



Special Powers and Duties of the Head of Council

(Strong Mayor Powers)

General Committee

November 21, 2023



Purpose of Presentation

- To provide a high-level overview of the Strong Mayor Powers (SMPs) in Part VI.1 of the *Municipal Act, 2001* and associated Regulations.
- To update Council on the work Markham City staff have done to date to review and integrate SMPs into various City by-laws, policies and processes.



Presentation Outline

1. Introduction to SMPs
2. SMP Legislative and Regulatory Context
3. Strong Mayor Powers
 - Legislative Powers
 - Administrative Powers
 - Financial Powers
4. Next Steps



1. Introduction to SMPs

- Over the past year, the Heads of Council in some Ontario municipalities have been given additional powers & duties known as Strong Mayor Powers (SMPs).
- According to the Provincial Government, the purpose of SMPs is to provide tools to assist the Heads of municipal Councils to cut red tape & speed up the delivery of key shared municipal-provincial priorities such as housing, transit & infrastructure in their municipalities.
- Reaction to SMP legislation generally appears mixed. AMO (Association of Municipalities Ontario) and AMCTO (Association of Municipal Managers, Clerks and Treasurers of Ontario) have both expressed concern with some aspects of Bill 3.



1. Introduction to SMPs (Cont'd)

- Any decision, veto or other exercise of power made under the SMP provisions of the *Municipal Act* is valid as long as it was exercised legally and in good faith. To date, there have been no challenges to the exercise of a SMP.
- There is no mechanism for a municipality and/or Mayor to opt-out of these new rules.
- Even if never used, the City of Markham's processes in specific areas need to be aligned to the new rules.



2. SMP Legislative & Regulatory Context

- SMPs were initially created through the passage of **Bill 3 - The Strong Mayors, Building Homes Act, 2022** which received Royal Assent on September 8, 2022 & came into force on November 23, 2022 (following the Municipal Election on October 24, 2022).
- Bill 3 amended existing legislation to provide expanded powers & duties to the Mayors in Toronto & Ottawa (*City of Toronto Act (COTA)*, *Municipal Act (MA)*, *Municipal Conflict of Interest Act (MCIA)*).
- Bill 3 established a new Part VI.1 (“Special Powers & Duties of the Head of Council”) in the MA. These Part VI.1 rules are commonly referred to as “Strong Mayor Powers”.



2. SMP Legislative and Regulatory Context (Cont'd)

- The [MCIA](#) was amended to extend the declaration of interest provisions to the Mayor's exercise of powers and duties outside of a meeting.
- Municipal Mayors are now required to declare any interests in writing to the City Clerk, not use the power and refrain from influencing the decisions of the City in respect of the matter.
- Municipalities are required to maintain a registry of any declared interests. The City of Markham's Legislative Services staff maintain a Declaration Registry.



2. SMP Legislative and Regulatory Context (Cont'd)

- **Bill 39, *The Better Municipal Governance Act, 2002***, received Royal Assent on December 8, 2022.
- Schedule 3 (*Municipal Act*) and Schedule 1 (*City of Toronto Act*) both came into force on December 20, 2022.
- Among other things, Bill 39 added mayoral power for Toronto and Ottawa to introduce certain by-laws related to prescribed provincial priorities that would require less than a majority to pass.



2. SMP Legislative and Regulatory Context (Cont'd)

- [Ontario Regulation 530/22](#) - designated the municipalities subject to Part VI.1 of the *Municipal Act, 2001* (only the City of Ottawa was originally designated).
- [Ontario Regulation 180/23](#) - added [26 municipalities](#) to the list of SMP municipalities where the head of council has strong mayor powers and duties.
- The 26 municipalities are high growth municipalities that have committed to a housing pledge. They include the City of Markham as well as the cities of Richmond Hill and Vaughan.
- The proposed amendments came into effect on July 1, 2023.



2. SMP Legislative and Regulatory Context (Cont'd)

- On August 21, 2023, the Premier announced at the AMO Conference that an additional 21 Ontario Municipalities will be given SMPs as of October 31, 2023.
- This is conditional on the Heads of Council from these municipalities providing written confirmation by October 15, 2023 of their commitment to Provincial housing targets.
- The identified municipalities are projected to have populations of 50,000 by 2031. They include Aurora, East Gwillimbury, Stouffville, and Georgina from York Region.

Note: There are 49 municipalities in Ontario where the Heads of Council have SMPs.



2. SMP Legislative and Regulatory Context (Cont'd)

- **Sections 284.10 and 284.11**, stipulate that the exercise of the SMP provisions of Part VI.1 regarding meetings, veto powers (except for veto powers related to the budget process, which are covered under **Ontario Regulation 530/22**), and by-laws must be connected to Provincial Priorities.
- **Ontario Regulation 580/22** defines Provincial Priorities as:
 1. Building 1.5 million new residential units by December 31, 2031.
 2. Constructing and maintaining infrastructure to support housing, including: transit, roads, utilities, and servicing.



3. Strong Mayor Powers - General

- The SMPs in Part VI.1 of the Act fall into three broad categories:
 1. Legislative Powers (*e.g. the power to veto by-laws, the power to require Council to consider a matter*)
 2. Administrative Powers (*e.g. the power to appoint a City Manager, the power to establish committees*)
 3. Financial Powers (*e.g. the powers and duties to propose and adopt a budget*)
- The Mayor can delegate Administrative Powers to certain parties.
- The Mayor cannot delegate Legislative and Financial Powers.



3. Strong Mayor Powers – Mayoral Decisions

- Mayoral power exercised or performed under Part VI.1 must be exercised in writing (via a signed “Mayoral Decision”).
- When exercising an SMP, the Mayor shall, by the next business day:
 - provide written record to each Member of Council and to the City Clerk, and,
 - make the written record available to the public (subject to the *Municipal Freedom of Information and Protection of Privacy Act*).



3. Strong Mayor Powers – Mayoral Decisions (Cont'd)

- As the first municipalities to receive SMPs, the Cities of Ottawa and Toronto established a new legislative instrument called a “*Mayoral Decision*” to satisfy the legislative requirement to document decisions.
- The format of these Mayoral Decisions generally contain the Mayor’s signature, the municipal logo, the date of the Decision, and a Decision number. They are retained by Clerks staff in the same manner as by-laws.
- Mayoral Decisions in Ottawa and Toronto are posted to an online repository. When a Decision is posted, an email notice is sent to their Members of Council and identified senior staff.



3. Strong Mayor Powers – Mayoral Decisions (Cont'd)

- Sample Mayoral Decisions for the City of Ottawa:
<https://ottawa.ca/en/city-hall/open-transparent-and-accountable-government/public-disclosure/mayoral-decisions-pursuant-municipal-act-2001>
- Sample Mayoral Decisions for the City of Toronto:
<https://www.toronto.ca/city-government/council/council-committee-meetings/mayoral-decisions/>



3. Strong Mayor Powers – Mayoral Decisions (Cont'd)

- Staff in Ottawa and Toronto have advised of a number of benefits of this approach.
 - A “Mayoral Decision” is recognized as an official and authoritative document and helps to distinguish between the formal exercise of authority and other informal powers.
 - It also avoids the use of informal media such as email, as forms of written instructions.
 - Mayoral Decisions aid in the process of identifying responsive records to access to information requests under MFIPPA.



3. Strong Mayor Powers – Mayoral Decisions (Cont'd)

- Ultimately, staff in each impacted municipality must work with their Head of Council to establish a standard template for Mayoral Decisions as well as a process for making the documentation associated with these Decisions available to the public.
- Markham City staff are currently working with Mayor Scarpitti to finalize the design of his Mayoral Decisions.
- City staff have also developed an online repository for written documentation at <https://www.markham.ca/wps/portal/home/about/city-hall>.



3. SMP Legislative Powers –By-laws

- Part VI.1 requires the Mayor to approve (in writing) all by-laws related to Provincial Priorities.
- Only the Mayor can determine if a by-law relates to a Provincial Priority.
- Because “Provincial Priorities” are very broadly defined, the Mayors in many designated municipalities (including the City of Toronto) are now issuing a Mayoral Decision to approve all of the by-laws enacted by Council after each Council meeting.
- This is done to ensure the force and effect of by-laws are in place as of the meeting date as per previous practice. These approvals (expressed as Mayoral Decisions) are subsequently posted online.



3. SMP Legislative Powers –By-laws (Cont'd)

- Staff support a different interpretation of the legislation. Namely, that the position that all bylaws *prima facie* relate to Provincial Priorities is overly broad.
- Accordingly, if Mayor Scarpitti considers a by-law to relate to a Provincial Priority, he will advise the City Clerk in advance of the Council meeting. If he subsequently wishes to veto the by-law, he will issue an Intent to Veto in accordance with the process outlined in the legislation.



3. SMP Legislative Powers – By-laws (Cont'd)

- Regardless of any Procedural By-law rules, if the Mayor is of the opinion that a by-law could potentially advance a prescribed Provincial Priority, the Mayor may propose the by-law to Council and require Council to consider/vote on the by-law at a meeting.
- The Mayor shall, in accordance with regulations, provide to the City Clerk and each Member of Council:
 - A copy of the proposed by-law, and,
 - The Mayor's reasons for the proposed by-law
- A proposed by-law from the Mayor is passed if more than 1/3 of the Members of Council (5 of 13) vote in favour of the by-law.
- The Mayor may vote as a Member of Council on the proposed by-law.



3. SMP Legislative Powers – By-law Veto

- SMPs give the Mayor veto power over certain by-laws enacted:
 - Under the *Municipal Act, 2001*
 - Under the *Planning Act*
 - Under other legislation prescribed in the regulations
 - E.g. the *Development Charges Act* is prescribed legislation in O.Reg. 530/22
- The veto can only be used when the Mayor is of the opinion that all or part of a by-law could potentially interfere with a Provincial Priority.



3. SMP Legislative Powers – By-law Veto (Cont'd)

- There is a prescribed process that must be followed to veto a by-law.
- After Council votes on a By-law, the Mayor must provide notice of intention to veto to the Clerk within 2 days.
 - The City Clerk is required to provide a copy of the notice to Members of Council and to the public.
- If the Mayor has given notice of intention to veto, within 14 days of the Council meeting, the Mayor is required to:
 - Provide written approval of the by-law; or
 - Veto the By-law in writing with reasons.



3. SMP Legislative Powers – By-law Veto (Cont'd)

- If the Mayor vetoes a By-law, within 21 days of receiving the veto notice from the City Clerk, Council can override the veto with a 2/3 vote (9 of 13).
 - The Mayor can vote on the proposal to override a veto.
- If Members of Council want to override a veto this would have to be by:
 - A Motion from a Member of Council at a Regular Council Meeting; or
 - A Motion from a Member of Council at a Special Council meeting called by the Mayor or a Majority of Council for that purpose.



3. SMP Administrative Powers – CAO/Organizational Structure

- The description of the CAO role in the MA is unchanged. Assignment of “other duties as assigned” is now the responsibility of the Mayor.
- With SMPs, the Mayor decides whether to appoint someone as Chief Administrative Officer (CAO). The authority to appoint a CAO can be delegated to Council only.
- SMPs also include the following Administrative Powers related to the Organizational Structure:
 - The power to establish Organizational Structures for the City.
 - The power to hire, dismiss or exercise any other prescribed employment powers with respect to the head of any division or any other part of the organizational structure.



3. SMP Administrative Powers – Statutory Officers

- SMPs related to organizational structure do not include the power to hire and dismiss statutory officers including:
 - City Clerk or Deputy Clerk
 - Treasurer or Deputy Treasurer
 - Integrity Commissioner, Ombudsman or Auditor General
 - Chief Building Official
 - Fire Chief
- The Administrative Powers related to organizational structure can be delegated to Council or to the CAO.



3. SMP Administrative Powers - Direction to Staff

- Under SMPs, the Mayor may, in writing, exercise powers of the City to direct employees (via a “Mayoral Direction”) to undertake research, provide advice to the Mayor and City Council on City policies and programs and to implement decisions made by the Mayor under Part VI.1.
- When directing staff, the Mayor must, by the next business day, provide a written record of the direction to the City Clerk and to the CAO. Unlike a Mayoral Decision (which must be made available to the public), Mayoral Directions do not need to be publicly posted.



3. SMP Administrative Powers - Direction to Staff (Cont'd)

- Sample Mayoral Direction to Staff from the City of Mississauga:

<https://www.mississauga.ca/wp-content/uploads/2023/07/Mayoral-Direction-to-Staff-re-2024-Budget.pdf>

- Sample Mayoral Direction to Staff from the Town of Ajax:

<https://www.ajax.ca/en/inside-townhall/resources/Documents/MDecision-No-1-2023.pdf>

- Sample Mayoral Direction to Staff from the City of Waterloo:

<https://www.waterloo.ca/en/government/resources/Documents/Cityadministration/Mayoral-Decisions/Mayoral-Direction-D2023-001-2024-2026-Operating-and-Capital-Budget.pdf>



3. SMP Administrative Powers - Committees and Local Boards

- With SMPs, the Mayor is assigned the power to appoint chairs and vice chairs of prescribed local boards (to-date, no local boards have been prescribed).
- The Mayor is now assigned various powers regarding prescribed committees, including:
 - The power to establish and dissolve committees.
 - The power to appoint chairs and vice-chairs of committees.
 - The power to assign functions.
- These powers may be delegated to Council.

NOTE: these SMP rules only apply to committees whose members are solely comprised of Members of Council.



3. SMP Financial Powers – Budget

- **Ontario Regulation 530/22** provides specific details related to the budget process as a result of the introduction of Strong Mayor Powers.
- The Mayor is now required to prepare a proposed budget for the City each year on or before February 1.
- The Mayor is also required to provide the proposed budget to each Member of Council and the City Clerk, and make it available to the public.
- If the Mayor does not propose the budget by February 1, Markham City Council must prepare and adopt a budget.



3. SMP Financial Powers – Budget (Cont'd)

- After receiving the proposed budget from the Mayor, Markham City Council can amend the proposed budget by passing a resolution within a 30-day review period.
- The Mayor then has 10 days from the end of the Council review period to veto any Council amendment.
- To veto a Council amendment, the Mayor must provide written documentation of the veto and rationale to each Member of Council and the City Clerk on the day of the veto.
- Council can override a Mayor's veto of a Council amendment with a two-thirds majority vote (9 of 13), within a 15-day period, after the Mayor's veto period.



3. SMP Financial Powers – Budget (Cont'd)

- There are mechanisms in place to enable Council and the Mayor to shorten their respective review, veto and override periods.
- For example, Council could pass a resolution to shorten their review and override period, and the Mayor could provide written documentation to Members of Council and the City Clerk to shorten the veto period.
- At the end of this process, the resulting budget is deemed to be adopted by the City.



3. SMP Financial Powers – Budget (In-Year Amendments)

- The Mayor is also able to initiate and prepare in-year budget amendments to raise additional amounts from property tax.
- The Mayor may propose the budget amendment by sharing the proposed budget amendment with each Member of Council and the City Clerk, and making it available to the public.
- After receiving the proposed budget amendment from the Mayor, Council can amend the proposed budget amendment by passing a resolution within a 21-day review period.
- The Mayor then has 5 days from the end of the Council review period to veto any Council amendment.



3. SMP Financial Powers – Budget (In-Year Amendments)

- To veto a Council amendment, the Mayor must provide written documentation of the veto and rationale to each Member of Council and the City Clerk on the day of the veto.
- Council can override a Mayor's veto of a Council amendment to the proposed budget amendment, with a two-thirds majority vote (9 of 13), within a 10-day period, after the Mayor veto period.
- There are mechanisms in place to enable Council and the Mayor to shorten their respective review, veto and override periods. For example, Council could pass a resolution to shorten their review and override period, and the Mayor could provide written documentation to Members of Council and the City Clerk to shorten the veto period.
- At the end of this process, the resulting budget amendment is deemed to be adopted by the City.

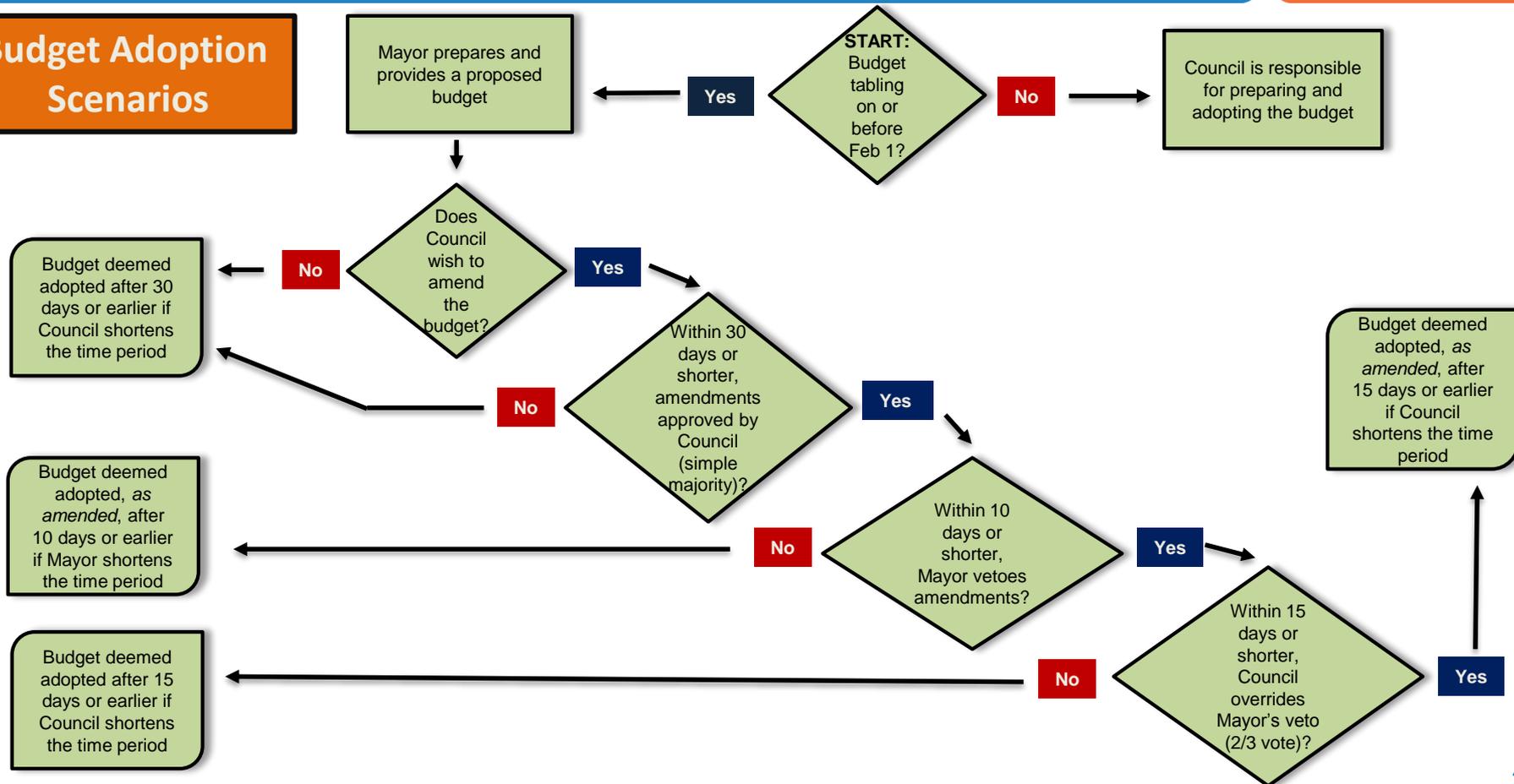


3. SMP Financial Powers – Budget (Cont'd)

- If under section 5.3 of the *Municipal Conflict of Interest Act*, the Mayor is prohibited from using the power and exercising the duty to prepare the proposed budget with respect to a matter:
 - Council may pass a resolution to amend the proposed budget with respect to the matter.
 - The Mayor may not veto the resolution or participate in the discussion on the matter in any way.



Budget Adoption Scenarios





4. Next Steps for the City of Markham

- As of July 1, 2023, Part VI.1 of the MA (the Strong Mayor Powers) now apply to the City of Markham.
- City staff have actively been participating in inter-municipal meetings, including those organized by the AMCTO and the Municipal Finance Officers Association (MFOA), and have initiated regular meetings with the municipalities within York Region.
- Impacted municipalities are grappling with understanding the clear and broader impacts of SMPs.



4. Next Steps for the City of Markham (Cont'd)

- Information on SMP legislation has been posted on the City's website to educate Markham residents.
- Staff from the Financial Services, Legal Services and Legislative Services Departments have been meeting to determine what by-laws (e.g. Procedural By-law) policies, practices and processes (e.g., budget preparation process) may have to be updated to reflect the existence of these Powers.
- Staff have been working with the Mayor and will be engaging Council as processes are confirmed.
 - Staff will be working with the Mayor to finalize and support the 2024 budget process.



Q U E S T I O N S ?