reference Plan 61R2943; Part Lots 1 and 6, and Part Block A, Plan 136, designated as Part 4, Reference Plan 61R20169; and Part Lot 1, Plan 272, designated as Part 6, Reference Plan 61R20169, City of Guelph.</p>	
<p>By-law Number (2014)-19707 A by-law to dedicate certain lands known as Block 3, 61M174, City of Guelph, as part of Mussen Street.</p>	<p>To dedicate lands as part of Mussen Street.</p>
<p>By-law Number (2014)-19708 A By-law to authorize the execution of a Transfer Release and Abandonment of an Easement with respect to Part of Block 1, 61M189, designated as Part 6, Reference Plan 61R11692, City of Guelph.</p>	<p>To authorize the execution of a Transfer Release and Abandonment of an Easement.</p>
<p>By-law Number (2014)-19709 A by-law to confirm the proceedings of a meeting of Guelph City Council held February 24, 2014.</p>	<p>To confirm the proceedings of a Council meeting held February 24, 2014.</p>

MAYOR'S ANNOUNCEMENTS

Please provide any announcements, to the Mayor in writing, by 12 noon on the day of the Council meeting.

NOTICE OF MOTION

ADJOURNMENT

CONSENT AGENDA - Revised

February 24, 2014

Her Worship the Mayor
and
Members of Guelph City Council.

SUMMARY OF REPORTS:

The following resolutions have been prepared to facilitate Council’s consideration of the various matters and are suggested for consideration. If Council wishes to address a specific report in isolation of the Consent Agenda, please identify the item. The item will be extracted and dealt with immediately. The balance of the Consent Agenda will be approved in one resolution.

A REPORTS FROM ADMINISTRATIVE STAFF

REPORT	DIRECTION
<p>CON-2014.15 95 WILLOW ROAD PROPOSED ZONING BY-LAW AMENDMENT (FILE ZC1316) – WARD 3</p> <p>1. That Report 14-13 regarding a City-initiated Zoning By-law Amendment to permit day care centre and government office uses for the property municipally known as 95 Willow Road, and legally described as Lot 9, Plan 593, City of Guelph, from Planning, Building, Engineering and Environment dated February 24, 2014, be received.</p> <p>2. That the City-initiated Zoning By-law Amendment from the P.4 (Regional Park) Zone to a specialized I.1 (Institutional) Zone to permit day care centre and government office uses for the property municipally known as 95 Willow Road and legally described as Lot 9, Plan 593, City of Guelph, be approved in accordance with the zoning regulations and conditions outlined in Attachment 2 of Planning, Building, Engineering and Environment Report 14-13, dated February 24, 2014.</p>	Approve
<p>CON-2014.16 CITY OWNED PROPERTY AT 65 DELHI STREET – FORMER DELHI COMMUNITY CENTRE</p> <p>1. That report CHR-2014.13 entitled “City Owned Property at 65 Delhi Street – Former Delhi Community Centre” be received.</p> <p>2. That the City Solicitor be authorized to enter into an Agreement of Purchase and Sale between the City and Vesterra 55 Delhi Inc. (“Vesterra”) for the sale of a portion of the City’s property located at</p>	Approve

65 Delhi (the "West Lot") on terms and conditions satisfactory to the City Solicitor and substantially in accordance with the report entitled "City Owned Property at 65 Delhi Street – Former Delhi Community Centre", dated February 24, 2014.

CON-2013.17 BILL 69 – PROMPT PAYMENT ACT, 2013

Approve

1. That the report titled "Bill 69 – Prompt Payment Act, 2013" dated February 24, 2014, be received for information.
2. That staff be authorized to make submissions to the Standing Committee on Regulations and Private Bills to outline the concerns with the proposed legislation as raised in this report.
3. That this report be forwarded by the Mayor to the local MPPs and the Association of Municipalities of Ontario with a covering letter.

attach.

STAFF REPORT



TO Guelph City Council

SERVICE AREA Legal and Realty Services

DATE February 24, 2014

SUBJECT Bill 69 – Prompt Payment Act, 2013

REPORT NUMBER CHR-2014-16

EXECUTIVE SUMMARY

PURPOSE OF REPORT

To discuss Private Member's Bill, Bill 69, the Prompt Payment Act, 2013.

KEY FINDINGS

Bill 69 is a Private Member's Bill that received First Reading on May 13, 2013 and Second Reading on May 16, 2013. The Bill was referred to the Standing Committee on Regulations and Private Bills. The Bill has been in the works for up to two years within the construction industry but there does not seem to have been much, if any, consultation with owners. The Bill purports to trump the contractual rights of parties and established principles of contract law. It imposes significant limits on the freedom of contract for construction services and there is no ability for owners and contractors to freely negotiate the most suitable payment arrangements in their projects.

FINANCIAL IMPLICATIONS

None at this time but if the Bill is passed and becomes law there could potentially be significant financial impact on owners of construction projects such as the City.

ACTION REQUIRED

City Council to authorize staff to make submissions to the Standing Committee on Regulations and Private Bills to outline concerns with the proposed legislation as raised in this report and that this report be forwarded by the Mayor to the local MPPs and the Association of Municipalities of Ontario for their information.

RECOMMENDATION

1. That this report be received by Council for information.
2. That staff be authorized to make submissions to the Standing Committee on Regulations and Private Bills to outline the concerns with the proposed legislation as raised in this report.

STAFF REPORT



3. That this report be forwarded by the Mayor to the local MPPs and the Association of Municipalities of Ontario with a covering letter.

BACKGROUND

On Friday February 7, 2014 AMO approached the meeting of the Large Urban Mayors' Caucus of Ontario (LUMCO) to request that LUMCO act quickly to make their concerns known about this Bill. The Bill is called *An Act respecting payments made under contracts and subcontracts in the construction industry* and the short title is the *Prompt Payment Act, 2013*. It received First and Second Reading in May 2013 and has been referred to the Standing Committee on Regulations and Private Bills. Bill 69 is a Private Member's Bill introduced by Liberal MPP Steven Del Duca.

The proposed legislation was put forward based on the efforts of the construction industry, led by the Ontario caucus of the National Trade Contractors Coalition of Canada and the Ontario General Contractors Association. To our knowledge there has been minimal, if any, consultation with owners' groups, such as municipalities who are often owners of large construction projects.

REPORT

The proposed legislation is significant in that it purports to significantly limit the freedom of contract for construction services in ways that severely impact construction owners' rights. The legislation purports to amend all construction contracts to comply with it. There is no ability for the owner and contractor to freely negotiate the most suitable payment arrangements in their projects. The following are major issues of concern:

1. Extremely short payment timelines:
 - a. Under the Bill, owners would be required to pay lien holdbacks to GC's within one day of the *Construction Lien Act* no longer requiring the owner to retain the holdback. This does not allow for any reasonable circumstances in which payment could not be made within one day such as requiring title searches to confirm that titles are clear of liens, or the practical reality that often payment processing requires more than one day.
 - b. Under the Bill, either the contract allows for payment at least every 31 days after the first delivery of services or materials, or progress payments must be made within 20 days upon submission of a progress payment application. These timelines do not take account of reasonable time required for the payment certifier to properly evaluate and certify the work, nor do they take account of the practical realities of payment processing. Often, additional information is required before the owner can properly certify work. These timelines do not account for possible discussions between the owner and contractor that often happen before work can be certified.

2. If the contract does not stipulate payment every 31 days, the contractor can provide “reasonable estimates” of work done and this would be sufficient to support payment application. The contractor can also request to be paid for material and services that “will be supplied”, rather than limiting the request for payment to work that has actually been completed or materials that have actually been supplied. It is standard and reasonable practice that payment will only be made for work actually done. This means a payment certifier will have to try to certify payment for work that is not actually done, but “reasonably estimated”. This is completely unfair to owners.
3. Payment applications are deemed to be approved 10 days after submission by the contractor unless the owner supplies, within that 10 days, full particulars of the problems in writing. One particular required is “any provisions of the contract or subcontract that are relevant to the disapproval or amendment”. In large contracts it may be impractical and impossible to sort through all the provisions of the contract to find out which are relevant to a payment dispute, within 10 days.
4. Where payments are not made in accordance with the legislation, the contractor can simply suspend or terminate the contract with 7 days’ notice. This completely undermines the general notion and most often the contractual agreement to resolve disputes using dispute resolution mechanisms. The ability to suspend or terminate on such short notice could have significant impact on public works. This will ultimately result in further costs to owners and potentially significantly delay project completion.
5. Holdbacks other than those required by the *Construction Lien Act* will be prohibited under this Bill. This will significantly limit the flexibility and ability of owners to use payment tools to ensure that work is completed to standard. This would mean that delay or deficiency holdbacks could never be used to ensure that contractors complete work properly and on time. This will force the City to always resort to litigation for delay claims rather than allowing these claims to be worked out with the contractor directly.
6. Before entering into a contract, this Bill states that owners must provide financial information to contractors as prescribed by the regulations, in support of an owner’s financial viability to carry out the work, without a reciprocal provision in favour of owners. They may request updates to the financial information at any time, with no limits on how many requests can be made. The Bill requires owners to respond “promptly” with no definition of what that means. However given the rest of the legislation, it will likely mean “unreasonably quickly”.

The above main concerns will have significant impact on the City and other owners of construction projects, including the Province and broader public sector. It is

STAFF REPORT



believed that other municipalities are now making their positions and concerns known to their Provincial MPPs through organizations like LUMCO and AMO.

It is recommended that the City's concerns as outlined in this report be shared with local MPPs and with the AMO and that staff be directed to share the City's concerns with the Standing Committee on Regulations and Private Bills.

CORPORATE STRATEGIC PLAN

2.3 Ensure accountability, transparency and engagement

3.2 Be economically viable, resilient, diverse and attractive for business

DEPARTMENTAL CONSULTATION

Office of the CAO – Senior Policy Analyst
Finance and Enterprise

COMMUNICATIONS

ATTACHMENTS

AMO letter dated November 13, 2013

Report Author

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November 13, 2013

Hon. Kathleen Wynne
Premier of Ontario
Legislative Building - Room 281
Queen's Park
Toronto ON M7A 1A1

Tim Hudak
Leader of the Official Opposition
Legislative Building - Room 381
Queen's Park
Toronto ON M7A 1A8

Andrea Horwath
Leader - New Democratic Party of Ontario
Legislative Building - Room 113
Queen's Park
Toronto ON M7A 1A5

Dear Provincial Party Leaders:

We are writing to you today regarding the Private Member's Bill, Bill 69 - *An Act representing payments made under contracts and subcontracts in the construction industry*. The municipal sector is quite concerned about this Bill and its potential impacts on municipal governments as construction owners. Municipal governments were not consulted during the development of Bill 69 or during the debates to date at the Ontario Legislature.

In our review of the draft legislation, it would appear that it places a significant limit on the freedom of contract for construction services that would restrict municipal governments' and other construction owners' rights. The draft Bill provides no ability for owners and contractors to freely negotiate the most suitable payment arrangements for their projects. In our understanding of the draft Bill, there are extremely short timelines to make payment that do not allow for reasonable review of the work and certification of the payments process.

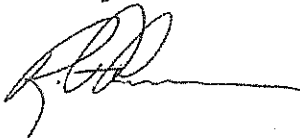
It also does not deal with the reasonable payment process of complex infrastructure projects. It also appears in the draft legislation that a contractor can request to be paid for services and materials that "will be supplied" to the project, rather than asking for payment once work has been completed or for materials that have actually been supplied. It is a standard business practice that payment is only to be provided once work has actually been done. This Bill appears to trump or amend established contract law that is in place on behalf of all the involved parties.

There are proposed stringent requirements to pay contractors even if there are valid reasons for withholding payment. Under the draft legislation, this could mean that general contractors and/or subcontractors could suspend work which could bring on project completion delays which would also involve stoppage and restarting costs. The proposed legislation also removes the right to include financial tools to ensure performance such as warranty and maintenance revisions, which could mean the only way to resolve potential disputes would be litigation for resolving deficiencies that are not done in accordance with the contract. These are only some of the concerns that municipal governments have raised upon reviewing Bill 69.

We would ask that this proposed Bill, should it go forward, be amended by agreement of all three parties to exempt municipal governments from its requirements. If the Bill becomes law without this exemption, it would have significant financial impacts on municipal governments and our property taxpayers.

We would look forward to discussing this further with you and your members. We appreciate your serious consideration of our and the municipal sector's request with respect to Bill 69.

Yours truly,



R.F. (Russ) Powers
President

cc: Hon. Linda Jeffrey, Minister of Municipal Affairs and Housing
Steven Del Duca, MPP Vaughan
Cindy Forster, MPP Welland, NDP Municipal Affairs Critic
Jim McDonell, MPP Stormont-Dundas-South Glengarry, PC Municipal Affairs Critic

Bill 69 – Proposed Prompt Payment Act - MPP Stephen Del Duca, PA to the Minister of Finance

Municipal Concerns:

Bill 69 will, if passed or combined into another bill, limit the contractual freedom of municipal governments, the province and other infrastructure owners to negotiate with contractors/suppliers.

The Bill would impose:

- Stringent timelines to make payment that does not account for the time required to review and properly certify work.
 - The ability of contractors to give reasonable estimates of the work done to justify a request for payment. The contractor may also request to be paid for services and materials to be (but not yet) supplied.
 - Very limited time to approve payment applications and onus on owners to justify any rejection of payment with full particulars.
 - A prohibition on holdbacks other than those required under the *Construction Lien Act*.
 - The ability of contractors to request financial information regarding the construction owners financial viability to carry out work before entering into a contract and after without limit.
 - This bill appears to trump or amend established contract law that is in place on behalf of all the involved parties.
-
- If passed, the Bill will affect municipalities' ability to exercise due diligence over public funds.
 - Municipal solicitors are very concerned about the content of proposed legislation
 - AMO has written to the Party leaders, copying the Minister of Municipal Affairs and the proponent to express our concerns and request an exemption for the sector. These concerns have also been raised directly with these parties.
 - The provincial implications to the province would be similar as it is project proponent and owners of infrastructure. It is understood that provincial civil servants understand the potential risk of this proposed legislation, but it is transparent as to how those interests have been considered magisterially.

