




CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
General Manager's Office

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	February 14, 2023
SUBJECT/REPORT NO:	City Review of Residential Developments Exempted from Site Plan Control by Bill 23 (PED23045) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Binu Korah (905) 546-2424 Ext.1322 Brian Hollingworth (905) 546-2424 Ext. 2953 Alan Shaw (905) 546-2424 Ext. 2574 Ashraf Hanna (905) 546-2424 Ext. 2123 Steve Robichaud (905) 546-2424 Ext. 4281
SUBMITTED BY:	Jason Thorne General Manager Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION(S)

- (a) That staff be directed to update and amend By-law 15-091 and any other applicable By-laws to include a Municipal Road Damage Deposit (MRDD) as a guarantee against damage to the curb, sidewalk, road, boulevard and other City infrastructure located within the municipal road allowance, as well as any clean-up of the adjoining streets;
- (b) That the Amending By-law to By-law 12-282 (Tariff of Fees), as amended, attached as Appendix "A" to Report PED23045, which has been prepared in a form satisfactory to the City Solicitor, be passed and the new proposed fees, including an exemption from the new proposed fees for charitable and not-for-profit organizations proposing affordable housing projects be implemented;
- (c) That the costs of waiving the Engineering Review Fees for charitable and not-for-profit organizations proposing affordable housing projects as set out in item 3 of the Amending By-law, attached as Appendix "A" to Report PED23045, be absorbed by the Planning and Economic Development Department, Growth

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Management Division, in 2023, and the permanent funding accommodated through adjustment to the 2024 Growth Management Division's Base Budget;

- (d) That staff be authorized and directed to prepare and implement the necessary application process and forms for an exemption from the Engineering Review Fees for charitable and not-for-profit organizations proposing affordable housing projects as proposed in this Report.

EXECUTIVE SUMMARY

On November 28, 2022, Royal Assent was given to Bill 23, More Homes Built Faster Act, 2022. One of the significant amendments to the *Planning Act*, as a result of Bill 23, is the exemption from Site Plan Control for residential developments up to 10 units. Municipalities have not been given the authority to phase-in or transition-in the new provisions, which means immediate changes to City review processes are required.

While the City's Site Plan Control By-law (By-law 15-176) currently exempts single and semi / duplex dwellings and some street townhouses from Site Plan Control, the Bill 23 revisions to the *Planning Act* will now go far beyond the City's existing exemptions such that any townhouse developments or multiple dwellings with 10 units or less are no longer subject to Site Plan Control.

It is important to note that, in the City of Hamilton, the Site Plan process is used to coordinate multiple permits and approvals that are required for a development to proceed, as a way to provide efficient and coordinated review for applicants.

With minimal time to adjust City processes to accommodate the new provincial changes, staff have investigated the process changes needed to follow the Bill 23 direction, and implement the required Site Plan Control exemptions, while minimizing risks to the City and continuing to provide efficient development review for applicants.

Report PED23045 provides a summary of the process changes being implemented as a result of Bill 23 and seeks Council approval for amendments to the Tariff of Fees By-law to implement the new process changes. This report also seeks Council's approval to carry forward the former Site Plan fee exemptions currently in place for charitable and not-for-profit organizations proposing affordable housing projects, to also exempt these organizations from the new fees.

Alternatives for Consideration – See Page 11

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: The proposed amendments to the Tariff of Fees By-law are intended to ensure that the development review process continues to be cost recovery. Staff have estimated the amount of staff time required to undertake the required reviews, and are recommending a fee of \$6,975 be approved to complete the engineering review to process these types of applications in addition to the sewer and water permit fees. This fee is based on a maximum of two submissions. Should an applicant require more than two submissions, it is recommended that an additional fee of \$1,500 is charged for each additional submission.

The proposed fee exemption for affordable housing developments would affect the amount of revenues collected, although staff anticipate these costs will be minor. The cost to review the affordable housing projects would be funded from the levy on an annual basis and for 2023 can be absorbed by the Growth Management Division Budget. The costs of this initiative will require an adjustment to the Growth Management Division's Base Budget as part of the 2024 Budget process.

Staffing: At this time, it is anticipated that the revised process can be implemented using existing staff complement in all affected Divisions. However, the City will be assessing the impacts once staff has a clear understanding of the volume of such applications and may modify staff complement under the existing delegated authorities if required.

Legal: N/A

HISTORICAL BACKGROUND

Site Plan Control is an application under the *Planning Act* whereby the site design, functionality and layout features of a development are reviewed, including: placement of proposed buildings, grading, site servicing (water, sanitary sewer and stormwater management), landscaping, building design, parking, loading and vehicular access, adequacy and availability of services (water, storm and sanitary sewer) within the City's ROW and third party utility impacts. Site Plan Control approval ensures that the City's requirements relating to these matters are met prior to the issuance of a building permit. Some of these matters also require separate permits and approvals under other City By-laws, and the Site Plan Control process has been utilized to coordinate these approvals in order to provide good customer service to development applicants.

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Prior to the enactment of Bill 23, all applications for the development of townhouses (excluding street townhouses in a registered plan of subdivision) and multiple dwellings, regardless of the number of units, were subject to Site Plan Control as outlined in the City's Site Plan Control By-law (By-law 15-176). The City's Site Plan Control By-law already exempts single, duplex and semi-detached dwellings and street townhouse dwellings within a registered plan of subdivision from the requirement for Site Plan Control.

For the developments that are subject to Site Plan Control, approval of a Site Plan Control Application must be received prior to the issuance of a building permit, as site plan control is applicable law for the purposes of the Ontario Building Code.

The City's current process for approval of a Site Plan Control application is as follows:

- Applicant submits a completed application for Site Plan Control, with supporting plans / studies and application fee, to the Planning Division;
- Planning Division reviews application for completeness and, upon deeming it complete, circulates the application for review to internal City Divisions and external agencies. The application is scheduled for review at the Development Review Team (DRT) meeting within approximately 4 weeks following the submission date.
- City Divisions circulated for review and comment include Growth Management (Development Engineering, Infrastructure Planning, Legislative Approvals), Planning (Zoning, Heritage and Urban Design); Transportation Planning, Hamilton Water, Forestry, Environmental Services (Waste Management), Landscape Architectural Services, Parks, Recreation and Transit amongst others.
- External agencies circulated for review and comments include Conservation Authorities, School Boards; Utility companies, Pipelines, Rail companies etc. amongst others.
- At the DRT meeting, City divisions and outside agencies that provided comments may attend the meeting to speak to the comments and identify required conditions of approval. The applicant / agent also attends the meeting. The applicant / agent is informed whether Site Plan approval can be granted (with related conditions).
- Following the DRT meeting, if the application is ready for conditional approval, the Planner will compile the conditional Site Plan approval letter. The letter provides the applicant with a list of conditions that must be satisfied prior to various phases of the development process (e.g. prior to submission for Building Permit review; prior to issuance of Building Permit; prior to occupancy, etc.).
- The City's Site Plan approval is valid for one year. If a Building Permit is not issued within one year, the approval lapses unless an extension is granted. The onus is on the applicant to submit plans and studies required for the clearance of conditions.

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.

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- Following the clearance of all Site Plan approval conditions that were identified as required “prior to issuance of Building Permit”, the applicant may submit a Building Permit application. Standard conditions that are required to be cleared prior to the issuance of a Building Permit include an approved Site Plan and building elevations, approved grading plan and stormwater management design, approved servicing plan, wastewater and water service assessments, approved landscape and tree management plans, payment of required fees and submission of a letter of credit / securities.

On November 28, 2022, Royal Assent was given to Bill 23, *More Homes Built Faster Act, 2022*. Bill 23 included amendments to several provincial statutes, including the *Planning Act*. For the purposes of this Report PED23045, the most relevant amendment is the (now in force) change that Site Plan Control can no longer be applied for the construction, erection, or placing of a building or structure for residential purposes on a parcel of land if that parcel will contain a maximum of 10 residential units.

While the City’s Site Plan Control By-law had already exempted single and semi / duplex dwellings and some street townhouses from Site Plan Control, the Bill 23 revisions to the *Planning Act* will now go far beyond the City’s existing exemptions such that any townhouse developments or multiple dwellings with 10 units or less from are no longer subject to Site Plan Control.

Additional significant changes to the *Planning Act* made by Bill 23 include the removal of exterior design as a matter of Site Plan Control for all developments (not just 10 units or less); and reduction of the role of the Conservation Authorities (CAs) in the review of applications.

This change has resulted in the cancelation of forty in process Site Plan Control applications; ten for multi-unit developments and thirty for single detached dwellings. The majority of these proposals are located in the Ancaster Existing Residential “ER” Zone and the Hamilton Beach Boulevard area.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The process changes outlined in this report are designed to implement the required changes under Bill 23 within the City of Hamilton.

RELEVANT CONSULTATION

- Hamilton Water, Waste Management, Environmental Services, Transportation Operations & Maintenance and Engineering Services Divisions of the Public Works Department; Housing Services Division;
- Legal Services Division of the Corporate Services Department; and,

- Notice of proposed changes to the Tariff of Fees By-law was advertised in The Hamilton Spectator on January 26, 2023.

ANALYSIS AND RATIONALE FOR RECOMMENDATIONS

In the City of Hamilton, the Site Plan Control process is used to coordinate multiple permits and approvals that are required in order for a development to proceed, as a way to provide efficient and coordinated review for applicants and ensure good development. As a result of Bill 23, several matters that would typically be addressed through Site Plan Control can no longer be applied due to the exemption. Staff have reviewed these matters to determine the following:

- which matters still require other City approvals or permits, notwithstanding the exemption from Site Plan Control, and which therefore require a new process for obtaining those approvals or permits;
- which matters, if not addressed, could create risk to the City, to neighbours, to adjacent development, or to the community; and,
- which matters can be addressed through the Building Permit application process (while some matters are not subject to applicable law under the Building Code and cannot be required for issuance of a Building Permit, some remain enforceable under applicable City by-laws).

The following section summarizes the areas that staff have identified as the most important to address. In some cases, staff have identified new mechanisms for ensuring that requirements are met, while others will no longer be part of the development review process.

(a) Servicing Connections

The City's Waterworks By-law R84-026, as amended, and Sewers and Drain By-law 06-026, as amended, regulate the installation, connection and use of the municipal water and sewer services within City of Hamilton and require that all types of development must obtain a water and sewer permit and excavation permit from the City prior to connecting to municipal systems. Furthermore, the City's Zoning By-law 05-200 and other zoning by-laws pursuant to By-law 09-267, which are "applicable law" under the Building Code, require that all buildings must have adequate servicing in place, including connections to municipal water and sewer services or approved alternatives. The *Planning Act* explicitly permits municipal zoning by-laws to restrict development unless municipal services are available. As such, notwithstanding the Site Plan exemption for 10 units or less, consistent with the City's zoning by-laws, Building Permits may not be issued until the applicant has obtained a water and sewer permit to

the satisfaction of Growth Management Division. Not being able to do this through the Site Plan process as a result of the exemption creates a potential challenge both for applicants and for the City.

For applications with one (1) to two (2) units, the applicant can obtain the water and sewer permit from the Building Division as part of the Building Permit process in accordance with the existing process. Growth Management will issue the excavation permit as per the current process. Proposals for one (1) to two (2) units within the Existing Residential (ER) Zone in Ancaster and on Beach Boulevard in Hamilton will be required to submit a Zoning Compliance Review application in advance of a Building Permit application.

For applications with three (3) to ten (10) units, the applicant will be required to submit a Zoning Compliance Review application to the Planning Division; and obtain a water and sewer permit from Growth Management Division prior to submitting the Building Permit application.

To ensure adequate servicing capacity is available to accommodate the proposed developments, applicants proposing developments with three (3) to ten (10) units must submit a Functional Servicing Report (FSR), which will also provide servicing, grading details and the condition assessment of existing infrastructure in front of the property. If there is sufficient capacity and there are no conflicts with utilities in the Right-of-Way (ROW), the water and sewer permit and the excavation permit can be issued, and the applicant must use a bonded contractor to complete the works.

In addition, if there is a conflict with an existing utility, the applicant must approach the utility companies and enter into an agreement for necessary relocation works for which the utility company must obtain a permit from Public Works. Upon receipt of all the documents from the applicant, Growth Management Division will proceed to issue the water and sewer permit. This procedure is also applicable to other City assets such as City trees and streetlights. The applicant shall enter into a development agreement to relocate any City assets within the ROW to accommodate the proposed developments.

(b) Extensions/Upgrades to Existing City Infrastructure

Pursuant to By-law 09-267, the City's zoning by-laws include language requiring adequacy of services, as described above.

For example, the language included in Zoning By-law 05-200 states that no buildings or structure may be erected, used or occupied (except model homes in draft plans of subdivision) unless:

- (i) adequate watermains, storm and sanitary sewer systems are existing or have been provided for in a binding and secured development agreement and all regulatory approvals have been received to the satisfaction of the General Manager of the Planning and Economic Development Department and/or his or her designate; or
- (ii) where such services are not required or contemplated, an approved waste disposal system and potable water supply to sustain the use of land for buildings or structures are existing or have been provided for to the satisfaction of the Chief Building Official and all regulatory approvals have been received to the satisfaction of the General Manager of the Planning and Economic Development Department and/or his or her designate; and
- iii) the dedication of lands for parkland or payment of cash-in-lieu of parkland in accordance with the City of Hamilton Parkland Dedication and Cash-in-lieu of Parkland Policy has been received to the satisfaction of the General Manager of the Planning and Economic Development Department and/or his or her designate.

Consistent with the City's zoning by-laws requiring adequacy of services, Building Permit applicants must confirm that the City infrastructure has sufficient capacity to accommodate the proposed developments. To confirm the capacity in the system, a Functional Servicing Report (FSR) including Stormwater Management (SWM) Report, servicing drawings and grading plans are required. If the FSR recommends that there is no capacity in the system or there are no services in front of the proposed site in accordance with City standards, the applicant would have an option to enter into a development agreement to complete the works at their cost within the ROW. The development agreement will include the infrastructure works including restoration, driveway installation and utility relocation (if required) to facilitate the proposed development. Until such works are completed to the satisfaction of the Director, Growth Management and Chief Development Engineer or designate to meet the requirements of the City's zoning By-law, the applicant cannot submit a Building Permit application.

(c) Grading, Site Alteration and Servicing Within the Site

As per the Building Code and Building by-law, the Building Division will review all the grading and servicing drawings as part of the Building Permit application stage. However, if the site is proposing any stormwater management strategy to control the post development flows to pre-development levels using Low Impact Development techniques, storage tank and other stormwater management appurtenances, the applicant has to obtain the approval from Growth Management prior to issuance of the Building Permit.

(d) Tree Protection

While tree protection considerations are not applicable law for the purpose of a Building Permit, applicants must still ensure that there are no impacts to City trees within the ROW in accordance with City of Hamilton By-law No. 15-125. As part of the water and sewer permit and driveway access permit review process, if the City identifies any impacts to the trees, the applicant must obtain approval from the Forestry Section prior to issuing permits.

(e) Road Cut Permit/Excavation Permit

As per the Water and Sewer permit process, applicants shall obtain an Excavation Permit. Further, under City of Hamilton By-law 15-091, for any works conducted within the ROW, the applicant or any utility companies must obtain a Permit in accordance with the ROW Utility Installation and Permit Manual from the City to make sure that all works are conducted in accordance with City standards.

(f) Driveway Access

For developments of less than 3 units, driveway access requests and permits are reviewed and issued by Hamilton Municipal Parking System under the authority of the Streets By-law 86-077. For developments of three (3) to ten (10) units, driveway access and access management was previously reviewed as part of the Site Plan process. Given the changes introduced by Bill 23, the City will need to review and update processes for driveway access reviews and permits to ensure access management principles are achieved. This will include expanding the permit process to include developments of up to ten (10) units, as well as utilizing the provisions of in Zoning By-law 05-200, subsection 5.1(a)(i) which states that, where applicable, required parking spaces for each dwelling must be provided on the same property. Subsection 5.2(c) of Zoning By-law 05-200 further requires that all required parking shall be provided with adequate means of ingress and egress, as well as other access requirements.

Further changes to development review user fees may result from the review and updating of the driveway access permit process.

(g) Right of Way (ROW) Dedication

Development applications may require ROW dedications consistent with the road classification system identified in the Urban Hamilton Official Plan (UHOP) and Rural Hamilton Official Plan (RHOP) or the corridors identified in Schedule C-1 (RHOP) and Schedule C-2 (UHOP) that identify specific road widths. Approved Environmental Assessments may also be used in identifying ROW dedications. These ROW

dedications may relate to future needs for ROW elements such as landscape strips, sidewalks, street trees, bike lanes and vehicle lanes.

Under the *Planning Act*, the City can require that ROW dedications be dedicated to the municipality as a condition of site plan, consent, or subdivision. However, for those developments which are now exempt from site plan control as a result of Bill 23, there is no clear means to compel and protect ROW dedication requirements. As a result, the protection of corridors for future streetscaping, transportation, and utilities needs may be at risk as the ROW dedications cannot be obtained through the Building Permit application process.

(h) Other Challenges

Items including but not limited to noise walls, sidewalk extensions or cash-in lieu for the sidewalk, waste management, landscaping and urban design, archaeology, low impact developments (LIDs), mail box location, ROW land dedication are typically addressed through the Site Plan Control process. As these items are not applicable law under the Building Code, they can no longer be compelled through the development process if the property is exempt from Site Plan Control and does not go through any other *Planning Act* process.

Staff is proposing to amend the By-law 15-091 or any other applicable By-laws to include a Municipal Road Damage Deposit (MRDD), which is a written and financial commitment from a property owner to submit a deposit with the City as a guarantee against damage to the curb, sidewalk, road, boulevard and other City services located in municipal road allowance, as well as any clean-up of the adjoining streets.

(j) Landscaping/Urban Design

Landscaping issues would only be considered through a zoning review in terms of planting strips or screening elements.

Properties in a Heritage Conservation District will require a Heritage Permit that may have requirements for urban design and landscaping.

Engineering Review User Fee

For those matters described in the previous section that will require an engineering review, a user fee of \$6,975 is proposed for the first two submissions, with an additional fee of \$1,500 for each subsequent submission. The user fee will be administered by the Growth Management Division.

It is also proposed that the user fee be waived for charitable and not-for-profit organizations proposing affordable housing projects consistent with similar planning application fee exemptions granted for the same form of development. The application process to qualify for the fee exemption will be administered in accordance with the criteria set out in the Council-adopted staff report entitled *Tariff of Fees - Exempting Charitable Non-Profit Organizations from Planning Application Fees Relating to Affordable Housing (PED16098) (City Wide)*.

ALTERNATIVES FOR CONSIDERATION

Council may choose not to implement the changes proposed in this report. Not incorporating the requirements outlined in this report may increase the risk of non-compliance with City policies and bylaws as well as potential damages to City assets.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

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.

Built Environment and Infrastructure

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

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Report PED23045 – Amending By-law to By-law 12-282 Tariff of Fees