

City of Toronto Staff Comments on Bill 66, Restoring Ontario's Competitiveness Act, 2018

The proposed *Restoring Ontario's Competitiveness Act, 2018* ("Bill 66") recommends a number of changes that would have an impact on the City of Toronto. While the main intent of the proposed Bill is consistent with City Council direction to promote economic development, City staff would like to provide feedback on certain areas of the Bill which would impact the City's policies and procedures which have been put in place to meet City Council directions.

This submission includes City staff's comments on proposed amendments to:

- the Planning Act and proposed Open-for-Business Planning Tool
- the Child Care and Early Years Act and Education Act
- the Labour Relations Act
- the Toxics Reduction Act

As per the Toronto-Ontario Cooperation and Consultation Agreement, City staff look forward to further, more detailed consultations to clarify provisions outlined in the proposal. To inform further dialogue, City staff are providing an initial set of comments on the documents posted to the Environmental Registry as follows.

1. Changes to the *Planning Act*

While additional powers and legislative tools are welcome, City staff have concerns about any future wide-spread use of "open-for business" planning by-laws and any impact on established municipal employment land policies and planning practice. City staff suggest that the Province provide language that clearly denotes the exceptional circumstances under which the by-law should be considered.

We urge the Province to consider and address the following concerns to ensure that the new tool does not result in significant pressure on municipalities and takes into account existing provincial, policies and plans such as the Growth Plan for the Greater Golden Horseshoe and municipal Official Plans.

a. Authority and Approval for Enactment of the Proposed By-Law

In general, City staff are concerned that use of the tool, despite granting an additional planning mechanism, depends on the Minister's final approval. City staff suggest changes to establish that City Council serve as the 'final approval' body for enactment of an open-for-business planning by-law. Should this not be implemented, City staff feel that any amendments to the by-law proposed by the Minister or Province be subject to further consultation with the City and that these changes be subject to further approvals by City Council.

b. The Open-For-Business Planning By-law is Not Necessary

City staff note that the proposal, as it is currently drafted, may not incrementally contribute to its stated objectives of streamlining approvals. This is because:

- The City and other municipalities regularly review planning approval processes to determine how to review applications more efficiently. In Toronto, this includes an End to End Review which is currently underway and has already examined how to improve and streamline the development review process to have better outcomes and efficiencies.
- The tool does not appear to exempt businesses from Provincial land use approval requirements such as Environmental Compliance approvals required by the Ministry of Environment, Conservation and Parks and/or Ministry of Transportation permits which may also delay the issuance of site plan approval and/or building permit issuance.
- Businesses wanting to locate in employment areas can often proceed as-of-right or may simply require a minor variance, which is an expedited timeline relative to a zoning amendment application process. In addition, existing planning mechanisms ensure that businesses can locate, grow and expand without having their operations impacted by the introduction of residential and other sensitive uses.
- The application of the tool is limited, as it alone will not address the complex factors involved in employment growth. Achieving growth in areas that are expected to generate the most employment growth in the future (i.e. office growth - dense mixed-use areas served by higher order transit) will require the systematic alignment of planning, transit funding and comprehensive economic development initiatives.

c. Section 37 Exemptions

There is no need to exempt the use of Section 37 of the Planning Act in an open-for-business planning by-law. Section 37 is predominantly applied in the cases of mixed use development where there is a combination of employment and residential uses or in office developments. In these instances, Section 37 ensures that the necessary infrastructure and community facilities are in place to meet the needs of both residents and workers (e.g. daycares in office buildings, recreational facilities in office buildings etc.). The City uses discretion to determine if and how Section 37 should be applied in these instances to avoid jeopardizing the creation of jobs.

d. *Concern with the Potential Range of Permitted Uses in Employment Areas*

City staff suggest that the proposal be amended to specifically exclude all residential uses in employment areas and provide specific permitted secondary uses should they be different from the direction given by the *Planning Act*.

In addition the proposal should provide clarity to the language in the Bill under section 34.1 (5) to state that the prescribed purpose is for major employment uses only. In line with this, the proposal should identify that employment uses be located with like (compatible) uses and that compatibility with sensitive land uses be added as a prescribed criterion to the Regulation.

Under the draft proposal, it is unclear if the City's Employment Area lands (as adopted by City Council under the Official Plan and subsequently approved by the Minister of Municipal Affairs and Housing) will continue to be restricted to any residential or sensitive uses through the use of Section 34.1. This restriction was put in place to prevent residential or sensitive uses from detracting from the economic function of the lands and putting jobs at risk.

Further, locating sensitive uses within an employment area would be counter to an open for business approach as many manufacturing and industrial uses, in order to avoid land use conflicts, will locate away from sensitive land uses.

City staff require further transparency about whether residential, office or retail uses are contemplated in the proposal as secondary uses to be allowed in association with the primary use. If they are, where and subject to what conditions will they be permitted?

e. *Concerns with Environmental Land Use Compatibility*

City staff suggest that the Province consider that new employment uses be located with compatible uses and that compatibility with sensitive land uses be added as a prescribed criteria. City staff also seek confirmation that any developments enabled by an open-for-business planning by-law do not negatively influence existing businesses.

With respect to public health and safety, a new major employment use should be evaluated in terms of potential impact on sensitive land uses such as residential uses. The employment use should be located with compatible uses and should be required to minimize adverse effects from noise, vibration, odour and other contaminants on sensitive land uses. This will serve to protect public health as well as provide for the long-term viability of future and operating employers. At a minimum, before permitting a new major employment use, an open-for-business planning by-law should require an application to assess its potential it will introduce nuisances to nearby sensitive uses and mitigate appropriately. It is

anticipated that issues related to compatibility can be addressed through design and conditions of approval associated with the by-law.

f. Potential for Development on Floodplains

City staff suggest the Province consider that the restrictions included in the Provincial Policy Statement with regards to the potential for development on floodplains be carried forward into the new tool.

The proposal exempts open-for-business planning by-laws from the *Planning Act* Section 3(5) with regard to policy statements and provincial plans, the Provincial Policy Statement (2014) policies 3.1.2 and 3.1.4 that govern development within Special Policy Areas. Special Policy Areas are lands that are within the floodplain where intensification and development are not generally intended. Policy 3.1.4 from the Provincial Policy Statement requires Ministerial approval from the Ministries of Municipal Affairs and Housing and Natural Resources and Forestry to ensure that any development within Special Policy Areas are appropriately flood proofed or are subject to flood protection measures.

Allowing development and intensification on lands within Special Policy Areas, where development is not generally permitted, has the potential to negatively impact other flood-prone properties without the benefit of comprehensive hydraulic modeling required to understand how lands are affected by large storms events. Further, such development will increase the chance of flooding and therefore increase the risks to all orders of government, among which are the escalating costs for disaster response and management. City staff wish to maintain restrictions on floodplains.

g. Concerns with Potential Greenbelt Impacts

Toronto City Council has adopted Official Plan Amendments which have conformed to and supported the policy objectives of the Greenbelt Plan (2017). Key objectives for the City include:

- protecting the agricultural land base and the ecological and hydrological features and functions occurring in this landscape;
- mitigating impacts to the Rouge Valley area of Toronto, including the Rouge National Urban Park;
- minimizing impacts to the main corridors of river valleys that flow through Toronto and connect the Greenbelt to Lake Ontario as Greenbelt Urban River Valleys; and
- adopting planning approaches on lands within and abutting these river valleys to enhance ecological and hydrological functions.

City staff note that there would be many negative environmental and natural heritage stewardship implications of a regional nature in incentivizing employment uses (along with secondary uses) in all areas of the Greenbelt,

where such uses are not currently permitted and where such uses would not be subject to a planning evaluation pursuant to recently updated provincial policies and plans that have been put in place to guide growth and protect agricultural, ecological and hydrological features and functions in this area.

City staff also note that a robust natural environment is one of the most important defenses against the impacts of climate change. As existing urban areas intensify, the need for the ecological services that these areas provide and for high quality natural areas in close proximity to our communities as places for contact with nature and recreation, will increase. Permitting development based on number of jobs does not take into consideration the many other economic benefits provided by natural, agricultural and cultural attributes provided by the Greenbelt that will steadily increase in value with time if supported and shielded from poorly planned and located development.

Relevant City Council decisions are as follows:

- Official Plan Five Year Review: Final Recommendation Report on the Greenbelt Plan Conformity Official Plan Amendment
(<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.PG13.4>)
- Official Plan and Municipal Comprehensive Reviews: Amendments to the Official Plan for Economic Health and Employment Lands Policies and Designations and Recommendations on Conversion Requests
(<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.PG28.2>)

h. Exempting Open-For-Business Planning By-laws from Citizen and Stakeholder Engagement

City staff suggest that the proposal include a minimum standard for advance notice/expedited public consultation process be incorporated into the approval process for the Section 34.1 by-law.

Public consultation is a fundamental and important part of land use planning in Ontario. Consultation with the public on a proposed major employment use can assist a municipality with identifying both positive and negative impacts associated with a proposal and inform any proposed conditions which may be required.

i. Clean Water Act and Source Water Protection

The proposed approach includes eliminating the application of Section 39 of the Clean Water Act to open-for-businesses zoning. The Clean Water Act was developed to prevent public health crises like Walkerton from occurring again. City staff are concerned that this provision could be used to weaken or override the provisions of the Clean Water Act, in particular as it relates to Source Water Protection and the associated plans that are now in place across Ontario. Toronto has been very active in the development of Source Protection Plans

related to the watersheds that affect Toronto's drinking water and believes these Plans provide Torontonians (and our neighbouring municipalities) with high level protection of the drinking water sources we rely on.

The proposed approach could result in provisions of the Clean Water Act being ignored and is inconsistent with key recommendations of the Walkerton inquiry. Staff suggest that the Act should not be used to permit development in source protection areas and allow the passing of by-laws that conflict or disregard a significant threat policy identified in a Source Protection Plan.

The latest report from the Environmental Commissioner of Ontario found that even current protections for Ontario water are insufficient for its long-term security. The amendments proposed may further weaken the legislative framework that protects the water sources in Ontario, putting Ontarians' health at risk. The Clean Water Act and the Lake Simcoe Protection Plan, along with municipal source protection plans are the first step in protecting source water from contamination. If businesses are allowed to build in areas originally set aside for source water protection, this will introduce an increased risk to public health by introducing potential avenues for source water contamination.

j. Other Considerations

City staff suggest consideration of other approaches to streamline the planning approval process such as implementing regulations that would operationalize "zoning with conditions" or facilitating the use of the Community Planning Permit System, which already anticipates a streamlined development approval process.

Finally, there are several process questions surrounding the implementation of this tool that remain unclear. As noted above the City looks forward to further consultation to clarify the proposals.

Key questions include:

- How and when are conditions imposed? In the absence of a site plan approval process, how will the conditions be imposed and enforced and will they continue to be registered on title?
- How and which job standards will be applied? Which types of job will be counted (full time, part-time, seasonal, etc.)? Will there will be one definition for this purpose across the Province? Will employers benefitting from the streamlined Section 34.1 approval process be obligated to maintain their agreed to job count over a specified period of time?
- What are the anticipated timelines for Ministerial approval?

2. Changes to the Child Care and Early Years Act and Education Act

Bill 66 proposes a number of changes to the *Child Care and Early Years Act* and *Education Act*. While City staff support the principle of expanding access to different child care options, there is concern around the proposed change that would increase the number of children under the age of two in a home child care setting. This change would create the potential for an extraordinarily difficult scenario in any emergency situation and as such City staff do not support the change to the number of children under the age of two permitted in home child care.

Children under the age of two may not be walking or be able to follow instructions. In cases where the need to evacuate is urgent, any adult would struggle to manage three very young children, plus up to three older children. The safety risk is partially, though not sufficiently, mitigated in licensed home child care settings because these are required to conduct emergency preparedness planning and document fire evacuation procedures. However, the risk is unacceptably higher in unlicensed settings. These homes have little to no oversight of any kind, no requirements for emergency planning, and no expectations of caregiver training. In Ontario, this lack of oversight contributes to the fact that most child care deaths already occur in the unlicensed sector. Allowing more very young children in these environments increases the risk to every child in one of these homes.

The impact of this change on parents could be significant. Parents are attuned to these risks and may not feel confident in using home child providers with more very young children. As a result, parents will face a choice of either delaying or modifying return-to-work plans, finding a less-preferred option, or leaving their children in a potentially unsafe situation.

Toronto City Council has previously endorsed recommendations opposing similar changes

(<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.CD3.12>)

3. Changes to the Labour Relations Act

The proposed change in the City of Toronto's status from construction employer to non-construction employer would have significant implications for the manner in which the City secures the performance of construction work going forward. City staff have noted the following areas where clarification or amendments would be helpful.

- a. *Clarification required regarding bargaining units that do not include employees not employed in the construction industry*

Section 14 of Schedule 9 to Bill 66 provides that, on the date that subsection 127(2) of the *Labour Relations Act, 1995* comes into force, trade unions representing employees of a non-construction employer no longer represent those employees. The Schedule permits both the employer and the trade union to apply to the Labour Board to redefine the composition of a bargaining unit affected by the application of subsection 127(2), **if the bargaining unit also includes employees who are not employed in the construction industry.** However, this is not the case at the City of Toronto. Those individuals employed by the City are not in a bargaining unit that also includes employees who are not employed in the construction industry, as that industry is presently defined. Either a legislative provision that provides advice regarding the implications of this transition on employees in a bargaining unit that does not include employees not employed in the construction industry; or a mechanism through which the workplace parties can apply to the Labour Board is required.

- b. *Sufficient notice of effective date to allow for transition*

Most frequently, the City secures construction work through a Request for Tenders through which bidders are asked to submit bids to the City for the performance of this work. The timing of the effective date of the legislative amendments to the *Labour Relations Act, 1995* contemplated by Schedule 9 to Bill 66 would significantly impact both who can bid for the performance of this work and the nature of the bid that those parties can make. It would also impact the manner in which the City implements that transition. In that regard, it would benefit the City to have significant notice of the effective date of these legislative changes. The City requests that the Province provide sufficient time for the City to address those issues in advance of the date of proclamation of sections 12 to 14 of Schedule 9 to Bill 66.

- c. *Application to the City's local boards*

Finally, to the extent that this legislative change is intended to apply to local boards of the City of Toronto, the reference in s.14 of Schedule 9 to Bill 66 to "A local board within the meaning of the Municipal Act, 2001" is insufficient. The City of Toronto's local boards are not established through the legislative mechanism of the Municipal Act, 2001. They are established pursuant to the City of Toronto Act, 2006. Should this legislation not reference local boards within the meaning of the City of Toronto Act, 2006, the City of Toronto's local boards, like the Exhibition Place Board of Governors, would not be deemed to be a non-construction employer. If it is the Province's intent that amendments apply to Toronto local boards, the legislation should be amended to incorporate a reference to local boards within the meaning of the City of Toronto Act, 2006.

4. Toxics Reduction Act

The Toxics Reduction Act, 2009 (TRA) plays an important role in encouraging reductions in the use of toxic chemicals in Ontario, which has a positive effect on population health, reducing exposure to substances associated with cancer as well as chronic respiratory and cardiovascular diseases.

The proposed Bill 66 states that there is duplication between the TRA and the federal Chemical Management Plan (CMP). While both address the presence of toxins in the environment, there are some benefits offered by the TRA regime that are not included under the CMP:

- The CMP aims to reduce the risks posed by toxic chemicals to Canadians and the environment by (1) performing *Risk Assessments* (which includes environmental monitoring) and then (2) developing *Risk Management Instruments* (e.g. regulations, pollution prevention planning notices, release guidelines or codes of practice). While the CMP may use pollution prevention planning as a tool in some circumstances, the TRA aims to protect the health of Ontarians and the environment by encouraging all facilities to reduce the use, manufacture and release of toxic chemicals by: (1) making the facilities aware of the amounts of toxics that they use and release; (2) requesting the development of Toxics Reduction Plans; and (3) by providing public access to information reported by facilities.
- The TRA regime offers health protection benefits not included in federal legislation:
 - The TRA requires tracking of toxics use, creation, and amounts contained in product. This information is not tracked by the CMP nor the National Pollutant Release Inventory (NPRI). The TRA can be beneficial to the CMP by providing valuable information for its Risk Assessments.
 - The TRA tracks progress made by facilities on implementing toxic substance reduction plans. The CMP does not track nor publish information on toxic use reduction.
- The TRA requires public disclosure of information on toxic chemicals that is not available from the CMP or NPRI (e.g. use, creation, amounts contained in product, toxic reduction plans). This facilitates government transparency and enables access to valuable environmental information.

The proposal includes the following statement:

"The Toxics Reduction Program has not achieved meaningful reductions. Preliminary results indicate an overall reduction of 0.04% of substances used, created and released for all regulated facilities."

However, the available evidence about the TRA appears to suggest reductions as a result of its implementation. For example, the information published in the TRA's 2017 annual report indicates, from 2015 to 2016, a 6% to 7% reduction in the use of toxic chemicals and a 2% reduction in the amounts released to air, land and water. The same report shows that from 2010 to 2016, there is a lowering trend in the amount of toxics created, contained in product and released to air by the facilities that had committed to implementing their Toxic Reductions Plan.

Other North American programs have been also successful at reducing the use and creation of toxic substances while providing cost savings to industries. For example, from 1990 to 2005, the Massachusetts Toxic Use Reduction Act achieved a 55% reduction in use of toxic chemicals with a 9% increase in production (<https://www.mass.gov/guides/massdep-toxics-use-reduction-program>).