



Response to 22-MMAH015

**Proposed Minister's Regulations to help bring the Strong Mayors, Building Homes Act,
2022 into effect**

October 2022

Thank you for the opportunity to provide feedback on the proposed regulation. AMCTO would note that the timelines for providing feedback on this proposed regulation are extremely tight and are coming in the middle of Municipal and School Board elections. Assuming the regulations are approved, the turn-around time for Toronto and Ottawa to implement the regulations is extremely short, just under a month's time.

AMCTO has long advised the Province that without providing reasonable timelines to implement Provincially mandated changes to structures, governance or other matters, the Province continues to place undue administrative and operational burden on municipal staff who must implement these initiatives. These then become matters that require additional time and human resources to support which is an additional operational cost that the municipality must bear.

Below is our preliminary analysis of the potential impact of the regulations and our advice for mitigating issues and concerns related to their implementation.

Overarching Comments

AMCTO has long advocated that administrative burdens established by other orders of government impose costs on municipalities requiring significant administrative capacity. Unfortunately, the regulation as proposed includes administrative and operational uncertainties that may be unnecessarily burdensome for municipal staff.

While these powers are permissive, uncertainty regarding the potential for erratic shifts between the use of these powers remains. For example, municipal staff must create processes to ensure the organization runs smoothly. With many unknowns, one Head of Council to another could change their approach to using / not using these additional powers, or only use some of them, requiring staff to make changes to policies and procedures throughout the organization. Making small changes to a policy or procedure can have implications for many others. This leaves much uncertainty for staff as they try to develop policies, procedures, processes, tools and instruments to support implementation.

Furthermore, there remains many questions about the intent of some of the proposed regulations and their effect on municipal governance and administration. There remains lack of clarity in a number of areas and the risk of potential unintended consequences of certain proposals.

As the Province considers extending these authorities to other municipalities, it must also consider how these will work for and between two-tier structures, the impact on local governance and operational matters, finances, resources and capacity.

There is a significant level of uncertainty for municipal staff in all areas of municipal administration which impact their profession and their personal well-being. Moreover, the political appointment of senior leadership could result in a lack of consistency between terms of council with senior leadership turnover. A stable, continuous public service has been a hallmark of Canadian government administration. There is a

significant possibility that this consistency is threatened by the changes to senior administration appointments.

1. Propose that new powers and duties for the HOC apply to the City of Ottawa [sic and the City of Toronto]

While these regulations would only apply to Toronto and Ottawa in the interim, Provincial decision-makers including the Premier have made clear that these powers could be extended to other municipalities. A comment period of ten days is insufficient to provide adequate advice and recommendations on how these regulations would impact a wider group of municipalities and their staff, including identifying potentially unintended consequences and does not replace the need for formal consultations with municipalities or municipal associations such as AMCTO.

Many questions remain, such as: What is the process that will be used for the ministry to track who applies and who is granted authority? Will the ministry track which HOCs institute and use this new authority? Will the ministry provide guidance on how to revert back if the existing HOC or a new HOC no longer wants the authority? What information will the municipality be required to provide if any?

2. Propose to define head of division as “the highest level of senior management”

While the proposed definition is an improvement on head of division, it may not adequately define the ‘head’ because terminology is fluid across municipalities. If the intent is to apply these authorities to other municipalities, this could still result in different interpretations as structures and terminology differs. There remains the issue that the HOC has control over structure and reorganization of the municipality and could create “senior management” positions or heads that could encompass positions not typically considered senior management, or the head of division.

Moreover, AMCTO reiterates that other municipal leaders should have been included in the list of excluded roles. As with the CAO, AMCTO strongly believes it is necessary to avoid the politicization of other heads of departments such as the Chief Planner and the municipal lawyer/solicitor as has been suggested by our colleagues at OPPI and MLDAO. The mandatory role of the CAO should be included in the COTA and MA and other heads of department should be added to the exclusions list as soon as possible.

There remains a concern that two classes of municipal staff are effectively created: those that are responsible to Council and those who are responsible to the HOC. This could present several human resource management challenges such as reporting relationships and executing direction, in addition to exacerbating Council-HOC-Staff relations challenges which already exist. Moreover, given the uncertainty around structural changes, increased administrative burden, and balancing competing interests, staff could be placed in an awkward and untenable position, making the municipal sector a less attractive place to build a career. Over time, this could impact the already difficult task of recruiting qualified candidates for positions across departments,

especially considering the significant amount of retirements the sector faces over the next 5-10 years.

We understand that some models of so-called “strong mayors” or mayor executive models in the US still retain a CAO and that CAO is often a professional with specifically codified responsibilities often articulated in state legislation or in City Charters. Moreover, these models clearly delineate the political side represented by the HOC and the operational and administrative side. The proposals here blur those lines.

We continue to urge the Province to enumerate the roles and responsibilities of the CAO to reflect the expectations these experts are to meet and roles and responsibilities they have been fulfilling.

3. The Act would allow the HOC to create, assign functions and appoint chairs/vice-chairs of prescribed committees. Propose that these powers apply to committees of council (where all members are council members) made under the MA and COTA.

Much like the establishment of two-classes of staff, these provisions create two classes of members of council, establishing a pseudo-cabinet without expressly doing so in the MA. Clarity around reporting relationships between chairs/vice chairs and staff will be critical. Please see some of the other comments below for other operational concerns.

5. The Act would allow the HOC to direct staff in writing to do certain things. Propose to require the HOC to provide written documentation to the clerk and Chief Administrative Officer (CAO) when they direct staff.

In many municipalities including Ottawa and Toronto, the HOC’s staff are political employees. More frequently municipalities are turning to a political support model for HOC and council staff. Under the proposed regulations, it is unclear whether political staff, acting on behalf of the HOC would be able to provide written documents directing municipal staff to act as this is not specifically excluded as a delegation. It becomes more muddled where the HOC or their political staff would be also able to direct staff of other councillors where these employees may be non-political staff who are employees of the municipality.

That Proposal 4 and Proposal 5 are separate implies that where no CAO exists (ie the HOC is assigned the responsibilities of the CAO and doesn’t hire a CAO), the Clerk becomes responsible for following through on the HOC’s direction to staff. This would imply that the Clerk becomes involved in accountability for ensuring that the work the HOC is directing is completed. Is there expectation that the Clerk disseminate to the appropriate staff and be responsible for following up? If this interpretation is correct, then this adds more duties and responsibilities to an already burdened statutory officer responsible for council governance and management, reporting, election administration among numerous other duties often assigned or legislatively required. It also puts the

clerk is an awkward position as a “middle person” between the non-partisan staff and the political HOC.

If the intent is to only provide documentation to the Clerk for the purposes of record keeping, consistent with what is already in the Acts then the regulation needs to be more clear.

6A. The Act would allow the HOC to delegate certain powers. Propose that the HOC can delegate only to council the powers related to the CAO and committees.

Generally, supportive of the proposal given that should the HOC decide not to exercise these prerogatives, then it defaults back to the Council as it was prior to the passage of Bill 3 rather than any other individual or individuals besides a CAO, if that is the intent.

That said, the language lacks clarity. Does the reference to the “powers related to the CAO” mean the appointment of the CAO? The HOC power related to the CAO is outlined in section 284.5 refers to section 229 which outlines the authority to appoint a CAO AND outlines the authority of the CAO. A possible interpretation of this proposal is that a new model is adopted which envisions that the Council as a collective take over the responsibilities of the CAO where the HOC does not take the role on themselves which becomes administratively inefficient and could result in confusing and contradictory direction to staff. We would recommend clarifying the intent.

If the intent is to solely to revert to council hiring a CAO and to council to create committees and appoint Chairs/Vice-chairs then that should be made clear.

6B. Propose that the HOC can delegate only to council or the CAO the power to hire division heads and create/re-organize divisions.

We are still concerned that there is a lack of requirement to hire an experienced municipal professional leader as CAO who understands legislation, regulations, human resource and financial management and is therefore best positioned to determine, in consultation with the council, organizational structures and to provide leadership and management to department heads.

As with the CAO, AMCTO strongly believes it is necessary to avoid the politicization of other heads of departments such as the Chief Planner and the municipal lawyer/solicitor as has been suggested by our colleagues at OPPI and MLDAO.

7. The Act would allow the HOC to veto bylaws made under the MA, COTA and Planning Act if in the HOC's opinion, they could interfere with a prescribed provincial priority. Propose that the veto power also apply to bylaws made under section 2 of the Development Charges Act.

There are a number of municipalities, including Toronto and Ottawa which use a confirming by-law to authorize the decisions of council which are made by resolution in this approach. A confirming by-law is enacted by council during a meeting and/or at the

end of the meeting to confirm all of the decisions made up until the point the by-law is introduced.

It is unclear, in the circumstances where municipalities use a confirming by-law approach to enact council decisions, how a veto of a council resolution on a matter that the HOC is of the opinion will impact provincial priorities would be conducted. An unintended consequence of this would be that if the HOC was to veto the confirming by-law, it would have the effect of voiding all decisions made during that council meeting.

Guidance from the Province on instruments, mechanisms and templates for applying the HOC veto will be necessary, particularly if the authorities are extended beyond Toronto and Ottawa.

As with the veto authority on the budget below, the regulation as worded leaves loophole which could allow the HOC or their appointed Chair/Vice chair of a committee to act in bad faith to orchestrate the delay of a committee or council meeting or cancellation of a scheduled meeting to consider a veto override vote. To ensure accountability and transparency as well as more checks and balances for the process, the regulation should also require that a meeting to consider a veto override vote take place unless written confirmation from all members of council is received and made public that no vote is anticipated.

From a risk perspective, in an instance where the HOC is not of the opinion that a bylaw would interfere with prescribed provincial priorities, it is unclear whether an interested party could make an appeal to another body or tribunal if that party was of the opinion that the HOC did not fulfill their responsibilities on provincial priorities. If it was allowed, this would add to already existing delays to matters such as housing developments and exacerbate the administrative burden the tribunal system has on municipal matters. It is further unclear whether a successful council override vote would incur the same possibility.

Should the authorities extend beyond Toronto and Ottawa, further consideration must be given to instances where the upper-tier is the approval authority for a lower-tier decision and instances that require approval from both an upper-tier and lower-tier. For example, could the HOC of an upper-tier municipality veto a by-law to approve a lower-tier municipality's Official Plan for which they are the approval authority if they believe it interferes with a provincial priority?

8A. The Act would provide the HOC with new powers and duties related to the municipal budget. Proposing that each year, the HOC be required to propose the budget by February 1. If they do not by this date, the duty to prepare and adopt the budget transfers to council. After budget is proposed by HOC, council can pass resolutions to amend the budget within 30 days. The HOC has 10 days from the end of the council review period to veto a council resolution. Council may then override an HOC veto with a 2/3 majority vote within 15 days. At the end of this process, the resulting budget is deemed to be adopted by the municipality.

We would refer you to the Municipal Finance Officers Association (MFOA) submission to the Standing Committee on Infrastructure, Heritage and Cultural Policy on Bill 3 as it relates to the challenges the bill and now these regulations would have on the municipal budget process and long-term financial planning. We would draw your attention in particular to the following:

As Bill 3 currently stands, there is concern about how the proposed changes in Bill 3 will impact timing, processes and procedures that have been in place for many municipal budget cycles. Setting the municipal budget is more than just choosing a tax rate; a variety of considerations must be made that require the knowledge and expertise of finance professionals. Treasurers and finance staff consider legislative and regulatory requirements for reserves, debt management, future planning for infrastructure projects related to asset management plans, and the overall strategic plan of the municipality. Further, municipal staff are well aware of provincial mandates and incorporate these considerations into the budget planning process, in consultation with council as a whole.

...While MFOA agrees that provincial priorities such as building more housing is an important goal amongst all levels of government, the municipal budget is meant to address all aspects of municipal services. Municipalities should plan their budgets to follow provincial priorities, but this cannot be done at the risk of lowering service levels for other municipal services. The full suite of municipal services is part of what makes communities whole, and municipalities and their staff are the most appropriate actors to understand what should be prioritized for their annual budgets.

With four-year election cycles, there is a concern that a newly elected head of council will be unaware of the intricacies of municipal by-laws and plans, and without this knowledge, they cannot make the most informed decisions for the budget. Bill 3 proposes that the head of council prepare the budget and have veto power over amendments made by the council. There are a number of other by-laws that arise from the passage of the budget by-law such as setting tax rates, debt management, and reserve and reserve fund management. Concerns have been expressed as to whether the mayoral powers extend to other budget-supporting by-laws. Clarification on this issue is needed.

Clarification on these matters does not appear within these regulations and should be addressed before the regulations are approved.

Should the authorities be extended beyond Toronto and Ottawa, the February 1st timeline may also present a challenge for municipalities which are in two-tier systems. Often local municipal budgets must take into account allocations and financial planning by the upper-tier. If proposed budgets must be made February 1st lower-tier budgets may not reflect budgetary decisions of the upper-tier.

Given the process of local decision-making 30 days may be insufficient to allow councillors to adequately propose evidence-based resolutions to amend the budget. It assumes that the HOC may consult with their colleagues on council who would be aware of what is coming forward. Where members on council rely on city staff for information, research and analysis, they would be required to direct staff through resolution at a Council meeting and staff will require time to investigate the proposed amendments, conduct research and data analysis and report back to council. This makes the 30-day time period insufficient. We would propose 60 days.

This however, presents another potential unintended administrative burden to staff: they must support the HOC in the development of a proposed budget, continuing to ensure that sound fiscal principles and regulatory requirements are followed, and long-term financial planning is considered, while also supporting other councillors who may wish to amend any proposals brought forward by the HOC. This would result in increased costs to the municipality and increased strain on municipal staff impacting their health and well-being.

As with the veto authority on bylaws, the regulation as worded leaves a loophole which could allow the HOC or their appointed Chair/Vice chair of a committee acting in bad faith to orchestrate the delay of a committee or council meeting or cancellation of a scheduled meeting to consider councillor proposed amendments. To ensure accountability and transparency of the process, the regulation should also require that a meeting to consider amendments to the budget take place unless written confirmation from all members of council is received and made public that no amendments are being proposed.

8B. Proposing that in-year budget amendments may be initiated by the HOC. Council can pass resolutions to amend the budget within 21 days from when the budget amendment is provided to council. The HOC has 5 days from the end of the council review period to veto a council resolution. Council may then override an HOC veto with a 2/3 majority vote within 10 days. At the end of this process, the resulting budget amendment is deemed to be adopted by the municipality.

Similar to the concern noted above about mandatory meetings, a similar provision should be applied to the process outlined when the HOC proposes amendments to the budget.

Again, AMCTO would note however, that once a budget is set, the fewer amendments to it the better to ensure adequate financial planning and management. AMCTO and others have said time and again, that Provincial decision-making must respect local decision-making processes and timelines such as those applied to the development of the budget. While, presumably the intent of this measure is to ensure that a budget could be amended in response to new Provincial priorities, it is highly recommended that the Province consider municipal budgetary timelines, and fiscal calendar when contemplating any new policies, programs or initiatives or changes to existing ones, which will have an impact on municipal budgets. This will ensure that prudent and transparent planning to support provincial priorities can take place.

8C. The Act would generally exclude the HOC's ability to participate in the budget process with respect to any budget matters in which they have a pecuniary (financial) interest. Proposing that council may pass a resolution to amend the budget to address these matters and the HOC cannot veto these amendments.

Generally supportive of the proposal that council may pass a resolution to amend the budget to address these matters and the HOC cannot veto these amendments. With regard to the pecuniary interests, we would remind the Province of what AMCTO recommending in its submission to the 2015 review of the Municipal Act and Municipal Conflict of Interest: Provide greater clarity and a clearer definition for indirect conflicts of interest in the Municipal Conflict of Interest Act. With these new authorities it becomes more important for the municipal accountability framework to be straightforward and written in plain language so that it can be easily understood. If municipal HOCs and councillors are going to be held to this standard, it needs to be explained with greater clarity.