



2 October 2013

To: All Members of Parliament

**Reference: Response from City Hall Council to the Draft Municipalities Amendment Act 2013**

The original town of Hamilton was incorporated by an Act of the Bermuda Legislature in 1793. For more than 200 years the Corporation of Hamilton has been directly responsible for providing excellent service to all people in Bermuda; whether Bermudian or visitors, city business or city resident - all have benefited from the essential services provided under this Municipality.

Although it can surely be said that the history of the city is not a perfect one, if we look at the unprecedented success of Bermuda as a small island nation, it can hardly be doubted that we in Bermuda hold an enormous stature on the world stage, enjoying financial and economic rewards that can hardly be understood by many outsiders.

The Corporation of Hamilton has played a leading and vital role in Bermuda's continued economic success. To date the city is managed well on a balanced budget, which has been extremely challenging given the periodic economic and political changes particularly in the last few decades. The question needs to be asked, what possible motivation exists to move in this direction and in this manner?

Globally the process of the devolving of National Government authority is occurring at an ever increasing rate, decentralising Government authority within various local government frameworks to allow for more independent actions to deal with local priorities. Given this backdrop it is difficult to envisage the motivation to create legislation that would effectively shut down the municipality as an independent local government entity. In fact the effect is to reduce the municipality to less authority to operate than WEDCO which is an appointed board controlled entity or the BHB which is a quango.

On the one hand, the Municipalities Amendment Bill 2013 restores the authority of the Municipalities to charge wharfage and revives a number of Ordinances revoked by the Municipalities Reform Act 2010 relating to such charges. In addition, the Bill

has adopted some of the recommended changes put forward by the Municipalities in 2009. However, on the other hand, the Bill then goes on to remove the authority of the Municipality in relation to the disposition of land and Corporation powers.

## **Disposition of Land**

### Part 2

The Corporations of both Municipalities hold their land in freehold. This section completely removes all authority the municipality has over its own property. This may turn out to be a contentious constitutional argument at some point thus creating more angst and legal wrangling. It appears that the Amendment is toned as if the land in question is somehow public land when in truth the land belongs to a legal entity called the Corporation of Hamilton. Instead of oversight of areas or terms, which does occur in other jurisdictions particularly pertaining to a national interest, here is a wholesale removal of rights and a series of processes to effectively remove any authority in the disposition of the land and whole subject to whims of the government of the day.

On the surface this might seem somewhat draconian but at least the government of the day is not authorised to initiate a sale or lease of the city property. This however is not true because later the Amendment Act states that if the Minister deems it in the public interest the Government can assume stewardship of the Corporations infrastructure, function and service. This would then create the situation whereby the Corporation property is then under the direct stewardship of the Minister with Cabinet approval. This should raise concerns on multiple levels particularly since the corporation is a legal and independent entity and if its property can be virtually acquired in this manner what is to stop other similar entities befalling the same fate.

Another area of concern is the retroactive approach to contracts and leases. While initially it appears that compensation might be possible in the instances of a retroactive invalidation there is nothing in the Amendment Act that compensates for an unfinished plan/ dream / idea. The Acquisition of Land Act does not address compensation outside of the purchases of land.

## **Ordinances**

### Part 3 Clause 17

Ordinances are required by the Corporation to manage the affairs of the municipality. Without them the Corporation cannot adjust to changing conditions with the city in a timely manner. For over two hundred years the Municipal Ordinances have been used effectively and contributed to the success of the city. The Amendment Act introduces a review by the Minister and Attorney-General which does not cause a problem unless the review means it is on hold until approved. Then the Ordinance will be subject to either an affirmative resolution or negative resolution of the legislature depending on whether or not a fee or charge, tax or toll is being levied. The former affirmative resolution was revived from prior to the Reform

Act of 2010 but the negative resolution is new and the effect of the legislative route is that the Corporation will no longer be able to attend to the needs of the city in a timely manner. This removes all possibility of the city being able to address the city priorities and thus the control of the management of the city at this level moves to the Minister and the legislature.

Further, voiding Ordinances that have been long established without a valid review and plan to transition will cause chaos and challenges particularly since the Government does not recognise them on the online version of Bermuda Laws so there is no knowledge of the scope and impact. This appears to be unwise and seems attributable to the impasse attempted by some members of the civil service in blocking a number of Ordinances from both Municipalities by trying to introduce an “implied” process rather than the process followed for decades by both of the Municipalities.

## **Good Governance**

### Clause 5

The Municipalities already have a code of conduct, financial policies / instructions and an asset management strategy/ plan. This section provides for a review of the documents and authorises the Minister to make changes as he deems fit. The issues of a “Standards Committee” should be addressed to provide accountability of the Members of the Council during their time in office. Oversight by the Government is generally a good thing to underpin the public confidence in the operations of the two Municipalities.

However, there is a very significant difference between oversight to underpin confidence and direct ministerial control. The concern is raised with (6) of this clause whereby the Minister can assume stewardship of a Corporation’s infrastructure, function or service if he believes it is in the public interest. The clause states as a result of force majeure, maladministration, disrepair or lack of funding this can be the result. However, this appears to be at the discretion or opinion of the Minister who, supported by Cabinet, can remove the stewardship of the Corporation. There are no standards at which this will be tested nor any restrictions on how much or how long the assumed control would remain. This would appear to be based on the theory that either the Corporation is not a legal entity that owns property or if deemed in the national interest the Minister can assume the ownership of the Corporations property which is concerning from a constitutional and corporate perspective. If the Government can take the Corporation of Hamilton’s property what is to say they won’t repeat for another corporate entity if deemed to be appropriate. This is particularly troublesome when combined with the inability of the Municipality to address revenue and provide management control because all authority has been put in the hands of the Minister.

Further (7) seems to be completely redundant to (8) or vice versa. Forcing the Municipalities to follow Governments Financial Instructions is an unnecessary

burden and expense. This is ironic as numerous reports from Government demonstrate that no department appears to follow these instructions to the letter hence nothing is done. Applying the instructions to the municipalities is an unnecessary operational burden as the Corporation staff and functions are not so complex that a much simpler form of financial policies or instructions should apply. The Corporation of Hamilton has such financial policies so if the Minister would drop (7) and follow (8) a review of the current policies that if needed could be supplemented with additions or changes as he deems appropriate, would be a more effective way forward.

This Amendment follows the archaic view that local government should operate as an agent of the principal. This view is changing globally and the devolving of government authority to local government and authorisation to be fully empowered (within a legal framework) to meet the needs at the local level in a timely and effective manner is the more modern view. The empowered Municipality can apply solutions which best fit the priority and requirements of the city in a more timely and effective manner. To do this the Municipality must have full control over all resources required for the proper discharge of their mandate. The system of participatory local governance should be properly addressed in an appropriate legal framework.

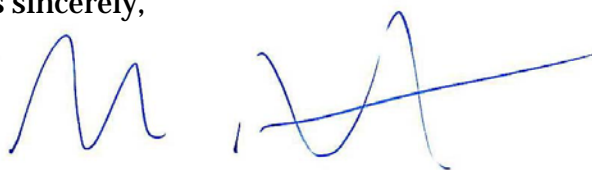
This amendment removes the authority of the Municipality to meet its mandate by direct control of the Minister and by overburdening the financial and operational processes to effectively strangle the Municipality to be completely ineffective.

This would seem to be at odds to the changes to expand the number of voters in municipal elections. The inclusion of the ratepayer vote, which in itself can be contentious and backward-looking for some, is met with a complete removal of authority to manage the affairs of the city in a timely and effective manner. Who would put themselves forward to serve where every decision is second guessed and controlled by another? This places the Municipality in the unenviable position of being burdened and controlled as if they were a government department but with no benefits of same.

In addition to these overall observations from a more functional perspective, I have attached some further comments from a more legal perspective for you to consider.

It is this Council's hope that our comments and concerns are taken into consideration and we welcome further discussion to improve some of the more workable aspects of the proposed bill and encourage further meaningful consultation between Government and the Corporation.

Yours sincerely,

A handwritten signature in blue ink, consisting of a stylized 'M' followed by a long horizontal line that curves upwards at the end.

**Rt. Wor. Graeme P. Outerbridge, JP**  
**Mayor of Hamilton**