

**Submission to
the Ontario Ministry of Municipal Affairs & Housing
regarding the
Consultation Document on the
Municipal Act**

by

The Ontario Federation of Agriculture

May 9, 1997

1.0 INTRODUCTION

The Ontario Federation of Agriculture (OFA) is the voice of Ontario's farmers. Supported by approximately 40,000 individual members and 29 affiliated organizations, the OFA represents farm family concerns to governments and the general public. Constituted in its present form since 1970, the organization has a long history of advocating on behalf of Ontario's farm community, and traces its roots back to the Ontario Chamber of Agriculture established in the 1930's. Active at the local level through 49 county and regional federations of agriculture, the OFA is also a member of the Canadian Federation of Agriculture (CFA), the farmers' voice on national issues.

The present Municipal Act is a complex and confusing statute. The Ontario Federation of Agriculture recognizes the need for amendments to the current Municipal Act.

2.0 BROADENING MUNICIPAL AUTHORITY:

The OFA supports the principle that municipalities be prohibited from overriding provincial or federal legislation or regulations. We expect this prohibition to be clearly stated in the new legislation.

3.0 OTHER RELATED ACTIVITIES:

The Consultation Document makes reference to “consultation on the Farm Practices Protection Act”. For Ontario farmers, the Farm Practices Protection Act is vitally important legislation. In our Brief to the Ontario Ministry of Agriculture, Food and Rural Affairs, responding to their 1997 Discussion paper on the Farm Practices Protection Act, we stated,

*The Ontario Federation of Agriculture has long believed in the need for farm practices legislation in Ontario. We welcomed the passage of the Farm Practices Protection Act in 1988. We welcome this chance to comment on the Ministry's **Discussion Paper on the Farm Practices Protection Act**.*

The Ontario Federation of Agriculture believes there are a number of reasons for revisiting the Act at this time and amending its provisions:

- i. evolving technology bringing about rapid changes in farming;*
- ii. changing demographics creating rural communities that do not understand modern farming and what constitutes a "normal farm practice";*
- iii. declining on-farm population and public demands for a "clean and safe" rural environment."*

Municipalities must not pass by-laws that unnecessarily interfere with farmers' ability to carry on “normal farm practices”. There also needs to be recognition that “normal farm practices” create

transitory nuisances, (eg. odour, noise, dust, light, vibration, smoke, flies).

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The Provincial Policy Statement (policy 2.1.5.) under section 3 of the Planning Act states, “In prime agricultural areas, agricultural uses and normal farm practices will be promoted and protected”. **The *new Municipal Act* must contain a clear reference to and linkage with the Farm Practices Protection Act.**

4.0 THE NEW MUNICIPAL ACT:

4.1 PART IV - PRACTICES AND PROCEDURES:

The Consultation Document states that the new Act will require councils to “enact procedural by-laws”. This is a positive step. We encourage the Ministry of Municipal Affairs to draft a model “procedural by-law” for reference by municipal councils.

4.2 PUBLIC CONSULTATION AND NOTIFICATION:

The Consultation Document states that the new Act will enable “municipalities to decide how they will give public notice or consultation on their by-laws”. Public input into the by-law process is vital. The lack of public input in the current by-law process is a key shortcoming of the present Act. All too often, municipal by-laws receive first, second and third reading at the same council meeting. Public input is not sought. There is no opportunity for an assessment of the by-law’s impacts.

The OFA believes that municipalities should be limited in their ability to pass by-laws without public input; particularly input from those who will be affected. The *new Municipal Act* must contain clear requirements that municipal councils must consult on all by-law proposals. This will ensure that by-laws are truly necessary and non-discriminatory. The OFA supports a public input process, built into the by-law process. We would encourage the Ministry of Municipal Affairs to draft a model “public notification and participation by-law” for implementation by municipal councils.

4.3 Part V - MUNICIPAL POWERS:

Municipalities will have powers to regulate, prohibit, licence, permit, approve, register and enforce by-laws, levy property taxes and expropriate property. The Consultation Document is short on details on how these powers will be exercised and what limitations there will be on them.

The Consultation Document outlines the broad areas of authority to be exercised by municipal councils:

- the health, safety, protection and well being of people and protection of property;

- public utilities;
- waste management;
- public highways, including parking and traffic on highways;
- transportation systems, excluding public highways;
- the natural environment;
- culture, recreation and heritage;
- economic development;
- nuisance, including noise, odour, vibration and dust;
- drainage and flood control, except storm sewers;
- structures, including fences and signs;
- parking, except on public highways; and
- animals and human activities in relation to them.

The Consultation Document states that the municipalities would have authority in the above named areas that is “broadly-based and flexible”. A number of these areas have implications for agriculture. The new Act must recognize the positive contribution by Ontario’s diverse and vibrant agricultural sector and the need for individual producers to be able to carry on normal farm practices, free from unnecessary restrictions.

For Ontario farmers, a number of provincial statutes apply to these areas of authority: the Drainage Act, the Lines Fences Act and the Farm Practices Protection Act, to name but three. Ontario farmers are well served by these statutes and are intent on seeing them continue. Municipalities must not be able to override these Acts.

4.4 LIMITATIONS AND SPECIAL PROVISIONS:

The *new Municipal Act* must reference the Farm Practices Protection Act and recognize its paramount role in determining whether agricultural nuisances (odour, noise, dust, light, vibration, smoke, flies) are the natural result of normal farm practices. Furthermore, the Farm Practices

Protection Board must be recognized as the judge of what is or is not a normal farm practice.

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The Consultation Document states that “municipal by-laws would not be able to conflict with provincial or federal statutes or regulations”. We support this. Our concern is with by-laws in areas where no established legislation exists.

The Consultation Document notes that a municipality’s powers to licence would be subject to the current limits (Section 257.1) on licencing “wholesalers and natural resource-based businesses”. Agriculture must be included in any definition of “wholesalers and natural resource-based businesses” and thus exempted from any municipal licencing provisions.

The Consultation Document also states that “municipalities would be given authority to enter onto private property in the course of delivering certain services...erecting snow fences, for example”. These powers need to be clearly defined and limited. As well, municipalities must be liable for damages to the property they enter and responsible for redressing these damages.

4.5 PART VI - MUNICIPAL FINANCE:

Matters of general taxation and reassessment are addressed in Bill 106, the *Fair Municipal Finance Act*. Issuance of long-term debt, investment powers and short-term borrowing are prescribed in the Better Local Government Act (1996), and performance measures and standards have been enacted in the Savings and Restructuring Act (1996). Most of the onerous issues have already been dealt with by other legislation. It appears that most of the new municipal finance issues to be dealt with by the *new Municipal Act* are of a general, housekeeping nature.

The *new Municipal Act* will require municipalities to obtain supplementary audits in addition to annual audit requirements. It is unclear why the additional audit requirements are needed. One thing for sure, this will bring additional administrative costs to municipalities, borne by municipal taxpayers.

The *new Municipal Act* will allow for the migration of the tax collection function to upper tier governments. Presently, upper tier municipal governments are financed mostly through taxes collected by the lower tier. Does granting taxing authority to upper tier governments reduce local autonomy or discretion regarding municipal expenditure priorities?

With the repeal of the Municipal Interests and Discounts Act, municipalities will be able to set penalties for late tax payments, be required to pay interest (at the same rate as charged on late payments) to taxpayers who make an overpayment, and provide discount rates or an interest bonus for early payments. This seems to be a progressive step as it allows municipalities to encourage timely tax payments and provides for administrative corrections in the event that a taxpayer is

wrongly assessed and taxed.

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4.6 PART VII - MISCELLANEOUS:

The Consultation Document speaks of **General Powers of Entry for Inspection Purposes**. We have concerns with extending to municipalities and their staff broad, ill-defined powers to enter private property to determine compliance with municipal by-laws. On whose initiative will these inspections take place? We foresee the potential for the use of municipal inspection staff to harass property owners.

Furthermore, entry powers must be clearly defined and limited. We encourage the Ministry of Municipal Affairs to draft a model “power of entry by-law” for reference by municipal councils. Such a by-law would describe the circumstances whereby municipal staff would be able to enter property, such as types of property, times of day, prior notification of the owner. The matter of access to agricultural buildings is a particular concern. More and more, access to livestock buildings cannot be permitted for herd health reasons.

5.0 PROPOSED DRAFT LEGISLATION for the CORE PARTS of a NEW MUNICIPAL ACT

Turning to the *DRAFT Act to revise the Municipal Act*, defining “sewage” to include “storm water and other drainage from land”, (PART I) is too broad. This definition needs to exclude water collected by field tiles and ditches to drain agricultural land to facilitate optimum crop growth. In addition, this section should include a reference to the Drainage Act and exempt works constructed under it, or its predecessors.

In section 6 (PART V, MUNICIPAL POWERS), the broad areas of municipal authority are described. We have serious concerns with some of the areas of municipal authority and their potential effects on the viability of agricultural operations.

Area 1 includes “The health, safety, protection and well-being of people and the protection of property”. The scope is broad and lacks definition.

Area 3 includes “waste management”. Municipal authority must clearly exclude animal wastes “disposed of in accordance with normal farming practices”.

Area 6 includes “the natural environment”. Again, the scope is too broad. What is meant by the term “natural environment”? Very little of the land in Southern Ontario can truly be described as being undisturbed by human activity.

Area 9 includes “nuisances, noise, odour, vibration and dust”. The Ontario Federation of Agriculture expects that this section will reference the Farm Practices Protection Act and that **all** matters of nuisance stemming from agricultural operations will be referred to the Farm Practices Protection Board for resolution.

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Area 10 includes “drainage and flood control”. We echo our earlier comments on the definition of “sewage”.

Area 11 includes “structures including fences and signs”. Ontario farmers rely on fences to contain their livestock, to define the limits of their property and to control unwanted access. The Lines Fences Act has established a process for resolving disputes over the construction or repair of line fences. The OFA is opposed to any changes to this process. In addition, many farms have on-farm enterprises and rely on signs to direct customers to their location. The lack of definition in this section raises concerns.

Area 13 includes “animals and human activities in relation to them”. Again, the wording is vague and lacks definition. Municipal powers in this area need to clearly exclude the keeping of livestock, including poultry and horses, as well as the keeping of fur-bearing animals, honey bees, fish, alternative livestock or birds or game birds or game mammals.

Section 8 (2) of the DRAFT *Act to revise the Municipal Act* states,

Within the area of authority described in paragraph 9 of subsection 6(1) (nuisances, noise, odour, vibration and dust), a municipality may pass by-laws with respect to matters that, in the council’s opinion, are or could become a nuisance.

While we recognize that municipalities do need to be able to control activities that may pose a nuisance to some residents, a number of every day farm practices create odours, noises or dusts that may pose a nuisance. Even strict adherence to codes of practice or best management practices will not eliminate them. But these nuisances are not life or health threatening. They are what they simply are -- nuisances. Manure brings odours. Farm equipment makes noises. Harvesting and tillage create dust. While some farm practices can be delayed or deferred, others cannot. It is because farm practices create these transitory nuisances that we have the Farm Practices Protection Act. Ontario farmers are not prepared to see production restricted because a normal farm practice may result in nuisances that “*in the council’s opinion, are or could become a nuisance*”. The powers of council to address nuisances must recognize the Farm Practices Protection Act.

In the notes following section 8, reference is made to powers of entry to lands and buildings. More

and more, access to farms and farm buildings cannot be permitted for biosecurity or herd health reasons. Livestock are isolated from other animals, and human contact is strictly limited, to reduce the chance of disease transfer between herds.

Reference is also made to powers to enter land to erect snow fences. While we recognize the need for snow fences, farmers must be sure that they will be consulted prior to entry and that there is a mechanism for providing compensation in the event of crop or property damage.

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Section 22 in PART VIII states that “the Lieutenant Governor in Council may, by regulation, restrict the power of municipalities to pass by-laws”. As municipal councils come to be dominated by non-farm people, we have seen them attempt to enact by-laws that unduly restrict legitimate agricultural activities. Among the examples are machinery storage and property standards, exotic animals, restrictions on livestock densities or types, round bale storage and restrictions on manure storage. In many instances, these by-laws demonstrate a total lack of understanding of modern farming and the adverse impacts of these restrictions.

There is a need for municipalities to fully consider a proposed by-law’s negative impacts on farm practices before it is enacted.

6.0 CONCLUSION:

The *new Municipal Act* must contain a clear reference to and linkage with the Farm Practices Protection Act.

The OFA supports public input into the by-law process. We encourage the Ministry of Municipal Affairs to draft a model “public notification by-law” for municipal use.

Entry powers need to be clearly defined and limited. We encourage the Ministry of Municipal Affairs to draft a model “power of entry by-law” for municipal use.

We look forward to working with Ministry of Municipal Affairs and Housing staff in the further development and refinement of a *new Municipal Act* for Ontario.