



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Mayor and Members City Council
COMMITTEE DATE:	April 8, 2022
SUBJECT/REPORT NO:	City of Hamilton's Response to the Provincial <i>Bill 109, More Homes for Everyone Act, 2022</i> (PED22112) (City Wide)
WARD(S) AFFECTED:	City Wide
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SUBMITTED BY:	Steve Robichaud Director, Planning and Chief Planner Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

- (a) That Council receive Report PED22112 as the basis for written comments on *Bill 109*, including the attached table containing staff responses on each amendment, attached as Appendix "A" to Report PED22112;
- (b) That the Mayor submit a letter to the Minister of Municipal Affairs and Housing and ERO outlining the City of Hamilton's comments regarding *Bill 109, More Homes for Everyone Act, 2022*;
- (c) That upon Royal Assent of *Bill 109, More Homes for Everyone Act, 2022* – Schedule 5 Amendments to the *Planning Act*, staff be directed and authorized to prepare the necessary amendments to the Urban Hamilton Official Plan and Rural Hamilton Official Plan, as well as any required policies and procedures to give effect to the proposed changes, and undertake an analyses on staffing impacts across the organization as well as any financial implications, and report back to the June 14, 2022 Planning Committee meeting.

EXECUTIVE SUMMARY

OUR Vision: To be the best place to raise a child and age successfully.
OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.
OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

On March 30, 2022 the Province announced the More Homes for Everyone Plan, and introduced Bill 109, *More Homes for Everyone Act, 2022*. Based on stakeholder consultations and recommendations from the Housing Affordability Task Force (HATF), the Government of Ontario has brought forward its first round of legislative and policy changes. Although *Bill 109*, brings forward many legislative amendments that will directly impact the municipal planning approval process, it does not provide the full scope of legislative changes that were recommended in the HATF Report, issued February 8, 2022.

As with the HATF Report, the changes contained in *Bill 109* are based largely on the premise that the cause of the housing affordability crisis is an increase in population and a lack of housing unit supply and does not respond to the fact that housing costs in Ontario have increased at a significantly higher rate compared to incomes. The amendments are intended to reduce red tape, accelerate development timelines, and streamline approvals.

Staff support the general intention of streamlining processes to assist in increasing the supply of housing, but *Bill 109* does not recognize that the planning approvals process is a partnership involving the municipality, the Applicant, the community and external agencies and Provincial Ministries. The planning process is not linear but reiterative and Applicants play a significant role in both the timing of, and the quality of submissions and resubmissions. Staff have concerns regarding the implications of the legislative amendments and consequences that some of the amendments will cause. The outcome of some of the proposed changes may be counterproductive to the intent of the plan and *Bill 109*.

If passed as currently written, Bill 109 will significantly alter local decision-making on development applications and approval processes, and the way in which market-based housing and affordable housing is delivered throughout the Province. These proposed changes will not speed up the process to advance housing supply but will instead lead to significant delays in the approval of comprehensive growth management and places local level decisions in the hands of the Ontario Land Tribunal (OLT).

Staff request endorsement of Report PED2212 as the written comments responding to the Ministry on *Bill 109*, are due Monday, April 11, 2022. In addition, upon proclamation of the proposed changes in *Bill 109*, staff request authorization to schedule a public meeting of the Planning Committee in June, 2022 (ahead of the proposed legislative changes to the *Planning Act* tentatively scheduled to take effect July 1, 2022) to consider an Urban Hamilton Official Plan (UHOP) and Rural Hamilton Official Plan (RHOP) amendment, any recommended policies and procedures to give effect to the proposed changes and staffing and financial implications.

Alternatives for Consideration – N/A

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

- Financial:** At this time there are no immediate financial implications associated with the recommendations contained in this Report. However, if changes are implemented through *Bill 109* such as changes to review timelines, refunding Applications, and new Ontario Land Tribunal procedures, they will have significant financial impacts and will have to be assessed in more detail.
- Staffing:** At this time there are no immediate staffing implications associated with the recommendations contained in this Report. However, if changes are implemented through *Bill 109* such as changes to review timelines, refunding Applications, and new Ontario Land Tribunal procedures, these changes will have significant staffing impacts and will have to be assessed in more detail.
- Legal:** At this time there are no immediate legal implications associated with the recommendations contained in this Report. However, if changes are implemented through *Bill 109* such as changes to review timelines, refunding Applications, and new Ontario Land Tribunal procedures, they will have significant legal impacts and will have to be assessed in more detail. Additional financial and staffing resources may be required to respond to these potential legal implications.

HISTORICAL BACKGROUND

On December 6, 2021, the Province of Ontario created a Housing Affordability Task Force (HATF) consisting of nine members with the mandate of determining ways in which to address housing affordability across the Province.

On January 19, 2022, the Minister of Municipal Affairs and Housing hosted a Provincial-Municipal Housing Summit for Ontario's Big City Mayors and Regional Chairs. The purpose of the Summit was to identify further opportunities for collaboration between all levels of government to address the housing affordability crisis and to develop performance indicators that governments can use to accelerate and incent new housing supply.

On February 8, 2022, the Province received and released a report from the HATF, which included 58 recommendations intended to increase the supply of market housing. On March 30, 2022 Council approved Report PED22071 containing staff-level responses to the HATF recommendations, identifying where clarity was needed, implications, and gaps of information.

On March 30, 2022, the Province of Ontario took the first step in implementing recommendations of the HATF by releasing its More Homes for Everyone Plan, and the introduction of *Bill 109, More Homes for Everyone Act, 2022*. The Bill received a second reading on April 5, 2022 and has been referred to the Standing Committee in the Ontario Legislative Assembly for consideration on April 11, 2022. If passed, this Bill would make changes to the *Planning Act*, the *City of Toronto Act, 2006*; the *Development Charges Act, 1997*; the *New Home Construction Licensing Act, 2017*; and, the *Ontario New Home Warranties Plan Act* in an effort to, among other goals, incentivize the timely processing of certain applications to bring housing to market and increase transparency. The *Planning Act* stands to see the most considerable change.

The Province has posted *Bill 109* and associated documents on Ontario's Regulatory Registry and is accepting public input on all schedule changes until April 29, 2022.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

This Section focuses largely on an analysis of the recommended *Planning Act* changes introduced in the proposed *Bill 109* – Schedule 5.

1. Official Plan Amendments and Approvals

Bill 109 proposes to amend the *Planning Act* providing the Minister with new discretionary authority when making decisions to suspend the 120-day time period for filing a non-decision appeal of an official plan or official plan amendment (OPA) where the Minister is the approval authority which is generally an OPA to implement all or part of a Municipal Comprehensive Review/Growth Plan Conformity Exercise. Presently, a non-decision appeal can be filed 120 days after the official plan or OPA is received by the Minister. This may enable the Minister additional time to consult with a municipality to clarify or resolve matters that may impact the Minister's decision. It could also result in increased timing for a decision and implementation that could cause more confusion and delay.

In addition, proposed changes to the *Planning Act* would enable the Minister to refer all or part(s) of an official plan matter (Municipal Comprehensive Reviews, Official Plan Amendments, or new Official Plans), to the OLT for either a recommendation on whether the Minister should approve or modify the OPA or for a final decision. The operational details on these new provisions has not been provided. This process could cause significant delays and increased costs for planning staff, legal staff, and consultants to participate in hearings.

These amendments will impact the timing of the Provincial decisions on the proposed Municipal Compressive Review (MCR) OPA which implements Council's No Urban

Boundary Expansion decision. These mechanisms would delay a decision on the City's future growth. By referring the City's MCR OPA to the OLT, a hearing on an urban boundary expansion would require 15 weeks of hearing time but based on scheduling and procedural considerations could take two years to accommodate. Furthermore, the cost of retaining lawyers, planners, consultants, and engineers would be significant (\$1 to \$2 M dollar range). These delays would, in turn, impact the timelines of other City initiatives already underway that implement Council's decision, such as intensification strategies, master plans, growth-related funding tool updates etc.

Staff do not support this change, as it would further delay approvals, cause more confusion, and significantly increase the financial costs of municipalities due to expenses associated with the tribunal litigation process.

2. Refunding Application Fees

Additional changes are proposed to the *Planning Act* legislation that would apply punitive consequences in the form of fee refunds from municipalities to gradually refund site plan, zoning by-law and official plan amendment Application fees to an Applicant if a decision is not made within the legislated timelines of receiving the complete application. The following chart describes the tiered refunding timeline:

	No Refund	50% Refund	75% refund	100% Refund
Zoning By-law Application	Decision made within 90 days	Decision made within 91 and 149 days	Decision made within 150 and 209 days	Decision made 210 days or later
Combined Official Plan Amendment and Zoning By-law Application	Decision made within 120 days	Decision made within 121 and 179 days	Decision made within 180 and 239 days	Decision made 240 days or later
Site Plan Application	Decision made within 60 days	Decision made within 61 and 89 days	Decision made within 90 and 119 days	Decision made 120 days or later

The implementation of these measure will have major financial impacts the City. Based on the 2022 activity forecasts and historic processing timeframes, this would result in an approximate \$5 M dollar levy impact as the fee revenues would be required to be refunded and staffing and related costs would have to be absorbed by the tax levy and result in the need to increase staffing involved in the development approvals process

across the organization. This will result in more upfront work on the part of applicants including coordination with external agencies for permits and approvals before the intake of an Application by the City. If implemented the City will be required to update our UHOP and RHOP to include Design Review Panel and Community Consultation requirements etc. in advance of submitting an Application. Clarity is also needed to understand if the City's current Conditional Site Plan Approval would constitute an approval decision.

In order to process a Zoning By-law Amendment or an OPA jointly with a Zoning By-law amendment, in accordance with the proposed changes, the number of staff involved in development approvals would need to approximately double in number. If the legislated timelines are not met, this would lead to a loss in revenue that would need to be absorbed by municipal levies. If implemented, this measure may in turn slow down the development process and opportunities to establish more meaningful dialogue between developers and the community and work collaboratively with Applicants. It will require Applicants to do more work upfront without much guidance from City Planners and will require City staff to be more stringent when deeming an Application complete. These changes reduce the ability of staff to negotiate to find consensus and may cause premature decisions on applications, including more refusals resulting in more litigation time and expenses at the OLT. Another consequence to this change is the impact it will have on retaining staff and attracting talent to public sector development planning jobs. Legal Services estimates that up to at three additional lawyers and three additional law clerks would be required to deal with the expected increase in OLT appeals starting in 2023.

Because Applicants require time to review and respond to the comments received as a result of the initial Application, the Province should consider amending *Bill 109* to adopting the changes made to the *Ontario Heritage Act* under *Bill 108* where both the municipality and the land owner can agree to a pause to the "time clock" to allow for continued discussion and negotiations to occur.

Staff do not support this. Furthermore, the change may cause more confusion for applicants and significantly increase the financial costs of municipalities due to staffing, covering costs of refunds or the expenses associated with the tribunal litigation process.

3. Community Infrastructure and Housing Accelerator (CIHA) Tool

The proposed Community Infrastructure and Housing Accelerator Tool (CIHA) would enable municipalities to request a CIHA order designed to accelerate planning processes for municipalities. The CIHA tool allows municipalities to submit a request to the Minister of Municipal Affairs and Housing to expedite zoning approvals for local priorities such as market-rate housing, non-profit housing, buildings that facilitate economic development, mixed-use developments, and community infrastructure such

as long-term care facilities. This tool resembles the current Minister's Zoning Order (MZO), but with added public consultation requirements to ensure that residents have an opportunity to provide feedback and exempts Council from having to ensure that the requested CIHA from local Official Plan Conformity. It should be noted that the CIHA cannot be used in the Greenbelt Area. In addition, the Minister's existing zoning order powers remain unchanged, and so the Minister can continue to make Minister zoning orders without a request from the municipality.

Generally, staff are supportive of this tool that can assist with expediting approvals in unique situations for priority developments. However, the CIHA Proposed Guidelines are vague and there is concern regarding potential misuse of this tool to facilitate ad hoc employment conversions, the provision of servicing outside urban boundaries, and development in areas that may conflict with comprehensive growth management process. If this tool is to be implemented, it should only apply to areas that align with the provision and timing of municipal servicing infrastructure.

4. Amendments to Site Plan Control

Municipalities are required to delegate authority to approve site plan control applications to a designated authorized person (officer, employee, or agent of the municipality). At present, municipal council may, but is not obligated to, delegate its authority to approve site plan Applications. The City of Hamilton is a leader in employing delegated site plan authority and has had a positive experience expediting site plan control development Applications as a result of this streamlined process.

Related to the refund of Application fee changes noted above, a new complete Application process for site plan Applications is proposed. This process follows the complete Application process that applies to official plan amendment and zoning bylaw amendment Applications. Staff support this change as it will add clarity to the application process and for deeming an application complete.

Amendments to Section 41 of the *Planning Act* include increasing the timeline to appeal a site plan application for non-decision is increased from 30 days to 60 days. This amendment is supported by the City staff.

5. Amendments to Subdivision Control

New legislation would also allow the Minister to prescribe matters that are not permitted to be imposed as conditions to subdivision approval. It is not clear what these potential matters may be. Furthermore, it is not clear what the intent is behind this amendment or the need for provincial intervention into local municipal affairs for subdivision approvals. Until further information is released it is difficult to assess the impacts of this amendment. The City does not support the amendment allowing the Province to set

standards for subdivision conditions, without knowing what the extent of their prescriptions may include. Municipalities should retain authority to set conditions that are reasonable and in keeping with the development proposed in the subdivision.

An additional amendment is proposed that is an administrative change to allow lapsed plans of subdivisions to be reinstated, one time only, where there are purchase and sale agreements, and the application lapsed within the last the past five years. Staff are in support of this change.

6. Growth-Related Funding Tools Changes

The Province is proposing changes to growth-related funding charges such as Development Charges, Parkland Dedication and Community Benefits Charge (CBC), with the goal of creating more transparency and certainty relating to fees or levies charged by municipalities to developers. Amendments include reporting requirements for municipalities to post annual financial reports for growth-related charges on their websites. As the effect of these changes is to provide additional transparency, staff support these changes.

Should Council adopt a community benefit charge by-law that is currently under review by staff, then this CBC by-law will require a five-year review (every five years) to determine whether there is any need for revision. If the municipality does not pass a resolution declaring whether a revision to the by-law is needed, the community benefit charge by-law will expire. This amendment will have no impact on the work being completed currently on the City's Community Benefit Charge By-law and Strategy project. Staff supports opportunities for review, amendments and transparency.

Amendments also include implementing a tiered alternative parkland dedication rate, that would only apply to Transit-Oriented Community (TOC) developments. For smaller sites that are five hectares or less, parkland dedication would be up to 10% of the land or its value. For sites larger than five hectares, parkland dedication would be up to 15% of the land or its value. In addition, the Minister of Infrastructure could identify encumbered parkland and deem the conveyance of the land to count towards any parkland dedication requirements imposed by the City.

Clarity is needed in understanding the geographic radius of Transit-Oriented Community Projects. Based on the limited detailed provided by the Province, staff are concerned that the proposed changes will limit the City's ability to ensure that there is adequate parkland in established areas as the number of households and population increases as a result of re-urbanization and re-development. It is unclear if they would contain the same parameters as a Protected Major Transit Station Area (PMTSA) as identified in the Growth Plan. In order to implement the proposed changed the City's Parkland Dedication By-law 18-126 would need to be updated to implement definitions for

Transit-Oriented Communities (TOC) and their geographic location. In addition, the proposed tiered alternative parkland dedication rate, for TOC developments would need to be included.

Conclusion

The City of Hamilton has already implemented a number of actions to streamline planning approvals, plan for intensification, and bring housing supply to the market quicker, in an effort to address housing affordability within our jurisdiction. The City has conformed to Provincial targets in efforts to increase housing supply. Of note, 2021 was an all-time record year for new housing construction in Hamilton. The City of Hamilton has had a strong record for keeping applications moving and working collaboratively with local development industry to bring supply of units to the market.

The City's residential intensification rate has increased from 34% in 2011 to 66% in 2021, with the same staffing levels. The challenge that the City of Hamilton now faces is how to create the right conditions to encourage and promote residential intensification. To achieve the existing intensification targets, the City has proactively accomplished the following:

- Pre-zoned the Light Rail Transit (LRT) corridor;
- Adopted new commercial and mixed-use zoning;
- Updated our downtown secondary plan and pre-zoned the downtown;
- Introduced City-wide zoning to allow for Secondary Units and Detached Units (laneway housing); and,
- Currently bringing forward zoning by-law changes to allow up to four units on a lot.

The City of Hamilton has made many efforts to streamline the development approvals process and prioritize files only to then see the lands sitting vacant for some time. Based on the City's Vacant Residential Land Areas and Unit Potential Analysis (December 2020), there were 34,570 potential units in the City of Hamilton. More focus should also be on providing tools or mechanisms to ensure proposed developments get built and in a reasonable time and conversely, if development does not proceed in a timely fashion, the ability to sunset approvals to allow for the allocation of servicing capacity.

The current Provincial response narrowly focuses on upgrading more decision-making power to the Province and OLT to catalyse market-rate unit supply. However, this swing to more provincial control over local processes and discretion will result in less accountability for getting the community building details right, increased litigation costs, delayed decisions, greater confusion on processes, and difficulty retaining and attracting municipal planning staff. Some of the proposed changes in *Bill 109* are an unnecessary overreach with punitive costs to municipalities. Some of the proposed

amendments will lead to greater animosity between the community and the development industry due to the lack of consensus building opportunity that the planning process plays. The City encourages the Province to reconsider amendments that would result in increased OLT litigation and to instead add mechanisms that ensure proposed developments get built in a reasonable time and to consider more tools and funding opportunities to increase the supply of deeply affordable housing.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Community Engagement and Participation

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community.

Economic Prosperity and Growth

Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.

Healthy and Safe Communities

Hamilton is a safe and supportive City where people are active, healthy, and have a high quality of life.

Clean and Green

Hamilton is environmentally sustainable with a healthy balance of natural and urban spaces.

Built Environment and Infrastructure

Hamilton is supported by state-of-the-art infrastructure, transportation options, buildings and public spaces that create a dynamic City.

Culture and Diversity

Hamilton is a thriving, vibrant place for arts, culture, and heritage where diversity and inclusivity are embraced and celebrated.

Our People and Performance

Hamiltonians have a high level of trust and confidence in their City government.

APPENDICES AND SCHEDULES ATTACHED

Appendix "A" to Report PED22112 - City of Hamilton Response to *Bill 109, More Homes for Everyone Act, 2022*

Appendix "B" to Report PED22112 - Key Changes in the More Homes for Everyone Plan

TS:sd