

# City of Mississauga Corporate Report



<p>Date: November 18, 2022</p> <p>To: Mayor and Members of Council</p> <p>From: Andrew Whittemore, M.U.R.P., Commissioner of Planning &amp; Building</p>	<p>Originator's files:</p> <hr/> <p>Meeting date: December 7, 2022</p>
--	--

## Subject

**Bill 109 Development Application Review Project**

## Recommendation

1. That Council receive the report for information and endorse staff's position to pilot the operationalization and procedural changes as a result of "*Bill 109, More Homes for Everyone Act, 2022*".
2. That staff return to Planning and Development Committee in the second quarter of 2023 with a progress update.
3. That staff drive further awareness with industry stakeholders as it relates to the impacts of operationalizing "*Bill 109, More Homes for Everyone Act, 2022*" on the processing of development applications beginning January 1<sup>st</sup>, 2023.

## Executive Summary

- The City initiated a project in the summer of 2022 to operationalize procedural changes to planning application review processes. The project's purpose is to complete a thorough consultation with City staff, external stakeholders and Ontario municipalities to best operationalize the Government of Ontario's *More Homes for Everyone Act* legislation. The project will comprehensively review the City's current development application review processes in an effort to satisfy legislated timelines while mitigating risk exposure.
- Draft processes for revised development application review processes as they relate to Bill 109's Official Plan Amendment, Rezoning and Site Plan applications have been completed. These draft processes will be presented to Planning & Development Committee as a pilot for January 1<sup>st</sup>, 2023 implementation.
- Development application review and Planning and Development Committee (PDC) Procedural changes will be required to satisfy timelines stipulated by the Province.

Council	2022/11/18	2
---------	------------	---

## Background

On December 6, 2021, Steve Clark, Minister of Municipal Affairs and Housing (the Minister) established Ontario's Housing Affordability Task Force (Task Force). Their mandate is to address housing affordability by increasing the supply of market housing, reducing red tape, accelerating timelines, supporting economic recovery and job creation.

On February 8, 2022, the Task Force delivered its report to the Minister, which includes 55 recommendations.

On March 2<sup>nd</sup>, 2022, City Council adopted the City's [response](#) and recommendations to the *Housing Affordability Task Force Report*. This report summarized the implications but also positions within the broader development review process. The outcomes also included a response from the Mayor to the Honourable Steve Clark, Minister of Municipal Affairs and Housing.

On March 30, 2022, the Minister of Municipal Affairs and Housing tabled Bill 109, the *More Homes for Everyone Act, 2022*. This legislation looks to implement many of the recommendations made in the Housing Affordability Task Force (HATF) report which was released on February 8, 2022. Bill 109, the *More Homes for Everyone Act, 2022* is divided into three themes:

- Less Red Tape More Homes
- Make it Easier to Build Community Housing
- Protect Homebuyers, Homeowners, and Renters

Bill 109 makes a number of significant changes to the *Planning Act*, the *Development Charges Act, 1997*, the *City of Toronto Act, 2006*, the *New Home Construction Licensing Act, 2017*, and the *Ontario New Home Warranties Plan Act*. One significant change means that some or all of the application fees paid by developers are to be refunded if a municipality fails to approve a site plan or make a decision on a rezoning and/or official plan amendment within the Provincially stipulated timeframe. Official plan amendments, rezoning applications ("ZBA"), combined official plan amendment and rezoning applications ("OPA/ZBA"), and site plan applications ("SPA") are all impacted. See table below.

Amount of Refund	Zoning & OPA Combined	Zoning Amendment	Site Plan
	<i>Decision is made within</i>	<i>Decision is made within</i>	<i>Plans are approved within</i>
No Refund	120 days	90 days	60 days
50%	121 days & 179 days	91 days & 149 days	61 days & 89 days
75%	180 days & 239 days	150 days & 209 days	90 days & 119 days
100%	240 days & later	210 days & later	120 days & later

Appendix 1 provides additional information as it relates to the development application processes' relevant constraints.

Council	2022/11/18	3
---------	------------	---

On Wednesday, April 6, Mayor Bonnie Crombie, Members of Council and City staff hosted a live, virtual information session on housing affordability in Mississauga, which may be viewed [here](#).

On June 20<sup>th</sup>, 2022, City Council adopted the [report](#) "Proposed Amendments to Mississauga Official Plan, Site Plan Control By-law and Mandatory Pre-Application Meetings By-law." This report identified amendments required to Mississauga Official Plan, the Site Plan Control By-law and the Mandatory Pre-Application Meetings By-law to comply with certain provisions in Bill 109 and to create consistency between them prior to council adjourning for the summer period.

The City also initiated a project to operationalize Bill 109. The project's purpose is to complete a thorough consultation with City staff, external stakeholders and Ontario municipalities to best operationalize the Government of Ontario's *More Homes for Everyone Act* legislation. The project will comprehensively review the City's current development application review processes in an effort to satisfy timelines while mitigating risk exposure.

### **Bill 23, "More Homes Built Faster"**

On October 25, 2022, the Honourable Steve Clark, Minister of Municipal Affairs and Housing introduced the Bill to the legislature that introduce sweeping changes to 10 Acts (including the *Planning Act*, *Municipal Act*, *Development Charges (DCs) Act*, *Ontario Heritage Act*, *Conservation Authorities Act* and *Ontario Land Tribunal (OLT) Act*) and the Ontario Building Code. A separate [report](#) was brought forward to Council November 23<sup>rd</sup>, 2022. The Bill received royal assent on November 28<sup>th</sup>, 2022.

## **Comments**

The purpose of this report is to: highlight to Council the major procedural changes proposed to satisfy the prescribed timelines of *Bill 109*; the potential impacts to the community consultation process and industry stakeholders and City.

*Bill 109* seeks to reduce development application timelines, and in some cases, provide refunds to developers. The processing of development applications will be impacted in the following ways:

- The need for more upfront consultation with various provincial ministries, conservation authorities, utilities and other approval bodies;
- To ensure a "complete application" as defined by the province, municipalities will require, at the outset, that the terms and conditions and application materials are provided, to avoid penalties later in the process;
- More applications may be escalated to the Ontario Land Tribunal (OLT) for decision, which has a record of decisions in favour of proponents
- More Holding (H) provisions may be placed on lands to deal with matters not able to be addressed within the timelines.

Council	2022/11/18	4
---------	------------	---

The above is further supported by the benchmarking and interviews conducted amongst the following municipalities:

- Toronto
- Ottawa
- Hamilton
- London
- Kitchener
- Markham
- Vaughan
- Windsor
- York Region

Benchmarking confirms the City's approach: in which municipalities are targeting to not return fees and that a December PDC (or equivalent) report will be followed by Official Plan Amendments and By-law updates in December through 2023.

### **Stakeholder Specific Changes**

The Bill 109 Development Application Review project's objectives have been developed and this report identifies procedural changes that are required to satisfy the statutory timelines. The following are generalized comments on the direction the City has taken:

- That clear expectations and increased accountability of all stakeholders will be required to satisfy timelines.
- That maintaining good planning outcomes will guide staff.
- That there will be an emphasis on earlier communications (i.e. planning staff's position as negotiations are conducted prior to application submission).
- Roles and responsibilities will shift within the organization.
- That continuous improvement through quarterly reviews and piloting the draft processes will be critical to operationalize the changes effectively.

Municipalities such as Mississauga are navigating how-to satisfy the regulations. We are using our full suite of continuous improvement tools (Lean, Project Management, etc.) and have identified key actions to help operationalize this new legislation and deliver increased housing supply and affordability.

The following are highlights as they relate to the stakeholders within the existing process and identifies the necessary changes:

#### *Mayor and Council*

- A one report system will be introduced combining the Information Report and Recommendation Report.

Council	2022/11/18	5
---------	------------	---

- Planning and Development Committee & Council will continue through the summer period in order to pass By-laws within the prescribed timelines
  - Note, it was identified that Proxy voting may be a consideration for Planning & Development Committee members.
  - A December 7<sup>th</sup> Council report will come forward regarding hybrid and virtual meetings formats – to continue or not. At time of authoring this report, the current decision is for hybrid and virtual meetings until December 31<sup>st</sup>.
- The statutory Public Meeting is to be established at time of application submission and will include the date in the Notice of Complete Application.
  - Previously, public meetings were held when the Information Report was brought forward to PDC within the City's processing timeline. The new process cannot accommodate this step after deeming an application complete.
  - Staff will advise the applicant to consult with the Ward Councillor prior to application submission so that they can be sure the Councillor is available for the PDC meeting date.
  - These notices will be provided approximately 80 days in advance and will advise that the application background information may be reviewed on the city's website and comments can be provided.
- The Official Plan Amendment and/or implementing Zoning By-law will come forward at the Council meeting directly following PDC.
- The Planning and Development Committee agenda will be posted online 7 days prior (currently it is 10)
- Council may see that there will be an increase in Committee of Adjustment applications, as implementing Zoning By-laws may need to be based on base zoning rather than a site specific exception zone with detailed performance regulations. This may mean that minor changes to the implemented base zone may need to be addressed through minor variances granted by the Committee of Adjustment
- Minor residential infill projects will no longer be subject to Site Plan approval (Bill 23)

#### *Industry*

- Applicants will be told to work with the local Councillor to establish how best to engage the community prior to application submission.
- Direction will be given to work with and engage the community prior to application submission. Responding to resident concerns and comments from these community meetings will be a requirement of a complete application and will be the responsibility of the applicant.
- Negotiations with staff will need to occur prior to application submission
- Fee revisions and adjustments
  - Applicants will no longer be credited for Pre-Application Meeting (PAM) and Development Application Review Committee (DARC) fees when they submit Site Plan, Official Plan Amendment and Rezoning applications
- Site Plan Applications:

Council	2022/11/18	6
---------	------------	---

- Site Plans will be approved with conditions. This is in alignment with neighbouring municipalities. Previously applications received full site plan approval at the end of the process.
- Minor Variances required to support an application will need to be identified, approved and become final and binding prior to application submission.
- No Concurrent Official Plan Amendment and/or Rezoning applications and/or minor variance applications within the Site Plan Approval process
- A second Pre-Application Meeting will be required to ensure that the application and its accompanying materials are ready to be submitted
- Staff may have to redline a site plan to satisfy approval timelines
- Appendix 2 includes a more comprehensive list of process changes relevant for Mississauga's development community

#### *Residents*

- Staff will enhance access to application information and public commenting features for OPA & Rezoning applications through improved website enhancements.
- Public notices will be sent out further in advance of the Public Meeting (see "Public Meeting" notice sub-bullet point above).

## **Next Steps**

The following is a project timeline that identifies the major activities and milestones:

- **December**
  - Execute pilot project plan
  - Execute Phase 1 of the external communications plan and website enhancements
  - Initiate industry and stakeholder engagement
- **January**
  - Pilot OPA/Rezoning and SPA processes
  - Core team working meetings
  - LT / Project Steering committee updates
- **January / February**
  - Official Plan Amendments to support the satisfaction of the prescribed timeline (see future considerations section for examples)
  - By-law updates to support the satisfaction of the prescribed timeline
- **May**
  - Planning & Development Committee update and improvements
  - Modify Fees and Charges By-law to match new level of effort

## **Future Considerations**

The influence on interrelated processes for development application review requires further consideration as the pilot phase progresses, these include but are not limited to:

Council	2022/11/18	7
---------	------------	---

- Official Plan Amendments: Delegated Authority for development agreements, consent for Committee of Adjustment applications, floodplain agreements, municipal servicing and works
- Building permit intake
- Pre-Zoning Review
- Road Occupancy permitting
- Tree Permitting
- Heritage Advisory Committee procedures
- Procedural by-laws amendments and/or revisions, if applicable
- Governance Committee and amendments to procedures
- Surety Bonds versus Letters of Credit
- Updates to any fees and charges schedules (ex. development fees schedule, building fees schedule, etc.) and securities collection
- Staffing and technology costs/requests

Staff will continue to inform and advise Council on the changes that may stem from Bill 109 on the processes identified above.

## Engagement and Consultation

The following includes a list of additional key activities, engagements and consultations that have occurred.

- October 5<sup>th</sup>: memo to the Minister of Municipal Affairs and Housing office, subject line: Considerations for the Minister in regards to Planning Act and Building Code
- October 11<sup>th</sup>: memo to Mayor from the Director of Strategic Communications and Initiatives, titled *Bill 109, More Homes for Everyone Act*
- Ongoing: Municipal benchmarking. Of which, the majority of other municipalities are planning to release reports to their Councils in early December.
- Ongoing: Municipal roundtables, where subject matter experts discuss operationalizing *Bill 109* to align strategy and industry communication tactics. In addition to the benchmarked municipalities above, these are attended by other municipalities such as Brampton and Caledon.

## Financial Impact

All fees paid by developers are strictly governed by legislation, regulation and City by-laws. Fees are required to be paid prior to application approval, except where otherwise may be prescribed. These include those fees due to the City of Mississauga as well as any other external agency.

Council	2022/11/18	8
---------	------------	---

The Development and Design Division is currently working with a consultant and key internal stakeholders to update the Fees and Charges By-law so that it is in-line with the level of effort and intent of the *Planning Act*.

In preparation for January 1st, 2022 staff have reviewed select development related fees and is proposing revisions that reflect the level of effort. This also includes a cessation of crediting pre-application meetings that would then be applied at application submission. Staff have identified these fee adjustments and have presented these to Council through the standard budget process.

### **Potential Impact & Bill 23 Awarding Costs**

The total costs of not satisfying these timelines are a summation of the development fee revenues in addition to the legal costs of going to the Ontario Land Tribunal (OLT). Using probability analysis identifies that without these changes above, and using 2021's development fee revenues in addition to the past two-years in Legal Services costs (due to the lengthy Ontario Land Tribunal process), the estimated impact would be in excess of \$7.4 million (~1.48% tax pressure).

Staff are, however, concerned about the proposal for the OLT to more routinely award costs against a losing party. When *Bill 23* is coupled with *Bill 109*'s requirement that a municipality provide a decision within short timelines (or otherwise refund fees), a municipality could get caught in a position where it has to refuse an application because a major issue has not yet been resolved and could later be punished by having costs awarded against them. City staff consider that the OLT's current process where costs are only awarded where there is a genuine attempt to obstruct a matter should continue, and costs should be rarely awarded.

Staff have proposed a course of action above to operationalize *Bill 109*'s legislative changes that mitigate financial risk, exposure to poor planning outcomes and community engagement. Costs to-date have been absorbed through operational budgets and staff time. However, the \$776 to implement *Bill 109* as identified by the Provincial government is inaccurate ([source](#)). Staff, through a separate report and/or business planning process will identify any resource needs as it relates to operating budget (adjustments), capital budgets, and human resourcing.

## **Conclusion**

Mississauga has demonstrated a strong commitment to support provincial aims to create more housing, a greater mix of housing and efforts to make home ownership and renting more affordable. The City further supports the government's commitment to reduce red tape and make it easier to live and do business in Ontario.

The proposed changes will certainly create new challenges for developers, as they will have to coordinate more effectively with external agencies and their consultants prior to submission while also engaging the community prior to a complete application. Residents will most likely experience a shift in traditional community engagement and public meetings.

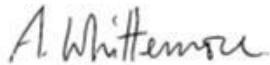


City staff will continue to coordinate a development application process that recognizes the value of community engagement and good planning, while mitigating the financial risk of not satisfying the legislated timelines.

## Attachments

Appendix 1: Development Application Process Related Reminders

Appendix 2: Process Specific Change Highlights



Andrew Whitemore, M.U.R.P., Commissioner of Planning & Building

Prepared by: Christopher Valeri, Strategic Advisor