

## Picking up the PACE and Running with City Charters

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### Picking up the PACE and Running with City Charters: Update on *Municipal Government Act*

As has been covered in several of our previous blog posts, the *Municipal Government Act* (MGA) has been undergoing review and revision for a few years now (see our most [recent post](#) for a summary of changes to municipal environmental powers). Earlier this month, further changes were announced: the passage of the *City Charter Regulations* and the introduction of *Bill 10*. Both these changes have implications for municipal environmental authority and management.

#### ***City Charter Regulations***

On April 4, 2018, both the [City of Calgary Charter, 2018 Regulation](#) and the [City of Edmonton, 2018 Regulation](#) became law by way of Order-in-Council. These regulations are made pursuant to the MGA and establish a City Charter for each of Calgary and Edmonton (the City Charters are the same for both Cities). The effect of the City Charters is to grant more expansive powers to the Charter Cities, allowing for non-application or modification of certain provisions of the MGA (and some other pieces of legislation such as s. 9(4) of the *Weed Control Regulation*).

The expanded powers of the Charter Cities include authority to make bylaws for:

the well-being of the environment, including bylaws providing for the creation, implementation and management of programs respecting any or all of the following:

- (i) contaminated, vacant, derelict or under-utilized sites;
- (ii) climate change adaptation and greenhouse gas emission reduction;
- (iii) environmental conservation and stewardship;
- (iv) the protection of biodiversity and habitat;
- (v) the conservation and efficient use of energy; and
- (vi) waste reduction, diversion, recycling and management

There are also several provisions in the City Charter aimed at climate change matters. For

instance, both Cities will be required to develop and adopt climate change mitigation and adaptation plans. Mitigation plans are meant to address and mitigate the effects of climate change by addressing matters such as the energy efficiency and greenhouse gas emissions of City-owned buildings, facilities and fleets of vehicles, and development of renewable electricity. Adaptation plans are meant to facilitate adaptation to the effects of climate change. This includes assessing exposure, risk and vulnerability of systems within the City, and outlining actions to be taken (such as climate-resilient infrastructure and flood preparedness). The Cities are required to provide an opportunity for public participation in the development of the climate change plans.

Another provision aimed at climate change matters is a modification of s. 66 of the *Safety Codes Act*. This modification will allow municipalities to supplement existing safety codes to address environmental matters (for example, heat retention and energy consumption) thereby enabling the Cities to put energy efficiency requirements for buildings that go above and beyond those in the provincial requirements

Also aimed at climate change matters, the Cities will have the ability to make loans and guarantees for the “purposes of ensuring or improving energy conservation or energy efficiency, or both, with respect to property” under s. 264 of the MGA. This may allow the Cities some flexibility to implement more creative financing arrangements to encourage the use of higher efficiency technology in private residences.

If the City of Calgary or Edmonton intends to make a bylaw under the extended bylaw powers granted by its City Charter, then it must hold a public hearing and ensure publication of the bylaw as a “Charter Bylaw” within a specified time period. These requirements will apply to bylaws for well-being of the environment, to set requirements above and beyond the *Safety Codes Act*, to establish subclasses for contaminated property, and for enabling improving energy conservation or energy efficiency loans.

### ***Bill 10: An Act to Enable Clean Energy Improvements***

As mentioned, the City Charters provide some authority to implement more creative financing arrangements to encourage the use of higher efficiency technology in private residences via the use of energy conservation or energy efficiency loans. However, this authority would not be sufficient to establish an optimal, province-wide program to encourage higher efficiency technology in a broad range of private properties. As such, in early April the government introduced *Bill 10: An Act to Enable Clean Energy Improvements*.

Bill 10 proposes amendments to the *MGA* to enable Property Assessed Clean Energy (PACE ) programs. Because the installation of home energy technologies and upgrades may be subject to barriers such as high up-front costs, long payback periods and limited access to financing, PACE

programs are designed to address those barriers. PACE programs energy improvements on private property by providing accessible financing that is repaid via property taxes (which are transferred to subsequent owners to overcome the barrier of long payback periods).

PACE programs have been used extensively in the United States to encourage the adoption of clean energy technology in both residential and commercial buildings. These programs have raised almost \$5,000 million USD investment in residential properties alone. For more information, see the PACENation website which lists all [PACE programs](#) in the United States.

Bill 10 creates a new municipal financing tool called a **clean energy improvement tax (CEIT)**. In order to implement a program using CEIT, a municipality must pass a bylaw that:

- (a) indicates that where a municipality has entered into a clean energy agreement with a property owner, that a tax will be charged based on that agreement;
- (b) sets the tax rate to be imposed;
- (c) indicates the process for applying for a clean energy improvement;
- (d) any other information that municipality considers necessary; and
- (e) any requirements imposed by regulations.

A clean energy improvement is defined as a “renovation, adaptation or installation on eligible private property that (a) will increase energy efficiency or the use of renewable energy on that property, and (b) will be paid for in whole or in part by a [CEIT].” Any residential, non-residential or agricultural private property – except designated industrial property – will be eligible for a CEIT program. Before the clean energy improvement is made, the property owner and municipality must enter into an agreement. The owner of the property on which the CEIT is imposed is liable for payment. The liability remains with the property meaning if the property transfers to another owner, so does the outstanding loan amount to be paid via the CEIT. The property owner does have an option to pay off the remaining amount to cover the costs of the clean energy improvement before the tax is imposed.

Because these amendments are being made to the MGA (as opposed to in the City Charters), there is potential for a province-wide PACE program to be established but this would require municipalities to opt in by adopting a bylaw (and its various administrative trappings). This approach has the advantage creating a uniform PACE program with increased leverage (more properties involved in one program) and provincial administrative efficiency; however, lack of

municipal capacity and/or motivation may undermine the approach. Bill 10 takes the important step of enabling PACE programming. Now municipalities need to pick it up and run with it.

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