
SUBJECT: Bill 109, More Homes for Everyone Act, 2022
PREPARED BY: John Yeh, RPP, MCIP, Manager, Strategy & Innovation (ext. 7922)

RECOMMENDATION:

1. That the report dated July 11, 2022 entitled “Bill 109, More Homes for Everyone Act, 2022” be received;

PURPOSE:

This report provides information on the Province of Ontario’s Bill 109, More Homes for Everyone Act, 2022 (Bill 109), *Planning Act* amendments which received Royal Assent on April 14, 2022 and amends 5 pieces of legislation:

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

BACKGROUND:

On December 6, 2021, the province announced a Housing Affordability Task Force to provide the government with recommendations on additional measures to address market housing supply and affordability.

The [Report from the Housing Affordability Task Force](#) was released February 8, 2022 with 55 recommendations to increase the supply of market housing and a goal to build 1.5 million homes over the next 10 years.

Markham Council received staff comments on the Report from the Housing Affordability Task Force in a report titled “Comments on the Report of the Ontario Housing Affordability Task Force” at its meeting on March 7, 2022 and forwarded a letter with the staff report on the recommendations of the Report of the Ontario Housing Affordability Task Force to the Province on March 25, 2022.

On March 30, 2022, the Provincial government introduced the More Homes for Everyone Plan and Bill 109, which according to the Province includes a number of initiatives the Province is taking to address Ontario’s housing crisis. At that time the Province posted Bill 109 on the [Environmental Registry](#) with a commenting period from March 30, 2022 to April 29, 2022. The Province brought the legislation forward to Royal Assent on April 14, 2022 before the end of their consultation period.

The following is a summary of key changes to the *Planning Act* and how it would impact municipalities. The first five items are most impactful to municipalities and are discussed in more detail in the Options/Discussion section of this report.

- Requiring municipalities to refund fees for zoning by-law amendment, combined zoning by-law and official plan amendments, and site plan applications if the municipality does not issue a decision within prescribed timelines
- Delegating Site Plan to staff which became mandatory on July 1, 2022 while adding complete application requirements and expanding timelines for review
- Establishing an one-time opportunity to extend draft plans of subdivision that have lapsed within five years
- Establishing a new planning tool called ‘Community Infrastructure and Housing Accelerator’ where municipalities can request the Minister for an Order similar to a Minister's Zoning Order (MZO)
- In Transit Oriented Communities (TOCs), a maximum parkland contribution would be established and require 100% credit and acceptance of encumbered parkland
- Providing the Minister the authority to pause the required decision making time for Official Plans or Official Plan Amendments that are before them for decision, so that they cannot be appealed to the Ontario Land Tribunal for failure to make a decision within the prescribed timeline
- Providing the Minister the authority to refer all or parts of an official plan amendment that is before them for decision to the Ontario Land Tribunal
- Introducing a five year review of Community Benefits Charges by-laws
- Establishing regulation-making authority for the Minister to require public reporting on development applications / approvals
- Providing the Minister with authority to make regulation for surety bonds connected to land use planning
- Providing the Minister with authority to require reporting on planning matters by regulation

While the above changes will impact the development review process in Markham, the City since 2018 has embarked on an ambitious program to streamline development processes and realize efficiencies in planning and development. Working closely with the development industry (Markham City Builders Forum), City staff has committed to continuous improvement in the development review process.

City staff have been implementing several initiatives including [KPMG's 2019 recommendations from their assessment of the development review process](#) and implementing ePLAN, the City's online development application submission and electronic review system. The City is also utilizing several Provincial funding opportunities including the Streamline Development Approval Fund for several development approval initiatives including a Lean review of the development review process and the Audit and Accountability Fund to develop a residential infill strategy and recommendations for a Community Planning Permit System to streamline development approvals.

OPTIONS/ DISCUSSION:

According to the Province Bill 109 is intended to build homes faster by expediting approvals, streamline development approvals processing and facilitating faster decision, increased certainty of parkland requirements for Transit Oriented Communities, and increased certainty of development costs. Bill 109 places the onus on municipalities to address these issues.

Housing supply and affordability are impacted by other factors beyond the municipal role in timing of review and approval. These include commenting from provincial ministries, applicant and consultant changes to application submissions, relatively low interest rates, investor demand, home resale bidding practices and so forth which are not addressed by the Housing Affordability Task Force and Bill 109.

They key issues and staff comments on Bill 109 *Planning Act* changes are summarized below.

Province requires municipalities to refund zoning by-law amendment and site plan application fees if the municipality does not issue a decision within prescribed timelines

The Planning Act changes from Bill 109 requires municipalities to partially or entirely refund fees for zoning and combined official plan amendment and zoning applications if a decision by the municipality is not made within the timelines from the *Planning Act*. For site plan applications the same holds true if the municipality has not approved site plans within the timelines from the *Planning Act*. The timing of fee refunds is noted below. These changes are to take effect on January 1, 2023

Application type	No Refund	50% Refund	75% Refund	100% Refund
Zoning By-Law	Decision within 90 days	Decision between 90 and 150 days	Decision between 150 and 210 days	Decision after 210 days
OPA/Zoning	Decision within 120 days	Decision between 120 and 180 days	Decision between 180 and 240 days	Decision after 250 days
Site Plan	Approval within 60 days	Approval between 60 and 90 days	Approval between 90 and 120 days	Approval after 120 days

Refund of fees for rezoning and site plan control reviews that do not meet established timelines do not account for how the review process is undertaken. The planning review and approval process is dependent on the information submitted from applicants, professionals working with applicants and comments from the various ministries and agencies involved. The timely receipt of this information greatly impacts approval timelines. Bill 109 legislation penalizes municipalities for outcomes that are beyond their control and will impact the fiscal sustainability of municipalities.

Consultation and collaboration with stakeholders including applicants, municipal Councillors, external agencies, and community members is an important component of the development review process which includes required statutory public meetings and public notices, all of which require time to complete to ensure effective input prior to a decision. The timelines required from Bill 109 will strain and jeopardize effective public consultation. Addressing these changes could result in the need for additional staff resources and increased development fees.

There is no provision in Bill 109 that “stops the clock” once the application is back with the applicant for review and revision. Also Bill 109 does not account for delays which occur when municipal councils are not able to address applications such as during election years or extended periods when Council meetings do not take place such as the summer and holiday periods.

The requirement to refund fees, if put into effect, may also lead to an increase in Ontario Land Tribunal hearings and greater delays in the planning process. Finally, implementation of this legislation will run counter to the long-held principle that growth pays for growth and costs of development review processing may instead shift the cost of growth to the taxpayer.

Staff is exploring ways to implement the fee refund changes to the *Planning Act* including conducting a Lean process review through the Streamline Development Approval Fund this Summer and Fall that will provide recommendations. There is also a working group with York Region and local municipal staff including Markham to develop ideas to address the Bill 109 legislation. Implementing these potential suggestions may not guarantee meeting the mandated timelines because the changes have not been tested against the approval timelines required by the *Planning Act*.

Delegation of Site Plan to staff became mandatory on July 1, 2022 and adding ability to require complete application requirements and expanded timelines for review

The *Planning Act* now requires site plan approval to be delegated to staff by July 1, 2022 which is now in effect. Bill 109 no longer provides for a municipal council to be the approval authority. The City’s delegation [By-law 2002-202](#) will be amended and brought to Development Services Committee this Fall for approval.

Bill 109 now also requires a complete application process for site plan applications. The City’s Official Plan will need to be amended to apply complete application requirements for site plan applications.

The timeline to appeal a site plan application has been increased from 30 to 60 days. The 60 days, however will still be a challenge to meet under the current review process as sufficient time is needed by staff to review, the applicant to respond, and prepare agreement conditions in advance of the timeline for refunding fees.

As noted in the previous section of this report a Lean process review will be conducted to identify ways to address the new timeline requirements from Bill 109. Initial ideas potentially include submission of draft site plan agreement to legal in advance, front end review and external agency approvals prior to application submission, update site plan approval guidelines, and review practice of conditional building permits issuance prior to site plan approval.

Establish a one-time opportunity to extend draft plans of subdivision that have lapsed within five years

Bill 109 permits the municipality to deem a draft plan of subdivision application not to have lapsed unless:

- Five or more years have passed since approval
- Approval has previously been deemed to not have lapsed
- A sale agreement has been entered into

Staff supports this change to the *Planning Act* and have no concerns.

Establishing a new planning tool called ‘Community Infrastructure and Housing Accelerator’ where municipalities can request the Minister for an Order similar to a Minister's Zoning Order (MZO)

The Community Housing Accelerator / Minister Order at request of the municipality is a new tool as part of Bill 109 changes to the Planning Act. The MZO request requires the Minister's decision. More detailed Guidelines are required to direct municipalities in the use of this tool.

Current information states that a Community Infrastructure and Housing Accelerator can be used to facilitate priority developments as follows:

- land, buildings, and structures for health, long-term care, education, recreation, socio-cultural activities, and security and safety
- any type of housing, including community housing, affordable housing and market-based housing
- buildings that would facilitate employment and economic development, and
- mixed-use developments.

A Community Infrastructure and Housing Accelerator cannot be used in the Designated Greenbelt Area.

The Community Infrastructure and Housing Accelerator circumvents the comprehensive planning process. While it can be used to support the vast majority of developments outside of the greenbelt, prudence is suggested in its use to ensure the proper planning process, including public participation and stakeholder input, continues to be a pillar of the approval process.

In Transit Oriented Communities (TOCs), a maximum parkland contribution would be established and require 100% credit and acceptance of encumbered parkland

The following land conveyance is established for park purposes in an area designated transit oriented community:

- 10% of land or value where development land is five hectares or less in area or
- 15% of land where development is greater than five hectares in area

The change with respect to parkland for Transit Oriented Communities is very concerning. The proposed formula of 10% of land or value where development land is five hectares or less in area or 15% of land where development is greater than five hectares in area does not take into account the density of development in these communities. Parkland requirements need to be associated with population levels so cities can provide amenities such as parkland, soccer fields, baseball diamonds, that homebuyers expect to have as part of their community.

For example the provincial Bridge Station Transit Oriented Community in Markham includes approximately 25 ha of land and proposes 5.04 hectares of parkland. While the enhanced Minister's Zoning Order for this area provides for up to 5.04 hectares of parkland Bill 109 would have only permitted up to 3.75 hectares (15% of the total land area of 25 hectares). The City would also be unable to secure funds to provide additional parkland nearby using cash-in-lieu of parkland.

NEXT STEPS

Staff has retained KPMG to undertake a Lean process review through the Provincial Streamline Development Approval Fund which will address Bill 109 provisions for fee refunds and make recommendations. Staff is also working with York Region and the local municipalities through a working group to determine options to address this issue and could inform the Lean process.

The site plan delegation requirement from Bill 109 will be implemented by updating the City's delegation by-law, amending the City's Official Plan to require site plan applications to have complete application requirements, and updating processes in ePLAN to include a site plan deeming process for a complete application.

FINANCIAL CONSIDERATIONS

Detailed review of the implications of Bill 109 from a financial perspective will be conducted however, it is anticipated that fee refunds, based on current processes and timelines, would approach the majority of all fees collected. In order to meet the new accelerated timelines, increased staffing resources is anticipated to be required for Planning & Urban Design, Engineering and Legal staff as well as commenting

departments to meet the new development processing timelines which would be a component in a broader set of development review process changes.

HUMAN RESOURCES CONSIDERATIONS

Not applicable

ALIGNMENT WITH STRATEGIC PRIORITIES:

This report addresses Growth Management and Municipal Services priorities with an emphasis on the goals “Exceptional Services by Exceptional People” and “Safe, Sustainable and Complete Community” of the Building Markham’s Future Together Strategic Plan.

BUSINESS UNITS CONSULTED AND AFFECTED:

Planning & Urban Design, Policy & Research, and Legal Services

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ATTACHMENTS: