

Attachment “A” to Letter of Transmittal for ERO Posting 019-6821

***City of Hamilton Comments on
Bill 97, Helping Homebuyers, Protecting Tenants Act, 2023
Comments on Schedules, 3,4,5 and 6***

**ERO Posting 019-6821
City of Hamilton Comments
May 5, 2023**

Schedule 3 – Development Charges Act

Subsections 2(3.2) and (3.3)

Description:

Amend subsection 2(3.2) and 3.3) to replace “parcel of urban residential land” with “parcel of land”.

See comments below under Schedule 6 – Planning Act.

Schedule 4 – Ministry of Municipal Affairs and Housing Act

Minister Authority under subsection 12(3)

Description:

Re-enacting subsection 12(3) to authorize the Minister to appoint the Facilitator and up to four Deputy Facilitators and fix their terms of reference and to require the Facilitator and Deputy Facilitators to perform specified functions at the direction of the Minister.

City of Hamilton comments:

Under the *Ministry of Municipal Affairs and Housing Act* the Province of Ontario has created a Provincial Land and Development Facilitator (PLFD) to help the province, municipalities, developers, businesses and community groups resolve issues related to growth management, land use and infrastructure planning, and environmental protection by providing impartial facilitation services or by acting as a negotiator on behalf of the province. The office was first created in 2005.

Examples of the facilitator’s role in the past include providing advice on MMAH on amendments to the Growth Plan and assisting in boundary negotiations between municipalities. The Province, Municipalities or landowners could submit a request to the PLFD to resolve the issue.

The proposed amendment to the Act to increase the number of deputy facilitators from one to four indicates the Province of Ontario intends to utilize this office more moving forward.

Without additional information from the Province on whether the function of the PFLD is being expanded to include additional powers, City staff consider the proposed amendment premature and are unable to provide any additional comment on this proposed amendment.

Schedule 5 – Municipal Act

Minister Authority under section 99.1 (Rental Replacement By-laws)

Description:

Amending section 99.1 to authorize the Minister to make regulations with respect to a variety of matters including governing the powers of local municipalities under section 99.1 and authorizing certain local municipalities to require certain owners of land to make payments and provide compensation.

In the event of conflict, the provisions of regulations made under section 99.1 will prevail over the provisions of the Act or any other Act or regulations (new subsection 99.1(8)).

City of Hamilton comments:

The City is currently conducting a review of the planning policy and process framework around conversions and demolitions of rental housing. Establishing a permit process to regulate demolitions and conversions of rental housing through a by-law using the powers of Section 99.1 of the Municipal Act was identified in the review as a key feature which can strengthen the City's strategy to protect existing rental housing, particularly affordable rental housing (Report PED22091).

Overall, staff have concerns with any limits imposed by the Province through regulations that restrict a Municipality's ability to protect its existing rental housing stock. The City of Hamilton has seen historically low vacancy rates and rapidly increasing rental rates over recent years which in turn has increased homelessness and residents in core housing need. The City has concerns with any regulations that may limit the City's ability to develop and implement creative solutions to address this significant issue.

City staff will have additional comments on the proposed regulations establishing criteria and limits on the City's ability to protect existing rental housing and will provide those comments through Ontario's Regulatory Registry Posting on 23- MMAH05.

Schedule 6 – Planning Act

Definition of “areas of employment” under subsection 1(1)

Description:

Modifying the definition of area of employment to only include heavy industry and other employment uses that cannot be located near sensitive uses, (i.e., not suitable for mixed use) to scope the applicability of existing provisions which limit appeals of municipal refusals and non-decisions.

City of Hamilton comments:

Generally, the intent of the definition remains the same as the previous version, however it is more explicit that institutional uses and standalone commercial and office uses are not to be permitted in an “Area of Employment”. The revised definition provides additional clarification that office uses must be associated with a manufacturing, research and development use related to manufacturing, or a warehousing use, whereas the previous definition allowed standalone office uses.

The additional subsection proposed (1.1) further clarifies that an area of land that is designated in an OP for business and economic uses is an “area of employment” even if there are one or more parcels where the existing use is institutional or standalone commercial/office, provided that the parcels of land are appropriately designated in the OP for the current use, and the use existed before the day that the Bill 97 amendments to the *Planning Act* come into force.

Policy Planning staff will need to review existing Employment Areas policy with respect to the restriction on standalone office buildings, notably within the Business Park designation. It is intended that the Employment Area – Business Parks designation allow for employment supportive uses, like offices, to develop as prestige employment areas. Underutilized lands in this designation are planned for major employment growth to meet the City’s employment growth targets to 2051.

Staff are concerned the proposed changes will result in a conflict between the D-series Guidelines for land use compatibility specifically related to the industrial categorization criteria and definitions used to establish an appropriate transition between major facilities and sensitive land uses. The Province should ensure alignment between the definitions in this legislation and definitions within the D-series Guidelines

Fee refund for development applications under section 34

Description:

Delaying the requirement for municipalities to refund zoning by-law application fees so that it only applies to applications submitted on or after July 1, 2023.

Creating Minister's regulation-making authority to be able to exempt municipalities from the fee refund provisions in the future if needed (no exemptions are being proposed at this time).

City of Hamilton comments:

The City has revised the process for reviewing development applications including Zoning By-law Amendments, in response to the required fee refunds implemented through Bill 109. This includes changes to the submission requirements to ensure all the necessary information has been provided to staff in order for a decision to be made by council within the prescribed timelines.

Bill 97 proposes to delay the refund to only apply to applications submitted on or after July 1, 2023 instead of January 1, 2023. This provides municipalities with a transition period while adjusting to new processes for the review of Zoning By-law Amendment applications.

Bill 97 also proposes to give the Minister the authority to exempt municipalities from the fee refund provisions if needed. It is unclear in which scenarios the fee may be waived however this could be used to provide flexibility for the applicant to opt to work with the municipality to come to an agreement on a proposal outside of the prescribed timelines.

While the City of Hamilton has previously commented that the City does not support the fee refunds implemented through Bill 109, we support the proposed change to defer the date when the fee refunds will apply.

Interim Control By-law Appeals under section 38

Description:

Enabling an individual to appeal an interim control by-law under subsection 38(1) (Adoption of new Interim Control By-law) and 38(2) (Extension of Interim Control By-law) whereas previously the Minister could only appeal the initial passing of an interim control by-law under subsection 38(1).

Amends the notice and appeal timelines to provide 20 days for municipalities to give notice of the passing of an interim control by-law or a by-law extension (instead of the current 30 days) and for appeals to be made within 50 days of the by-law being passed. A transition provision has been added as subsection 38(4.1).

City of Hamilton comments:

The purpose of an interim control by-law is to prohibit development in a defined area for a period of one year to allow a necessary review or study to be undertaken prior to any new development.

Currently the initial adoption of an interim control by-law (ICBL) can only be appealed by the Minister within 60 days of the notice of passing. Under the proposed Bill 97, any person or public body who was given notice of passing can appeal the interim control by-law within 50 days.

The passing of an ICBL is rare as only five interim control by-laws have been passed in the City of Hamilton over the last 20 years. Typically, ICBLs are considered where there is an immediate concern about development applications which could conflict with the future land use vision or intent for an area.

Staff anticipate that if enacted, appeals would be received from land owners following the passing of new interim control by-laws as they would want to avoid prohibitions or restrictions on the development of their properties regardless of the broader community initiative to which the ICBL is related.

These appeals would undermine the intent of the ICBL by providing uncertainty on whether the ICBL will stay, be revised by the OLT and potentially result in 'donut holes' in the By-law.

Section 38(6.1) may need to be updated to specify if the interim control by-law is in effect while it is under appeal.

Bill 97 proposes to reduce the timeline for the municipality to send the notice of passing from 30 days to 20 days and the time to appeal from 60 days to 50 days. Staff are generally supportive of this change but request the province to clarify the rationale for the reduced timelines.

Amend definition of “development” under subsection 41(1.2)

Description:

Amending subsection 41(1.2) to provide that a parcel of land containing more than 10 residential units will constitute “development” if the parcel of land is in a prescribed area.

City of Hamilton comments:

Site plan control is an effective tool to manage and review development to ensure development is designed to minimize negative impacts.

The City of Hamilton has previously commented that the City does not support the exemption of site plan control for residential developments up to 10 units as implemented through Bill 23. Staff are supportive of site plan control being applied to residential developments of 10 units or less on a single lot in the prescribed areas.

Fee refund for development applications under section 41

Description:

Delaying the requirement for municipalities to refund site plan application fees so that it only applies to applications submitted on or after July 1, 2023.

Create Minister's regulation-making authority to be able to exempt municipalities from the fee refund provisions in the future if needed (no exemptions are being proposed at this time).

City of Hamilton comments:

The City has revised the process for reviewing development applications including Site Plan Control applications, in response to the required fee refunds implemented through Bill 109. This includes changes to the submission requirements to ensure all the necessary information has been provided to staff in order for a decision to be made by council within the prescribed timelines.

Bill 97 proposes to delay the refund to only apply to applications submitted on or after July 1, 2023 instead of January 1, 2023. This provides municipalities with a transition period while adjusting to new processes for the review of Site Plan Control applications.

Bill 97 also proposes to give the Minister the authority to exempt municipalities from the fee refund provisions if needed. It is unclear in which scenarios the fee may be waived however this could be used to provide flexibility for the applicant to opt to work with the municipality to come to an agreement on a proposal outside of the prescribed timelines.

While the City of Hamilton has previously commented that the City does not support the fee refunds implemented through Bill 109, we support the proposed change to defer the date when the fee refunds will apply.

Information submitted for appeals for non-decision under Section 41

Description:

Including the information and materials required under subsections 41 (3.3) and (3.4) to be forwarded by the clerk to Ontario Land Tribunal for appeals of non-decision under Section 41.

City of Hamilton comments:

No comments.

Site Plan Refunds – Start of 60 day review.

Description:

Subsection 41 (12) of the Act to be amended by striking out “submitted to the municipality” and substituting “received by the municipality”.

City of Hamilton comments:

While the City of Hamilton was not supportive of the change to timelines this Section through Bill 109, Staff are supportive of this amendment which provides clarity on when ‘the clock starts’ for Site Plan refunds under the recent changes made to the *Planning Act* through Bill 109.

New Minister’s Zoning Orders subsection 47(4.01)

Description:

Amending Section 47 to give the Minister of Municipal Affairs and Housing the authority to exempt certain subsequent approvals required to establish uses permitted by Minister’s zoning orders from having to align with provincial plans or policies.

City of Hamilton Comments:

Bill 97 proposes a new subsection under Section 47 to provide the Minister with the authority to exempt zoning orders to establish uses from having to align with provincial plans or policies such as the Provincial Policy Statement.

Provincial plans and policies are expected to provide a framework of policies which give direction on provincial interests. It is unclear what scenario would constitute a zoning order that does not comply with the policies of provincial and official plans.

Such powers do not allow for any certainty on what land uses can be expected on any given land and if used, would undermine public trust in the planning process.

If this subsection is enacted, there should be prescribed criteria when this can apply so there is a better understanding of the intention behind the proposed subsection.

Development Agreements under section 49.2 (new)

Description:

Providing the Minister of Municipal Affairs and Housing with the authority to make an order to require landowners to enter into development agreements with the Minister or municipality in matters where the Provincial Land and Development Facilitator or the Deputy Facilitator has been directed by the Minister to advise, make recommendations or perform any other functions with respect to the land.

City of Hamilton comments:

It's not clear how this agreement differs from a Development Agreement under other *Planning Act* applications. Is it in addition to those, or an addendum? No regulations are provided, and it would be helpful if examples were provided of the types of development agreements are contemplated with this proposed legislation.

The proposed change gives the Province the power to require a land owner to enter into a development agreement with the Minister or the municipality where land is of provincial interest. Staff are concerned that this additional power has the ability for the Province to impose financial agreements with municipalities or private landowners in order to resolve a dispute. It's not clear how limited these powers are and if it is intended to provide an option to resolve issues provided all parties are agreeable, or something that would be imposed by the Province without an owner's or municipalities acceptance.

There is risk that the proposed legislation opens the door for Provincial downloading of its financial obligations to landowners and/or municipalities to implement Provincial priorities without their consent and outside of established land use processes through the *Planning Act* and *Municipal Act*.

Parking for additional dwelling units subsections 16 (3.1) and 35.1(1.1)

Description:

Amending subsection 16(3.1) and 35.1(1.1) to clarify that an official plan or zoning by-law cannot require the provision of more than one parking spot for each residential unit other than the primary residential unit.

City of Hamilton comments:

City of Hamilton amending by-laws Nos. 22-132 to 22-138 which consist of updates to the regulations for secondary dwelling units and secondary dwelling units detached

do not require additional parking for additional dwelling units. Staff are supportive of the proposed changes to provide clarification on this requirement.

Subsections 17 (24.1)(c), 17(36.1)(c)(iii), 22(7.2)(c)(iii), 34(19.1)(c), and 42(1.3)

Amending subsection 17(24.1)(c), 17(36.1)(c), 22(7.2)(c)(iii), 34(19.1)(c), and 42(1.3) to replace “parcel of urban residential land” with “parcel of land”.

City of Hamilton comments:

These sections of the *Planning Act* restrict appeals to the Ontario Land Tribunal for Official Plan policies and Zoning By-law regulations to allow additional dwelling units on a single property.

Staff's do not support the amendment to replace “parcel of urban residential land” to “parcel of land” which aligns with changes proposed to the new Provincial Planning Statement to allow additional dwelling units on rural and prime agriculture lands.

City staff are currently preparing zoning regulations to allow Additional Dwelling Unit – Detached as a permitted use on lands zoned Agriculture (A1) and Rural (A2) under Zoning By-law No. 05-200. If enacted, the proposed legislation would clarify that any Council adopted Zoning By-law Amendment associated with those regulations are not subject to a third-party appeal.

Staff do not have a direct concern with the proposed amendment to limit appeals of new Official Plan policies and Zoning By-law Amendment regulations to allow additional dwelling units on rural and agriculture lands. However, Staff do have significant concerns with the new PPS allowance of sweeping allowances of new residential development in the rural and prime agricultural areas – specifically with new lot creation, without the ability for municipalities to impose more stringent review criteria. Additional comments on the proposed PPS will be submitted under ERO 019-6813