



## Council Report

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**Report Number:** PLAN2022-057  
**Meeting Date:** September 27, 2022  
**Title:** Information Report on Bill 109: Changes to the Planning Act  
**Description:** Overview of Changes as a Result of Bill 109, the More Homes for Everyone Act, 2022  
**Type of Report:** Regular Meeting  
**Author and Title:** Richard Holy, Director of Development Services

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### Recommendations:

**That** Report PLAN2022-057, **Information Report on Bill 109: Changes to the Planning Act**, be received.

**Department Head:** \_\_\_\_\_

**Legal/Other:** \_\_\_\_\_

**Chief Administrative Officer:** \_\_\_\_\_

## **Background:**

A number of changes have been introduced in 2022, including amendments to 5 statutes as a result of Bill 109, More Homes for Everyone Act, 2022.

The following is an overview of changes that are anticipated to have the most effect on the operations of the Development Services Department.

## **Rationale:**

### **Bill 109, More Homes for Everyone Act, 2022**

Bill 109 was introduced on March 30, 2022 and received Royal Assent on April 14, 2022. The Bill made amendments to 5 statutes:

- City of Toronto Act, 2006
- Development Charges Act, 1997
- New Home Construction Licensing Act, 2017
- Ontario New Home Warranties Plan Act
- Planning Act

The following summary will only consider the changes made to the Planning Act as none of the other statute changes impact the Development Services Department. The Province provides that the purpose of the amendments is to increase the supply of housing by lowering municipal costs imposed on construction and expediting the land use planning appeals process.

The major changes to the Planning Act include:

- Requiring municipalities to provide refunds for zoning by-law amendment and site plan application fees where no decision is made during the statutory timeframe;
- The introduction of a new ministerial zoning tool, referred to by the Minister as the Community Infrastructure and Housing Accelerator ("**CIHA**");
- An established review process for community benefit charge ("**CBC**") by-laws;
- Amendments to parkland requirements on lands designated as Transit-Oriented Communities ("**TOC**");
- Empowering the Minister with new powers regarding certain official plan amendments ("**OPAs**") and new official plans; and
- Empowering the Minister to make regulations for the use of surety bonds as security for conditions imposed by a municipality on planning approvals.

## Application Fee Refunds

Changes to the approval process for zoning by-law amendment and site plan applications will require municipalities to refund application fees if a decision is not made within the legislative timelines. Refunds will be calculated on a graduated basis (i.e. 50%, 75% or 100%) depending on the number of days following the application. This change will apply to applications made on or after January 1, 2023.

Amount of Refund	Type of Application		
	OPA and Zoning Combined	Zoning	Site Plan
No Refund	Decision made within 120 days	Decision made within 90 days	Plans are approved within 60 days
50%	Decision made between 121 and 179 days	Decision made between 91 and 149 days	Plans are approved between 61 and 89 days
75%	Decision made between 180 and 239 days	Decision made between 150 and 209 days	Plans are approved between 90 and 119 days
100%	Decision made 240 days or later	Decision made 210 days or later	Plans are approved 120 days or later

The stated intent of these changes is to expedite the approval process by facilitating faster decisions on applications; however, notwithstanding workloads and staffing issues, it is virtually impossible to meet these timeframes for a number of reasons. The City cannot control the agency response times, the public consultation process, nor can it control the developers response times to agency comments. While most applications require at least one resubmission if not more, the legislation does not apply to fees collected by other agencies. The Province has indicated that best efforts will be taken to adhere to a 45-day review period, which in the case of a site plan will likely require a refund. Staff will be reviewing the changes and developing the necessary policies and processes to minimize the impact on operations.

## **Site Plan Control**

Changes to the Planning Act will require municipal Councils to delegate site plan control decisions to staff (i.e. an officer, employee or agent of the municipality). This will apply to all applications received on or after July 1, 2022.

Bill 109 also extended the site plan application review timeline from 30 days to 60 days. This means that an applicant can only appeal a municipality's failure to approve their site plan application to the Ontario Land Tribunal (the "**Tribunal**") beginning 60 days after the application was submitted, rather than 30 days.

Lastly, the changes establish complete application requirements for site plan applications, similar to current complete application requirements for other types of applications under the Planning Act, with recourse if the application has not been deemed complete within 30 days of acceptance by the municipality.

Council has already delegated site plan approval to the Director of Development Services so no change was required from that perspective. However, the delegation by-law will need a further revision to remove the provision that grants Council authority to amend the Director's decision or grant a site plan exemption for a building expansion exceeding 25% or 1,000 sq.m. Staff will be reviewing the site plan approval process to implement all aspects of the new provisions, including Preconsultation process for site plans.

## **Plans of Subdivision**

Bill 109 permits the establishment of a regulation-making authority to determine what cannot be required as a condition of draft plan approval. These requirements will be prescribed by a regulation made under the *Planning Act*, which has not been released yet.

The changes also permit an approval authority to allow municipalities to reinstate draft plans of subdivision that have lapsed within the past five years without a new application. This exemption does not apply where the approval has previously been deemed not to lapse using this provision of the Planning Act, and if there is an agreement entered into for the sale of the land by a description in accordance with the draft approved plan of subdivision. If the draft plan of subdivision is deemed not to have lapsed, the approval authority shall specify a time when the approval lapses. This provision can only be reinstated once and cannot be extended. The City has already used this provision successfully in one instance.

## **Community Infrastructure and Housing Accelerator**

A new section to the Planning Act was added, which creates an additional type of Minister's order outside of the Ministerial Zoning Order ("**MZO**") under s. 47 of the Planning Act. The Minister has indicated that the s. 47 MZOs will instead be reserved for provincially significant infrastructure projects.

The CIHA tool permits the Minister to make an expedited zoning order at the request of the municipality, by Council resolution. The Council's resolution must:

- Identify the lands to which the order will apply; and
- Identify the manner the municipality's powers will be exercised with respect to the lands.

A draft by-law must be included in the resolution to satisfy these requirements. Before passing such a resolution, the municipality must give notice to the public and consult with persons, public bodies and communities as the municipality considers appropriate. Within 15 days after Council passes the resolution, the municipality shall forward the resolution to the Minister, where it may make an order under s. 34 of the Planning Act or by way of a development permit by-law.

An order may not be made in respect of any land in the Greenbelt area. However, the order does not have to be consistent with the Provincial Policy Statement, 2020, nor does it have to conform, or not conflict, as the case may be, with provincial plans or official plans.

A CIHA order, once made by the Minister, must be provided by the municipal clerk to the landowner. The Minister may also make regulations prescribing additional persons or public bodies who must be notified of the CIHA order. Additionally, the Minister has the power to enact a regulation outlining the manner in which a municipality must make the order available to the public. The order prevails in the event of a conflict with other by-laws passed under s. 34 of the Planning Act.

Finally, before an order is issued, the Minister must establish guidelines respecting orders and publish the guidelines on a Government Website. Draft Guidelines were posted on March 30, 2022 and indicate:

- Where CIHAs cannot be used (e. the Greenbelt);
- That CIHAs can be used to regulate the use of land and the location, height, size and spacing of buildings and structures to permit certain types of development; and
- That the Minister may make CIHAs to expedite certain developments, including planning approvals that support the quality of life for people and communities,

any type of housing (particularly community housing, affordable housing and market-based housing), buildings that would facilitate employment and economic development and mixed-use developments.

A CIHA order (under section 34.1 of the Planning Act) is different from an enhanced MZO. An enhanced MZO tool was introduced through Bill 197 in 2020. Subsection 47(4.3) of the Planning Act gives the Minister an enhanced authority to exercise zoning order powers, except in the Greenbelt Area, to remove municipal use of site plan control, require agreements between municipalities and proponents concerning some or all specified site plan matters, and require inclusionary zoning.

Staff will be working on a Standard Operating Procedure to outline the process and required background information for obtaining a Council Support Resolution for either an MZO, an expedited MZO or a CIHA.

### **Community Benefit Charge By-law Reviews**

New subsections are proposed to the Planning Act, as well as the provincial regulation O. Reg. 509/20 regarding Community Benefit Charge By-laws and Parkland dedication, that increase the existing municipal reporting requirements. Municipalities that pass a CBC By-law will be required to undertake and complete a review of the by-law at least once every five years. The review will include public consultation. The City has not yet contemplated a Community Benefits Charge By-law.

### **Parkland Requirements for Transit-Oriented Communities**

The amendments implement a maximum and tiered alternative parkland dedication rate for municipal parkland in areas designated by the Minister of Transportation as TOC land under the Transit-Oriented Communities Act, 2020 (i.e. development projects that are connected with the construction of a station that is part of a defined priority transit project). The rate is based on a percentage of the development land or its value (10% on sites 5 hectares or less, and 15% on sites more than 5 hectares).

The changes also provide the Minister of Infrastructure with authority to identify encumbered land at TOC development sites that could be conveyed to a municipality as parkland. These changes do not apply to the City of Kawartha Lakes as we are not part of this legislation.

### **Ministerial Powers Regarding Official Plan Approvals**

These changes give the Minister new discretionary authority when making decisions on certain OPAs, or new official plans. The Minister is permitted to refer these matters to the Tribunal for a recommendation on whether the Minister should approve or modify

the OPA or new official plan, or for a final decision. In either instance, the Tribunal may hold a hearing before making its recommendation or rendering its decision. If an Official Plan was submitted to the Minister for approval prior to April 14, 2022, and no decision respecting the Plan has been made, the Minister may still refer all or parts of the plan to the Tribunal for recommendation or a decision.

The changes also allow the Minister to suspend the time period in which to decide on all official plan matters subject to Minister's approval (with transition for matters that are currently before the Minister).

### **Regulation-Making Authority for the Use of Surety Bonds**

A final section was added to the Planning Act that, once in force, will permit the Minister to make regulations prescribing and defining surety bonds and other prescribed instruments. Such instruments will authorize landowners and applicants to stipulate the type of surety bond (or other prescribed instrument) to secure obligations imposed by the municipality in connection with land use planning approvals.

A regulation has not been issued regarding surety bonds and section 70.3.1 of the Planning Act (Regulations re surety bonds and other instruments) is not in force. Once proclaimed, the Minister could use this authority to make a regulation to authorize landowners and applicants to choose the security that municipalities must accept for development agreements under prescribed circumstances. Prior to proceeding with making the regulation, the Ministry would consult with municipalities, the development industry, and other relevant stakeholders.

### **Alignment to Strategic Priorities:**

The Council Adopted Strategic Plan identifies these Strategic Priorities:

1. Healthy Environment
2. An Exceptional Quality of Life
3. A Vibrant and Growing Economy
4. Good Government

These provincial initiatives align with a vibrant and growing economy and an exceptional quality of life by facilitating development of housing.

## **Financial/Operation Impacts:**

There are no anticipated financial implications to the City with respect to the other legislative and policy changes.

## **Development Services – Planning Division Comments:**

While the goal of the recommendations provided by the Ontario Housing Affordability Task Force was in part to simplify planning legislation and policy documents, this legislation does more the opposite by adding to the complexity of the Planning Act and by not addressing any of the issues creating the long development times in Ontario. In simple terms, this Bill says “municipalities do it faster or we will penalize you” but without providing any meaningful tools, resources, or processes to improve.

For example, the proposed “Community Infrastructure and Housing Accelerator” appears to be a method of allowing municipalities to circumvent development policies contained in the Provincial Policy Statement, Growth Plan and the Official Plan. If the Province indeed views these policies as limiting and slowing the development process, a more reasonable approach and long-term solution would be to eliminate or change the policies rather than creating a complicated “accelerator” process, which places the onus on municipalities for these decisions.

The review of site plans, zoning amendments and official plans has become increasingly more complex over the past few decades. Each of these processes include circulation to a variety of agencies and utility providers including City departments, conservation authorities, telephone, gas, hydro, school boards, provincial ministries, and first nations consultation. The information package circulated by the Province makes note that in the Greater Golden Horseshoe it takes on average 12-30 months time for site plan approval, 7-25 months for subdivision approval, and 9-25 months for a zoning amendment.

The proposed Bill 109 does not reduce or change the complexity or details that a municipality is to go through, just reduces the time for it to make a decision and penalizes the municipality if it cannot achieve that standard. The Province expects municipalities to approve increasingly complex applications but within a shorter approval timeframe or else the taxpayers will be responsible for covering the cost of the growth. There is no onus on outside agencies or the Province to meet these timeframes nor is there an onus on the development community to respond back to agency comments within a prescribed timeframe. Refunding of fees penalizes municipalities for a process that they don’t control.



Throughout Ontario there is already a shortage of staff in nearly every aspect of development review and approvals. Whether it is at a provincial ministry, a consulting firm, or a municipality. There are currently more municipal planning job postings now than at any time in memory. If the Province implements these requirements for reduced approval timelines, all municipalities across Ontario will need to increase planning staff capacity. Municipalities will be competing even harder for an already limited supply of potential employees. It is already a challenge for rural Ontario to attract staff and this legislation would exasperate that task.

That being said, the City shares the Province's objective of accelerating our housing supply across all types and affordability ranges. City staff will be preparing a policy for reviewing MZO and Accelerator requests to ensure that any decisions made by Council are accountable and based on public and agency consultation as well as sufficient background information. Staff will also review the rezoning and site plan approvals processes and develop new policies and procedures to implement the necessary approval processes in compliance with this legislation.

### **Consultations:**

Ministry of Municipal Affairs and Housing

### **Attachments:**

None

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**Department File:** D01