




CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	October 18, 2024
SUBJECT/REPORT NO:	Implementation of Changes to Section 41 of the <i>Planning Act</i> - Site Plan Approval, in Response to Provincial Bill 185 (PED24175) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Sean Kenney (905) 546-2424 Ext. 5998 Mark Kehler (905) 546-2424 Ext. 4148
SUBMITTED BY:	Anita Fabac Acting Director, Planning and Chief Planner Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

- (a) That the Draft By-law, attached as Appendix “A” to Report PED24175 to repeal and replace the Consolidated Site Plan Control By-laws for the City of Hamilton to allow for housekeeping and technical amendments and to implement other changes as required and allowed for by Bill 185, *Cutting Red Tape to Build More Homes Act, 2024*, which has been prepared in a form satisfactory to the City Solicitor, be enacted by Council.
- (b) That Council authorize the Mayor and the Clerk, or delegate, to authorize and execute any agreement or undertaking pursuant to Section 4.0 of the Site Plan Control By-law and signed by the owner or developer of the affected land, provided that persons with delegated authority have approved the plans and drawings required to be submitted under Section 3.0 of the Site Plan Control By-law.

EXECUTIVE SUMMARY

On June 6, 2024, Bill 185, *Cutting Red Tape to Build More Homes Act, 2024*,

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.

SUBJECT: Implementation of Changes to Section 41 of the *Planning Act* - Site Plan Approval, in Response to Provincial Bill 185 (PED24175) (City Wide) - Page 2 of 9

received Royal Assent, thereby becoming law. The Province's legislative changes are focused on streamlining planning approvals and increasing housing supply and infrastructure to support the goal of building 1.5 million homes over the next 10 years. Bill 185 amended the *Planning Act*, *Municipal Act* and *Development Charges Act*, among others. A detailed summary of the changes precipitated by Bill 185 was provided to Planning Committee on May 14, 2024 in Report PED24097 (*Planning Act* matters) and Audit, Finance and Administration Committee on May 2, 2024 in Report FC24034 (*Development Charges Act* matters).

The purpose of this report is to recommend approval of a new Site Plan Control By-law that implements the legislative changes made by Bill 185 to Section 41 of the *Planning Act*. In addition, the proposed new Site Plan Control By-law includes housekeeping and technical changes to keep the by-law up-to-date and easier to understand and use.

Site Plan Approval is a legislated process under Section 41 of the *Planning Act* required for multi-residential, commercial, industrial, and mixed-use development. It is a coordinated review process to address matters of site design including site layout, site access and parking, grading, drainage, and landscaping. The entire City of Hamilton is designated as a Site Plan Control area. The Site Plan Control By-law regulates the type of development subject to Site Plan Approval and the requirements of the approval process.

Staff recommend that the existing Site Plan Control By-law No. 15-176, as Amended by By-laws Nos. 18-104, 19-026 and 21-069 be repealed and replaced with a new by-law (attached as Appendix "A" to Report PED24175). The proposed new Site Plan Control By-law includes the following changes to implement Bill 185:

- Exempting publicly funded colleges and universities from Site Plan Control;
- Introducing "use it or lose it" lapsing provisions for Site Plan approvals; and,
- Removing the requirement for formal consultation prior to submission of a Site Plan Control application, replacing it with an optional formal consultation process.

In addition, the new Site Plan Control By-law introduces housekeeping and technical changes to ensure consistency with the *Planning Act* and provide criteria for minor changes to approved plans.

As staff continue to respond to the Bill 185 and other legislative changes, future reports to Council will address other policy and process changes and the financial impact and staffing implications of the legislation.

Alternatives for Consideration – See Page 8

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: Bill 185 removed the refund of fees for any site plan application not approved within 60 days of an application being deemed complete. To date, no fee refunds have been issued as staff have met the required timelines for every Site Plan Control application received since July 1, 2023.

Staff are still assessing process and programme changes that Bill 185 and previous legislative changes have made to the Site Plan Control process. Measures may need to be implemented to address matters no longer captured by Site Plan Control (for example the coordination of development on lands owned by publicly funded colleges and universities). The financial implications of these changes will be discussed as part of future reports to Council.

For developments subject to Site Plan Control, the *Development Charges Act, 1997* requires that development charges be “locked-in” based on the development charge rates applicable on the date that a complete Site Plan Control application is submitted. Bill 185 has introduced a new “use it or lose it” tool for municipalities to use for site plan approvals. This tool ensures that the “locked-in” development charge rates expire if construction does not occur in a reasonable amount of time. Previously, there was not any timeline for an owner to construct the building once site plan approvals were granted.

The introduction of lapsing provisions to the Site Plan Control By-law will result in a new Site Plan Control application being required after a Conditional Site Plan Control approval lapses. This will reset the lock-in date for development charges which will then be determined based on the date that the new Site Plan Control application is submitted. The *Development Charges Act, 1997*, requires that a building permit be issued within 18 months of Final Site Approval for the lock-in date to apply.

Staffing: There are no direct staffing impacts arising out of Bill 185.

Other recent legislative changes now allow Site Plan Control for residential developments with less than 10 units where properties are adjacent to a shoreline or near rail lines. Staff are studying the implications of implementing this change. Should further changes to the Site Plan Control

SUBJECT: Implementation of Changes to Section 41 of the *Planning Act* - Site Plan Approval, in Response to Provincial Bill 185 (PED24175) (City Wide) - Page 4 of 9

By-law be recommended, any staff impacts would be managed through delegated authority as outlined in Report PED22112(c).

Legal: Legal Services and the Planning Division staff will report back where necessary with recommendations for the implementation of Bill 185. Council's approval of a Site Plan Control By-law cannot be appealed to the Ontario Land Tribunal.

HISTORICAL BACKGROUND

Council has approved updates to the City of Hamilton Site Plan Control By-law to address legislative changes impacting Site Plan Control under Section 41 of the *Planning Act*. These legislative changes have included Bill 108 – *More Homes, More Choice Act, 2019*, Bill 109 – *More Homes for Everyone Act, 2022*, Bill 23, *More Homes Built Faster Act, 2022*, Bill 97, *the Helping Homebuyers, Protecting Tenants Act, 2023* and now Bill 185, *Cutting Red Tape to Build More Homes Act, 2024*. The Provincial Government introduced these legislative changes with the intent to streamline approvals for housing and reduce barriers and costs to development.

Staff have brought forward changes to the City's Site Plan Control By-law as necessary to ensure that the City of Hamilton Site Plan Process and By-law are up to date with legislation.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The Provincial Planning Policy framework is established through the *Planning Act* (Section 3) and the Provincial Planning Statement, 2024 (PPS). It provides municipal governments with the direction and authority to guide development and land use planning through official plans, secondary plans, and zoning by-laws. The *Planning Act* requires that all municipal land use decisions affecting planning matters be consistent with policy statements and plans issued by the province. The proposed Site Plan Control By-law implements recent legislative changes to Section 41 the *Planning Act* (Site Plan Control) and is consistent with the Provincial Planning Policy framework.

Urban and Rural Hamilton Official Plans

The Urban and Rural Hamilton Official Plans identify the entire area within the City of Hamilton Planning Area as a proposed Site Plan Control Area, with the Site Plan Control By-law establishing criteria for the application of Site Plan Control in accordance with the *Planning Act*. The Official Plans also identify the planning

objectives that are to be achieved through Site Plan Control, and in the Urban Hamilton Official Plan, the components of a development that shall be considered to achieve the planning objectives identified. For the West Harbour (Setting Sail) Secondary Plan area that has not been brought into the Urban Hamilton Official Plan, Site Plan Control is identified as an implementation tool for achieving the objectives of the Secondary Plan.

While the Official Plans provide policy direction on Site Plan Control scope, objectives, and matters for review, it is Section 41 of the *Planning Act* that gives effect to the Site Plan Control By-law. Proposed amendments to the Urban and Rural Hamilton Official Plans, and the former Hamilton-Wentworth Official Plan that address Bill 185 are outlined in Report No. PED24134. These amendments are not required to implement a new Site Plan Control By-law.

RELEVANT CONSULTATION

Staff from the Legal Services Division, Planning and Economic Development Department and Public Works Department were consulted in the drafting of the by-law.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

Bill 185 made changes to Site Plan Control under Section 41 of the *Planning Act*. These changes directly impact the City of Hamilton Site Plan Control process by:

- Removing the requirement for undertakings of publicly funded Universities and Colleges to obtain Site Plan Control approval as they are no longer subject to the *Planning Act*,
- Removing mandatory pre-consultation prior to submission of a Site Plan Control application; and,
- Allowing for lapsing of Site Plan Control approvals under a new “use it or lose it” provision.

Additional housekeeping changes to support the Bill 185 changes and previous legislative changes are also proposed to ensure the by-law remains up-to-date, relevant and is easier to understand. Report PED24097 provided a detailed analysis of the implications of the recent legislative changes in Bill 185. With Bill 185 now in effect, the City is required to amend the Site Plan Control By-law to implement these amendments.

Appendix “A” attached to Report PED24175 contains the Draft By-law to repeal Site Plan Control By-law No. 15-176, as Amended by By-law Nos. 18-104, 19-026, and 21-069 and replace it with a new Site Plan Control By-law. The changes included in the new Site Plan Control By-law can be summarized as follows:

Section 1.0: Definitions

Section 41 of the *Planning Act* allows municipalities to require Site Plan Control approval within a Site Plan Control area and Bill 185 introduces new provisions that allow site plan approvals to lapse if a building permit is not issued within a specified time. The City of Hamilton has a two stage Site Plan Control approval process that includes:

- A “Conditional Approval” stage during which redlined plans are approved and conditions are imposed that must be addressed to the City’s satisfaction before a building permit is issued; and,
- A “Final Approval” stage that occurs after all the conditions required prior to issuance of a building permit are satisfied and final plans are approved to be implemented through construction and completion of on-site works.

To provide for greater clarity on how Site Plan Control approval is structured in the City of Hamilton, definitions of “Conditional Site Plan Approval” and “Final Site Plan Approval” have been added to the By-law to reflect the two-stage approval process.

Section 3.0: Submission Requirements

Subsection 3.2 of the existing Site Plan Control By-law requires mandatory consultation with the City prior to submission of a Site Plan Control application through a process called Formal Consultation. Bill 185 has removed mandatory consultation for Site Plan Control applications. Therefore, Subsection 3.2 has been revised to reflect that the Formal Consultation process for Site Plan Control applications is now optional. Further discussion of the City’s response to the removal of mandatory consultation is provided in Report PED24134.

Section 8.0: Site Plan Control Exemptions

Section 8.0 identifies the types of development (buildings, structures and / or uses) that are exempt from Site Plan Control in the City of Hamilton.

A new Subsection 8.3 has been added to exempt undertakings of a Post Secondary Institution from Site Plan Control. This change is required because Bill 185 has added a new Section 62.0.2 to the *Planning Act* that exempts publicly funded Post Secondary Institutions on lands outside the Greenbelt from any requirements of the *Planning Act*. In addition, in accordance with the existing definition of “Development” in the *Planning Act*, Subsection 8.2 has been added to exempt the placement of a portable classrooms

on a school site of a district school board if the school site was in existence on January 1, 2007.

Section 9.0: Types of development, built form or areas of the City where Site Plan Approval is required (Notwithstands Section 8.0)

The Site Plan Control By-law applies to the entire City (Section 2.0), with Section 8.0 identifying the types of development that are exempt from Site Plan Control. Section 9.0 further identifies a series of uses or circumstances where the exemptions of Section 8.0 do not apply and Site Plan approval is required.

The existing subsection 9.2 related to Site Plan approval for the use of a septic tank in vulnerable source protection areas has been amended to clarify that Site Plan cannot be required where the proposal does not meet the definition of “Development” in the *Planning Act* and Site Plan Control By-law.

New Section 11.0: Minor changes to approved plans

The City of Hamilton Site Plan approval process allows for minor changes to approved plans without the need for a new Site Plan application. This includes Conditionally Approved plans and plans that require minor changes after Final Site Plan Approval is issued. The approval of minor changes is at the discretion of the Chief Planner or designate (typically the Manager of Site Planning).

A new Section 11.0 has been added to outline criteria for what is determined to be a minor change to an approved plan. This sets a clear and transparent process for the evaluation of minor changes to approved plans requested through the Site Plan Approval process. When a minor change is considered, a recirculation to staff is often required and a resubmission fee is collected per the Planning and Economic Development Department’s Fee Structure. Where a change is not considered minor, a new Site Plan Amendment application and Conditional Site Plan Approval is required.

New Section 12.0: Lapsing of Site Plan Approvals

Currently, Site Plan Approval in the City of Hamilton (Conditional Site Plan Approval and Final Site Plan Approval) never expires. The City had previously provided for the lapsing of Site Plan approvals (see Report FCS20028 / PED20105), but this was challenged at the Ontario Land Tribunal (OLT) on the basis that it resulted in higher Development Charges being collected upon submission of a new Site Plan Control application and was not provided for in the *Planning Act*.

SUBJECT: Implementation of Changes to Section 41 of the *Planning Act* - Site Plan Approval, in Response to Provincial Bill 185 (PED24175) (City Wide) - Page 8 of 9

Bill 185 now allows municipalities to lapse/expire Site Plan approvals as a tool to address “stalled” developments that can limit progress on provincial housing targets. Unless set by regulation, a municipality may lapse a Site Plan approval after three years. Staff recommend that Council implement a three-year lapsing on Conditional Site Plan Approvals plus a one-time, one-year extension subject to criteria. The proposed three-year period is the shortest provided for in the *Planning Act*, and the discretionary one-year extension will provide flexibility in cases where unforeseen challenges result in additional time being required to clear conditions.

For the purposes of calculating development charges, development charge rates are locked in at the later of the date of Site Plan Control Application or a site specific Zoning By-law Amendment application, whichever is the later. This generally means that rates will be locked-in to the submission date of a Site Plan Control application as long as the Conditional Site Plan Approval remains in effect. Once a Conditional Site Plan Approval lapses, a new Site Plan Control Application is required, and the development charges lock-in date will reset to the submission date of the new application. For Final Site Plan Approval, the *Development Charges Act, 2017* requires that a building permit be issued within 18 months of the final approval date for the lock-in date to apply.

Staff are also recommending the inclusion of criteria by which the one time one-year extension to Conditional Site Plan will be evaluated against. This sets a clear and transparent process for how extension requests will be evaluated.

New Section 13.0 Transition Clause for Existing Site Plan Approvals

The Provincial amendments to the *Planning Act* allow for the new lapsing provisions to apply to existing Site Plan Approvals issued prior to the passing of Bill 185. Should Council approve the proposed lapsing provisions, Planning Division staff will notify existing applicants and the Registered Owner(s) listed on the most recent Assessment Roll of the changes to their approval requiring them to clear conditions and obtain Final Site Plan Approval within the mandated timelines. To provide for transition to the new lapsing provisions for applications that are nearing or have passed their lapsing date, existing applications that received Conditional Site Plan Approval prior to December 31, 2021, will be granted a one-time, one-year extension to obtain Final Site Plan Approval before the Conditional Site Plan Approval lapses. For Conditional Site Plan Approvals issued after December 31, 2021, staff will have ample time to inform applicants of their option to request a one-time, one-year extension prior to their three-year lapsing date as provided for in Section 12.1 of the By-law.

ALTERNATIVES FOR CONSIDERATION

Council is required to prepare the necessary amendments to the Site Plan Control

SUBJECT: Implementation of Changes to Section 41 of the *Planning Act* - Site Plan Approval, in Response to Provincial Bill 185 (PED24175) (City Wide) - Page 9 of 9

By-law to bring it into conformity with the amendments to Section 41 of the *Planning Act*. Therefore, the Site Plan Control By-law changes that exempt Public Colleges and Universities from Site Plan approval and eliminate mandatory consultation are required.

It is not mandatory that municipalities implement the “use it or lose it” lapsing provisions introduced by Bill 185. However, in the City’s submission to the Province on Bill 185, Council supported the “use it or lose it’ concept. Should Council decide not to approve the recommended Site Plan lapsing provisions, Conditional Site Plan approvals in the City of Hamilton will continue to not expire. Council may also approve a longer time period before Conditional Site Plan Approval will lapse but cannot implement a time period that is shorter than three years. A longer time period is not recommended by staff because the minimum three-year time period will provide for the greatest incentive to developers to implement their approvals in a timely manner and only lock in development charge rates for applications that have not lapsed.

Should Council decide not to approve the recommended housekeeping items to establish criteria for minor changes to approved plans, this matter will continue to be addressed by staff on a case-by-case basis.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Report PED24175 – Draft Site Plan Control By-law

SK/MK:sd