



MEMORANDUM

To: Mayor and Members of Council

From: Arvin Prasad, Commissioner of Development Services
Claudia Storto, City Solicitor and Director of People Services

Prepared by: Duran Wedderburn, Manager Planning, Planning and Urban Design
Maggie Cheung-Madar, Assistant City Solicitor, Legal Services

Date: June 18, 2024

Re: **Cutting Red Tape to Build More Homes Act (Bill 185) – Implementation**

RECOMMENDATION:

1. That the memorandum entitled “Cutting Red Tape to Build More Homes Act (Bill 185) - Implementation” be received;
2. That staff be directed to provide the following comments to the Minister of Municipal Affairs and Housing on the proposed amendment to Ontario Regulation 525/97 to Exempt Certain Official Plan Matters from Approvals Under the Planning Act:

“Staff recommend that provincial approval of matters related to Protected Major Transit Station Areas be scoped to matters in the *Planning Act* regarding the delineation of Major Transit Station Area boundaries and establishing minimum densities in accordance with provincial policy. Staff also recommend that planning approvals for land use designations, densities, and height in Protected Major Transit Station Areas, site-specific development applications, and Secondary Plans should be delegated to the City”; and

3. That staff be directed and authorized to do all things necessary to give effect to this resolution.

BACKGROUND:

On April 10, 2024, the Province released Bill 185, the Cutting Red Tape to Build More Homes Act 2024 as a part of Ontario’s Spring 2024 Red Tape Reduction Package. The intent of the Bill is to support the advancement of the Province’s goal to build 1.5 million homes by 2031. The Bill impacted key legislation including but not limited to the *Planning Act*, *R.S.O 1990*, the *Development Charges Act, 1997*; and the *Municipal Act, 2001*.

The Province undertook consultation on Bill 185 and other measures and posted 8 items on the Environmental Registry of Ontario (ERO) and Ontario Regulatory Registry (ORR) with a commenting deadline of May 10, 2024. Council passed a [resolution](#) on May 15, 2024 with City of Markham comments on Bill 185 and the Proposed Provincial Planning Statement, 2024. Council was generally supportive of the proposed changes in Bill 185 but made recommendations to the Province on matters including the removal of parking requirements in Protected Major Transit Station Areas, Removal of Third-Party Appeals, and Delegated Approval Authority. The majority of the recommendations were not incorporated into the approved legislation, but some positive changes are proposed with respect to delegated approval authority for planning application approvals.

Bill 185 was modified by the Standing Committee on Finance and Economic Affairs on May 29th, 2024 and received Royal Assent on June 6, 2024.

DISCUSSION:

The following section provides an overview of the key changes from Bill 185 that are now in effect.

No Parking Requirements in Protected Major Transit Station Areas

The *Planning Act* limits the ability of official plans and zoning by-laws to require car parking facilities in Protected Major Transit Station Areas or areas designated in official plans for planned higher-order transit areas, where there is a requirement for minimum densities. The Minister also has the ability to further prescribe other areas where no minimum parking can be required and the ability to prescribe a required number of parking spaces. No regulations have been released to date prescribing other areas where no minimum parking can be required or requirements for a specific number of parking spaces.

The City has 22 Protected Major Transit Station Areas identified in the 2022 York Region Official Plan where car parking facilities will no longer be required as per the City's Official Plan and Zoning By-law. These legislative changes will be considered in the on-going Citywide Parking Strategy.

Third-party Appeal Rights

Third party appeal rights for Official Plan and Zoning By-law Amendments have now been removed from the *Planning Act* except for 'Specified Persons' and other select parties, who made written or oral submissions.

At the Standing Committee, modifications were made to the legislation to include the registered owner of any land to which the official plan and zoning by-law would apply and expand the list of 'Specified Person' to include the following:

- Nav Canada and airport authorities with Airport Zoning Regulations;

- Holders of Aggregate Resources Act permits, for lands within 300m of licensed area; and
- Environmental Protection Act approvals that are within an area of employment for lands within 300m and only based on land use compatibility in the Provincial Policy Statement;

For the purposes of appeals to the Ontario Land Tribunal only ‘specified persons’, ‘public bodies’, and ‘registered owners’ that have made oral or written submissions can now appeal official plans, official plan amendment, zoning by-law, zoning by-law amendment, draft plan of subdivision, site plan or minor variances.

Third-party appeals filed prior to the date Bill 185 came into force where no hearings on merits have been scheduled before April 10, 2024 are deemed to have been dismissed effective June 6, 2024. The City of Markham does not have any third-party appeals that would be impacted by this legislative change.

Non-appellant party rights are governed by the Ontario Land Tribunal Act which has not been amended. The result is that individuals that are not “specified persons” or “registered owners”, ratepayer groups and industry organizations no longer have the right to appeal to the Tribunal but can seek party status, as a non-appellant party, or participant status.

Development Application Fee Refunds

Legislation introduced through Bill 109 required municipalities to refund development application fees based on the statutory appeals period in the *Planning Act* are now removed.

Municipalities are no longer required to issue refunds for applications filed after June 6, 2024. Applications filed prior to June 6th are still subject to the fee refunds if the municipality made a decision as of June 6th. In application, this would mean that as of June 7th, if a municipality was required to issue a 25% refund, no further refund would be required regardless of the time it would take to make a decision. However, it should be noted that an applicant's ability to file an OLT appeal on the basis of a non-decision by Council based on prescribed timelines would still be applicable.

There are no development applications that are still subject to the refund provision in the City of Markham. While the refund provision is no longer in place, City staff intend to maintain the development application processing efficiencies established through its response to the More Homes for Everyone Act (Bill 109) to meet the timelines prescribed in the *Planning Act*.

Upper tier without planning responsibilities

The *Planning Act* provides for two different classes of upper-tier municipalities, those which have planning responsibilities and those which do not.

Amendments are made to provide that the Regional Municipality of Peel, the Regional Municipality of Halton and the Regional Municipality of York will become upper-tier municipalities without planning responsibilities effective July 1, 2024.

Four other specified upper-tier municipalities (County of Simcoe, Regional Municipality of Durham, Regional Municipality of Niagara, Regional Municipality of Waterloo) will be upper-tier municipalities without planning responsibilities on dates to be named by proclamation of the Lieutenant Governor.

On July 1, 2024, the City will be responsible for the administration of the 2022 York Region Official Plan as it applies to the City of Markham. Section 70.13 of the *Planning Act* outlines matters of transition as they relate to upper-tier municipalities without planning responsibilities.

A letter was sent to the City, attached as Appendix II, and an Ontario Regulatory Registry post ([Proposed Amendment to Ontario Regulation 525/97 to Exempt Certain Official Plan Matters from Approval under the Planning Act](#)) has been made with respect to matters for which the Province will be delegating approval authority to lower-tier municipalities.

The Province is proposing that the City will be the approval authority for all Official Plan and Zoning By-law Amendments with the exception of Section 26 Official Plan Amendments, New Official Plans, and matters related to Protected Major Transit Station Areas. The Province is further seeking feedback on matters where approval should be delegated to lower-tier municipalities.

Staff are supportive of the delegated authority as Council provided comments through Bill 185 requesting delegated approval authority. However, additional clarity is required regarding matters subject to provincial approval in Protected Major Transit Station Areas. In the absence of this clarification, the need for provincial approvals could create duplication of process and delay much needed housing and city building efforts.

Staff recommend that provincial approval of matters related to Protected Major Transit Station Areas be scoped to matters in the *Planning Act* regarding the delineation of Major Transit Station Area boundaries and establishing minimum densities in accordance with provincial policy. Staff also recommend that Planning approvals for land use designations, densities, and height in Protected Major Transit Station Areas, site-specific development applications, and Secondary Plans should be delegated to the City.

Voluntary pre-consultation

Changes to the *Planning Act* revoke the ability of the City to require applicants to consult before submitting development applications for official plan amendments, zoning by-law amendments, plans of subdivision, and site plan control.

Pre-consultation on development applications will now be a voluntary option for applicants. The City will encourage applicants to consult with staff prior to application submission through the Pre-Application Checklist to ensure that the appropriate technical studies are identified to inform the submission of a complete application.

Further, applicants can bring motions to the Ontario Land Tribunal (OLT) before filing an application (i.e. after pre-consultation), which can determine whether a requirement to provide certain information as part of the complete application is reasonable.

Pre-consultation related Official Plan Amendments adopted following Bill 109 and prior to June 6, 2024 which impose mandatory pre-application requirements will remain in effect. In February 2024, the City adopted Official Plan Amendment #42 which implemented mandatory pre-application and complete application requirements came into effect. Staff will review and recommend repealing the relevant by-law provisions which are inconsistent with the *Planning Act*.

Appeals to Settlement Area Boundary Expansion Decisions

Applicants can now appeal refusal or non-decisions by Council on official plan or zoning amendment applications to expand an existing settlement area boundary, so long as the proposed boundary expansion does not include any lands within the Greenbelt area.

Removal of Community Infrastructure and Housing Accelerator (CIHA)

Provisions that enabled the Minister to make CIHA orders have been removed. Instead, the Minister has provided a new framework to guide the request for Ministers Zoning Orders. CIHA orders existing as of June 6th are deemed to continue functioning as municipal zoning by-laws.

Use it or Lose it (Lapsing provisions on Subdivisions and Site Plan)

The *Planning Act* currently permits municipalities to provide for the lapsing of site plans and plans of subdivision approvals if a building permit has not been issued within a prescribed period, which can be no less than three years.

Under the new legislation, lapsing provisions for draft plan of subdivisions approvals are now mandatory and lapsing provisions can now be established for site plan approvals. The lapsing provisions cannot be less than 3 years.

Additional Residential Units (“ARUs”)

The *Planning Act* authorizes the Minister to make regulations establishing requirements and standards with respect to a second or third residential unit in a detached house, semi-detached house or rowhouse and with respect to a residential unit in a building or structure ancillary to such a house.

Provisions in Bill 185 now enable the Minister to make regulations establishing zoning standards with respect to any ARUs in a house, or the land on which the ARUs are located or a building or structure within which such ARUs are located.

Planning Act Exemptions and New Regulation Making Authority

The *Planning Act* now provides exemptions from the requirement to file *Planning Act* applications for specific entities. It also provides the authority to the minister to make regulations that would exempt certain uses or built forms from all or part of the *Planning Act*. They include:

- Publicly Assisted Universities, Colleges, and Universities affiliated with publicly assisted universities are exempt
- Regulation making authority to exempt Community Service Facilities (school boards, long-term care homes, and hospitals)
- Regulation making authority to exempt detached, semi-detached, or row housing from zoning or site plan control, subject to criteria (not proclaimed)
- Regulation making authority to establish specific requirements and standards for additional residential units in detached, semi-detached, or row housing.

Development Charges Act

Several changes are now in force that affect the *Development Charges Act* and the collection of development charges.

- The 5-year phase in period of development charges implemented through Bill 23 has been repealed. Any development charge imposed between November 28, 2022, and June 6, 2024 will be subject to Phase in provisions.
- Municipalities are once again allowed to include the cost to undertake studies as a part of the calculation of development charges. Municipalities that have excluded costs as a part of recently approved Development Charge By-laws will be given six months to amend their by-laws to include the study costs, or to adjust their by-law rates to account for the removal of the phase-in (Note: the City's DC by-laws are not impacted as they were passed in May 2022 and, included study costs and no rate phase-in). By-law changes to implement these provisions that are passed within six months cannot be appealed to the OLT. By-law amendments passed after December 6, 2024 will be subject to appeal.
- Freezing of Development Charge rates for development applications has been reduced from 2 years to 18 months.

It is anticipated that as a result of these Bill 185 changes, the Bill 23 impact on the City has been reduced from \$136 million to \$80 million.

Assistance to Manufacturing or Industrial or Commercial Enterprises

A new section has been added to the *Municipal Act* that allows the Province to make regulations authorizing a municipality to grant assistance directly or indirectly to a specified manufacturing

business or other industrial or commercial enterprise during a specified period of time if deemed to be necessary or desirable in the provincial interest to attract investment in Ontario.

The Province has the ability to set the type of assistance to be granted and impose restrictions, limits, and conditions on the granting of assistance.

Municipal Allocation By-law

The *Municipal Act* has been amended to add a new section that allows a municipality to adopt a by-law outlining policies to guide the allocation of water supply and sewage capacity. This would include establishing a system to track the available capacity to support approved developments and criteria to determine when allocation is assigned, withdrawn, or reallocated.

Once a by-law is in place, the administration of the policy must be assigned to an officer, agent, or employee of the municipality and decisions made under the policy are not appealable.

Next Steps

Staff will undertake a fulsome review of the regulatory changes and update its business processes accordingly to respond to the new legislation.

ATTACHMENTS:

Appendix I – City of Markham Protected Major Transit Station Areas

Appendix II – Letter -Proposed Amendments to Ontario Regulation 525/97 to Exempt Certain Official Plan Matters from Approval under the Planning Act

Appendix III – Summary of Provinces Response to Council's Bill 185 Comments