



Report to: Development Services Committee

Meeting Date: May 2, 2023

SUBJECT: Comments on the *Helping Homebuyers, Protecting Tenants Act, 2023* (Bill 97) and Associated Changes

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REVIEWED BY: Building, Legal, Economic Development

RECOMMENDATION:

- 1) That the report dated May 2, 2023 titled “Comments on the *Helping Homebuyers, Protecting Tenants Act, 2023* (Bill 97) and Associated Changes” be received;
- 2) That the City not support the proposed changes to the *Planning Act* that would:
 - a) Exclude institutional and commercial uses (including office and retail uses) not associated with manufacturing or warehousing from the definition of “employment area”;
 - b) Authorize the Minister to exempt planning approvals for uses permitted by a Minister’s Zoning Order from complying with provincial or local policies; and,
 - c) Enable appeal rights to individuals and public bodies when an interim control bylaw is initially passed.
- 3) That the City support proposed changes to the *Planning Act* that would:
 - a) Postpone the start date for planning application fee refunds to July 1, 2023, and request more information about the exemption provision; and,
 - b) Expand the use of site plan control for developments with less than 10 units and request further exemptions.
- 4) That the City not support the proposed changes to the *Development Charges Act* that would extend the exemption of development charges for additional residential units to rural areas;
- 5) That the City support the proposed changes to the *Building Code Act, 1992* to freeze Provincial Building Code Registration and Service Fees;

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- 6) That this report be forwarded to the Ministry of Municipal Affairs and Housing as the City of Markham comments on the Helping Homebuyers, Protecting Tenants Act, 2023 and Associated Changes; and,
 - 7) That Staff be authorized and directed to do all things necessary to give effect to this resolution.

EXECUTIVE SUMMARY:

On April 6, 2023, the Province of Ontario released the [Helping Homebuyers, Protecting Tenants: Ontario's Housing Supply Action Plan April 2023](#) (the "Action Plan"), and tabled the [Helping Homebuyers, Protecting Tenants Act, 2023 \(Bill 97\)](#) for comment with consultation deadlines on May 6, and 21 and June 5, 2023. The Action Plan and Bill 97 propose a suite of legislative, regulatory and policy changes intended to advance the Province's goal of increasing housing supply and affordability.

The majority of the proposed changes in the Helping Homebuyers, Protecting Tenants Act, 2023 (Bill 97) will amend seven statutes governing land use planning, development and rental housing in Ontario and are technical in nature. The proposed changes also introduce a new Provincial Planning Statement that would integrate the Provincial Policy Statement, 2020 and A Place to Grow: Growth Plan for the Greater Golden Horseshoe into a province-wide policy document.

This report provides comments on the proposed changes with consultation deadlines on May 6 and May 21, 2023. Based on the analysis completed by City staff, the proposed changes, if enacted will result in:

- limiting the range of uses that can be designated in new employment areas, and increasing employment conversion pressure on lands that do not meet the new provincial definition for "areas of employment";
- new ministerial powers that exempt planning approvals for uses permitted by Minister's Zoning Orders from aligning with local and provincial policies;
- clarifying the limits or conditions the Minister can impose on a municipality's ability to prohibit and regulate the demolition or conversion of residential rental properties; and
- reducing the ability of a municipality to collect development charges for additional residential units in Rural Areas.

Staff recommend that Council not support the majority of the proposed changes. The only exceptions that is recommended for support is related to amendments proposed to the *Planning Act* to postpone the start date for planning application fee refunds to July 1st 2023, and expand the use of site plan control for developments with less than 10 units, and to the *Building Code Act, 1992* to freeze Provincial Building Code Registration and Service Fees.

A subsequent report will be brought to DSC on May 30, 2023 with comments on the proposed Provincial Planning Statement to meet the Province's June 5, 2023 deadline.

PURPOSE:

This report provides comments on the Province of Ontario's [Helping Homebuyers, Protecting Tenants Act, 2023 \(Bill 97\)](#) and the associated changes posted on the Environmental Registry of Ontario (ERO) and Ontario Regulatory Registry (ORR) with consultation deadlines on May 6 and May 21, 2023.

BACKGROUND:

On April 6, 2023 the Province of Ontario (the "Province") released [Helping Homebuyers, Protecting Tenants: Ontario's Housing Supply Action Plan April 2023](#) (the "Action Plan"), and tabled the [Helping Homebuyers, Protecting Tenants Act, 2023 \(Bill 97\)](#). The Action Plan and Bill 97 are the latest initiatives by the Province to address the housing crisis in Ontario, and are preceded by the:

- [More Homes, More Choice Act, 2019 \(Bill 108\)](#);
- [More Homes for Everyone Act, 2022 \(Bill 109\)](#); and
- [More Homes Built Faster Act, 2022 \(Bill 23\)](#).

The Action Plan and Bill 97 propose a series of legislative, regulatory and policy changes aimed at further supporting the Province's goal of building 1.5 million homes by 2031 that includes amendments to the following seven statutes, among other things:

1. *Building Code Act, 1992*;
2. *City of Toronto Act, 2006*;
3. *Development Charges Act, 1997*;
4. *Ministry of Municipal Affairs and Housing Act*;
5. *Municipal Act, 2001*;
6. *Planning Act*; and
7. *Residential Tenancies Act, 2006*.

The proposed changes also introduce a new Provincial Planning Statement that would replace the Provincial Policy Statement, 2020 and A Place to Grow: Growth Plan for the Greater Golden Horseshoe with an integrated province-wide policy document.

The Province is undertaking consultation on the proposed changes and has posted 12 items on the Environmental Registry of Ontario (ERO) and Ontario Regulatory Registry (ORR) for comment. The consultation period ranges from 30 to 60 days from the date the initial proposals were posted with the following key deadlines:

- May 6 and 21, 2023; and
- June 5, 2023.

Appendix A to this staff report provides a description of each ERO and ORR proposal and the corresponding consultation deadlines.

This report provides comments on the proposed changes with consultation deadlines on May 6 and May 21, 2023. A subsequent report will be brought to DSC on May 30, 2023 with comments on the proposed Provincial Planning Statement to meet the Province's June 5, 2023 deadline.

It is noted that at the time this report was drafted, a second reading of Bill 97 was completed. The bill has been referred to the Standing Committee on Heritage, Infrastructure and Cultural Policy.

OPTIONS/ DISCUSSION:

The discussion on the proposed changes introduced by the Action Plan and Bill 97 is organized into two components: 1) Helping Homebuyers, Protecting Tenants Act, 2023 (Bill 97), and 2) Other Associated Registry Postings. Detailed staff comments on the proposed changes are provided in Appendix B.

1. Helping Homebuyers, Protecting Tenants Act, 2023 (Bill 97)

Bill 97 proposes a series of technical changes to seven statutes governing land use planning, development and rental housing in Ontario. The proposed changes are generally intended to:

- Strengthen tenants' rights and protections;
- Help prospective homebuyers;
- Facilitate new housing development; and
- Streamline provincial land use planning policy.

A summary of the key changes proposed by Bill 97 with implications for Markham is provided below with staff comments.

Amending the definition of “area of employment” to exclude institutional and commercial uses (including office and retail uses) not associated with manufacturing or warehousing

Bill 97 proposes changes to the *Planning Act* that would scope the definition of “area of employment” to include only manufacturing, warehousing and ancillary uses, and exclude new institutional and commercial uses (including office and retail uses) not associated with manufacturing or warehousing from being designated in official plans for clusters of business and economic uses.

A new subsection is also proposed to be added to the *Planning Act* that would allow municipalities to maintain employment areas with existing institutional or commercial uses not associated with manufacturing or warehousing if two conditions are satisfied:

1. The parcels of land in question are subject to official plan policies authorizing the continuation of the use.

2. The use was lawfully established on the parcel of land before the day the “area of employment” definition amended by Bill 97 is enacted.

The proposed change means that only employment areas with the prescribed uses will be subject to employment area policies in local official plans, as well as those in the proposed Provincial Planning Statement to plan, protect and preserve employment areas. However, if official plan policies are in place that authorize the continuation of institutional and commercial uses and the uses were in place prior to Bill 97 coming into effect, they can be maintained. It is noted that provisions in the *Planning Act* that restrict appeals regarding municipal decisions refusing the removal of lands from employment areas is maintained.

The Markham Official Plan contains four employment land use designations (i.e., ‘Business Park Employment’, ‘Business Park Office Priority Employment’, ‘Service Employment’ and ‘General Employment’). Appendix C shows the lands in Markham designated as employment areas in the 2014 Markham Official Plan, including lands in the Future Employment Area designation that comprise the Markham Innovation District (MiX). The ‘Business Park Office Priority Employment’ designation is the only employment land use designation that does not provide for manufacturing or warehousing uses and is intended for higher density prestige office development primarily on lands adjacent to the Highway 404 and Highway 407 interchange.

In addition to the lands shown in Appendix A, approximately 170 hectares of new employment area lands were added to Markham’s urban boundary through the 2022 York Region Official Plan. These lands, and the Future Employment Area lands noted above, do not have an employment area designation. If Bill 97 is enacted, the City would be limited in the range of uses as outlined in the proposed definition.

The City is an urban municipality and while warehousing and manufacturing are important economic drivers, Markham is home to many office, commercial, and institutional uses that support a diverse economy. The ability to secure and protect a wide range of employment uses is critical to supporting the development of complete communities. Staff recognize there are opportunities to seek housing on employment lands where sensitive uses are compatible with employment uses, however the proposed changes would limit the range of uses that can be designated in new employment areas, put employment lands that do not meet the new definition at risk of conversion to non-employment uses, as well as lead to the potential loss of critical jobs and services within the community. The Province should maintain the current definition of areas of employment and pursue flexibility through Provincial plans to introduce sensitive uses within these areas where appropriate land use compatibility guidelines can be addressed and existing jobs can be maintained or increased.

City staff recommend not supporting the proposed change to the “area of employment” definition in the *Planning Act*.

Introducing additional Ministerial powers in the *Planning Act* related to Minister's Zoning Orders, among other things

Several changes proposed to the *Planning Act* would add new ministerial powers authorizing the Minister to:

- Make regulations providing for transitional matters that the Minister considers necessary to facilitate the implementation of the proposed Provincial Planning Statement;
- Exempt certain subsequent approvals required to establish uses permitted by Minister's Zoning Orders (MZO) from aligning with provincial plans or local policies; and
- Require landowners to enter into agreements with municipalities or the Minister to address matters that the Minister considers necessary for the appropriate development of land in relation to lands that have been assigned to the Provincial Land and Development Facilitator.

The proposed changes would have varied impacts on planning at the local level. In terms of the proposed regulations, the transitional provisions would enable the Minister to create regulations to facilitate the implementation of a provincial policy statement (i.e., the proposed Provincial Planning Statement).

As for MZO, the ability of the Minister to utilize MZO as a tool to regulate the use of land, buildings and structures is outlined in the *Planning Act*. The changes proposed through Bill 97 would enable the Minister to order that lands subject to a MZO do not need to comply with provincial or municipal policy in order to obtain other land use planning approvals (e.g., plans of subdivision).

MZO is a tool that can be used by the Province to streamline the approval process for matters of provincial interest. However, staff are concerned about the lack of transparency and public process through the use of an MZO in contrast to what is undertaken through local planning. The use of the tool, which prevails over a municipality's zoning by-law, has increased notably in recent years. Between 2020 and 2022, seven MZO in Markham corresponding to three different applications by landowners were approved by the Province. The proposed changes are concerning as they expand the Ministerial powers associated with the use of MZO, and if approved will further limit a municipality's ability to achieve the land use and growth management objectives established in local plans and by-laws and can erode public confidence in the planning process.

Further, additional ministerial authority requiring landowners and municipalities to enter into agreements where a Provincial Land Development Facilitator has been appointed may be a positive tool for managing land use and related issues before they are brought to the Ontario Land Tribunal if the agreements require a landowner to pay for or provide

contributions that are more than the those outlined in the *Planning Act*, the *Development Charges Act*, or any other legislation.

Staff object to the proposed addition of Ministerial powers to exempt planning approvals for uses permitted by MZO from aligning with provincial or local policies.

Postponing the start date for planning application fee refunds by six months

Bill 109 introduced changes to the *Planning Act* requiring municipalities to refund fees for planning applications if a decision is not issued within the prescribed statutory timelines. The refund requirements came into force on January 1, 2023.

Changes proposed by Bill 97 would postpone the date of the application fee refund provisions by six months to July 1, 2023, and void any fee refunds required for applications filed prior to this date.

Further changes would also enable the Minister to make regulations exempting certain municipalities from development application fee refunds, however it is not yet clear which municipalities would benefit from this exemption.

Staff support the extension of the application fee refund provisions to July 1, 2023, and request more information about how the Minister intends to use the exemption provision. It is also noted that staff have continued concerns with any provisions that require a municipality to refund fees collected for the purposes of service fees. These type of provisions will penalize municipalities for outcomes that are beyond their control, impact the fiscal sustainability of municipalities, and may lead to an increase in Ontario Land Tribunal hearings, among other things. A staff report on the new application review process for Markham that responds to Bill 109 is targeted for DSC in June.

Enabling appeal rights for persons or public bodies at the initial passing of an Interim Control Bylaw

The *Planning Act* permits a municipality to pass an interim control bylaw (ICBL) for up to one year prohibiting the use of land, buildings or structures or a defined area in a municipality until a review of the applicable land use planning policies is completed. The ICBL may be extended as long as the total period of time it is in effect does not exceed two years. Currently, notice by the clerk of a municipality must be provided within 30 days of the passing of an ICBL, and only the Minister may appeal the ICBL during the 60-day period after the ICBL was initially passed. Individuals or public bodies can only appeal the ICBL if it is extended.

The changes proposed through Bill 97 would shorten the period during which the clerk of a municipality is required to give notice of the passing of an ICBL from 30 to 20 days, and enable, once again, the right of any individual or public body who received notice of the initial passing of an ICBL to appeal the bylaw (instead of only when it is extended).

The appeal timelines are however also shortened and appeals must be made within 50 days of the bylaw being passed.

The implication for Markham is that the proposed changes to notification requirements and appeal rights concerning an ICBL may limit the City's ability to pause the approval of applications and permits while reviewing the land use planning policies of a specific area, significantly reducing the viability of the ICBL tool.

Staff object to the proposed changes and have concerns about how enabling appeal rights to individuals and public bodies when an ICBL is initially passed would be used in practice to interfere with studies initiated through an ICBL.

Clarifying limits or conditions the Minister can impose on a municipality's ability to prohibit and regulate the demolition or conversion of residential rental properties

The *Municipal Act* enables a municipality to prohibit and regulate the demolition or conversion of residential rental properties with more than six units. The amendment proposed by Bill 97 builds on changes made through Bill 23 that authorize the Minister to make regulations imposing limits, restrictions and conditions on the powers of a municipality to prohibit and regulate the demolition and conversion of residential rental properties. The proposed changes provide further details in the *Municipal Act* on the specific matters the Minister can prescribe, this includes:

- prescribing requirements to be contained in rental replacement or demolition bylaws;
- conditions required for obtaining a permit;
- prescribing requirements local municipalities must impose on owners of land;
- requiring an owner of land to make payments and to provide compensation; and
- steps/conditions that local municipalities must meet before passing a by-law.

The Markham Official Plan currently includes policies that address the protection of rental units from demolition and conversion, however the City does not have a rental replacement or demolition control by-law. Action 13 in Markham's Affordable and Rental Housing Strategy that was endorsed by Council in July 2021 states that the City should consider the implementation of a rental housing protection by-law.

In relation to the proposed changes to the *Municipal Act*, the Province, through ORR Proposal 23-MMAH005, is seeking feedback on what should be included in the regulations to create a balanced framework around municipal rental replacement bylaws. Staff comments on the proposal are provided in Appendix B.

Staff are of the opinion that, while Bill 23 enabled the minister to make regulations to impose limits and conditions on municipal demolition or rental conversion by-laws, the proposed changes aim to clarify the specific matters the minister can regulate. This may provide clarity and consistency across municipalities. However, at a minimum, any forthcoming regulations to be proposed must protect tenants and the existing rental housing supply, including 1:1 replacement of existing units and fair and equitable

compensation for displaced tenants. Staff request that the Ministry consult on the draft regulation.

Prescribing areas where the exemption from site plan control for residential developments containing 10 or less units does not apply

Bill 23 amended the *Planning Act* to exempt residential development with 10 or fewer residential units from site plan control. [Staff were not supportive of this proposal.](#)

Bill 97 proposes to amend the exemption by creating a new regulation that would permit the use of site plan control for residential developments with 10 or less units on parcels of land any part of which is located within:

- 120 metres of a shoreline; and
- 300 metres of a railway line.

City staff support the proposed amendment, and note that it will allow a portion of the Unionville and Markham Village heritage areas to be subject to site plan control if the municipality wishes. See Appendix D for a map of the impacted areas. Staff recommend the full exemption of residential development with 10 or fewer residential units from site plan control as it pertains to development in the City of Markham. Should the Province not agree to full exemption for the City, Staff recommend that the proposed exemption be expanded to permit the use of site plan control for residential developments with less than 10 units in other circumstances where additional development considerations are required such as:

- Intensification/Infill development that abuts existing low density residential areas;
- Areas with servicing constraints;
- Regional Road access is required;
- Safe and appropriate site access/egress need to be demonstrated; and
- Heritage Conservation Districts

Exempting the creation of additional residential units from development charges to include rural areas

The proposed change to the *Development Charges Act* would exempt the creation of an additional residential unit in certain scenarios from development charges on “a parcel of land”, instead of limiting the exemption to “a parcel of urban residential land”.

Markham’s Affordable and Rental Housing Strategy identifies the review of permissions for additional residential units as a priority action item. City staff are supportive of new opportunities to provide appropriate intensification in urban and rural areas, however further analysis is needed to determine where additional residential units can be accommodated and what kind of infrastructure and services, including schools and parks, are needed to support new residents and how they would be funded. The exemption of additional residential units from development charges has an important implication as it means that the cost to assess the infrastructure needs and upgrades required to support

gentle increases in density in urban or rural areas would be transferred to the property tax base.

Staff are not supportive of the proposed change that would extend the exemption of development charges for additional residential units in rural areas.

Proposing changes that clarify the implementation of additional residential units

Changes are also proposed to the *Planning Act* that provide clarification on measures previously implemented through Bill 23 regarding additional residential units. These include clarifying that:

- More than one parking space can only be required for the primary residential unit; and
- No appeal rights for decisions on official plan and zoning by-law amendments to authorize the use of a residential unit in a building or structure ancillary to single, semi, or row house is expanded from ‘parcel of urban residential land’ to ‘parcel of land’. It should be noted that additional residential units are permitted as of right on parcels of urban residential land.

Staff have no comments on the proposed changes.

Freezing Provincial Building Code Registration and Service Fees would provide annual cost savings for practitioners in the public and private sector

The Province is proposing to freeze Provincial Building Code Fees at the level set out in the Building Code as of January 1, 2023. The fees that would be impacted include application and renewals for Building Official registration, Designer Firm registration, onsite Sewage System registration, and applications to the Building Code Commission and Rulings by the Minister.

The proposed changes will benefit building officials seeking to be qualified and registered by the Ministry of Municipal Affairs and Housing. The City of Markham currently has 45 Building Officials that require annual registration. The proposed freezing of fees would be a financial benefit to the City. Further the Province has stated that the proposed change would provide the building sector a cost savings of \$37,344 each year. It should be noted that no timeframe has been provided for how long the fee freeze would last.

Staff support the proposed amendments to the Building Code Act, 1992 to freeze Provincial Building Code Registration and Service Fees.

2) Other Associated Registry Postings

In addition to the Helping Homebuyers, Protecting Tenants Act, 2023, the Province is proposing amendments as well as seeking feedback on regulations to enhance tenants’ rights and protections, assist prospective homebuyers, and facilitate new housing

development. Staff do not have any comments on the proposals, and the following summary is provided for information purposes.

Proposals intended to strengthen tenants' rights and protections by:

- Enhancing protections from evictions due to renovations, demolitions, and conversions to personal use by the landlord.
- Investing \$6.5 million to appoint additional Landlord and Tenant Board adjudicators to improve service standards, clear case backlog and reduce decision timeframes.
- Specifying conditions permitting a tenant to install a window or portable air conditioner.
- Increasing maximum fines for landlords convicted of an offense.

Proposals intended to assist prospective homebuyers by:

- Creating protections for first home savings accounts.
- Establishing cooling-off periods for purchases of newly built freehold homes

Proposals intended to facilitate new housing development by:

- Exploring modular construction to reduce the cost of attainable housing.
- Freezing 75 provincial fees at current levels.
- Redesigning the qualification program for building inspectors and supporting new internship programs to address the shortage of building inspectors.

In addition to the changes summarized above, it is noted that effective April 6, 2023, Schedule 9, Section 7 of Bill 23 is in-effect allowing the Minister to amend municipal official plans if the Minister is of the opinion that a matter of provincial interest could be adversely affected.

NEXT STEPS:

City staff recommend that this staff report be forwarded to the Ministry of Municipal Affairs and Housing as the City of Markham's comments on the Helping Homebuyers, Protecting Tenants Act, 2023 (Bill 97) for postings with May 6/21 commenting deadlines. A staff report will be brought forward to Council on May 30 with City staff comments on the proposed Provincial Planning Statement.

FINANCIAL CONSIDERATIONS

If Bill 97 is passed the *Planning Act* application refund of fees provisions would be extended to July 1, 2023. Freezing Provincial Building Code Registration and Service Fees would provide annual cost savings for practitioners in the public and private sector.

HUMAN RESOURCES CONSIDERATIONS

There are no direct human resource implications related to this report.

ALIGNMENT WITH STRATEGIC PRIORITIES:

Bill 97 and the associated registry postings do not fully align with the Goal 3.2 of Building Markham's Future Together, 2023-2023 (BMFT): Build complete communities that offer a range of housing and employment opportunities, transportation options and

outstanding community amenities.” While Bill 97 will support Provincial efforts to increase the supply of housing, it does so at the expense of the other conditions required to support the development of a complete community (e.g., employment, infrastructure, community amenities, etc.).

BUSINESS UNITS CONSULTED AND AFFECTED:

All impacted city departments have been consulted on this staff report.

RECOMMENDED BY:

Darryl Lyons, RPP, MCIP
Deputy Director, Planning & Urban Design

Giulio Cescato, RPP, MCIP
Director, Planning & Urban Design

Arvin Prasad, RPP, MCIP
Commissioner, Development Services

ATTACHMENTS:

Appendix A – ERO and ORR Postings Associated with the Helping Homebuyers, Protecting Tenants Act, 2023

Appendix B – City of Markham Comments on the Helping Homebuyers, Protecting Tenants Act, 2023 (Bill 97) and Associated Changes

Appendix C – Employment Area Designations in Markham

Appendix D – Lands within 300m buffer of Railway line