

## City Council

### Motion without Notice

MM25.30	ACTION			Ward: All
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### **Protecting Public Interest and Requesting Accountability From Minister's Zoning Orders - by Councillor Kristyn Wong-Tam, seconded by Councillor Joe Cressy**

*\* This Motion has been deemed urgent by the Chair.*

*\* This Motion is not subject to a vote to waive referral. This Motion has been added to the agenda and is before Council for debate.*

### **Recommendations**

Councillor Kristyn Wong-Tam, seconded by Councillor Joe Cressy, recommends that:

1. City Council express its displeasure with the actions taken by the Province through the Ministry of Municipal Affairs and Housing with regards to the issuing of O. Reg. 594/20, O. Reg. 595/20 and O. Reg. 596/20 without consultation with local residents, City Planning or with City Council, and send a copy of this Motion to the Ministry of Municipal Affairs and Housing.
2. City Council request the Chief Planner and Executive Director, City Planning to report to the Planning and Housing Committee in the first quarter of 2021 with recommendations on a potential framework for the use of the Minister's Zoning Orders in the City of Toronto, with terms that set forth key considerations and principles which the Province should apply when determining the appropriate use of the Minister's Zoning Orders in the City of Toronto to reach an expected outcome, including, but not limited to:
  - a. the ability to collaborate with City staff and officials in advance of the issuing of these Orders when possible, including public consultation where feasible;
  - b. the ability to be consistent with and/or in conformity with Provincial policies and legislation, including the Provincial Policy Statement, The Growth Plan and the Ontario Heritage Act where feasible;
  - c. continuing to ensure that Site Plan matters remain with the City;
  - d. continuing to balance local planning policy, including the Official Plan and technical considerations in order to support complete communities and good planning;
  - e. the ability to provide the City with the opportunity to provide input into

the procurement process; and

f. ensuring that there is a mechanism for ensuring revenue neutrality and the collection of appropriate community benefits in the event that section 37 or community benefit charges become inapplicable due to a Minister's Zoning Order.

3. City Council request the Minister of Municipal Affairs and Housing to confirm an alternative process for the City to collect or be compensated for existing negotiated and future community benefits that may have been impacted due to O. Reg. 594/20, O. Reg. 595/20 and O. Reg. 596/20.

## **Summary**

Late Friday, October 23, 2020, we learned that the Government of Ontario, through the Ministry of Municipal Affairs and Housing, issued three Minister's Zoning Orders affecting three sites in the West Don Lands. These Minister's Zoning Orders were issued without notification to our offices or formally to City Planning staff and were discovered by chance by a member of City Planning. The Province did not provide information about their implementation to either our offices nor to City staff prior to them becoming in-force.

The Province's unilateral decision to permit significant intensification on the properties, including one site that has not even been the subject of a formal application, sidesteps municipal governance, public consultation and the right to appeal options. Even though the Province has aggressive legislative powers to cut City Council in half during an ongoing election or reverse electoral reforms by banning the ranked ballot system, it does not mean they should do it. Especially not without communicating with the City first and even providing us the courtesy of announcing their intention with explanation.

Until the Ford Government, Minister's Zoning Orders were rarely used as exhibited by former governments including other Conservative ones. When such reaching powers were used, it was only in extraordinary circumstances.

The West Don Lands has long been planned for growth, utilizing public land to create a new complete community with thousands of new affordable housing units, transit and new parkland and public realm. The area, adjacent to the Don River, is home to significant brownfield assets that are being unlocked as new flood protection and remediation efforts are completed. Over the past 15 years since Waterfront Toronto began planning this new community in collaboration with the City, it has always represented a good faith effort from all levels of government to engage with residents and each other to master plan this community.

On Thursday, October 22, 2020, three provincial sites received Minister's Zoning Orders from the Province, under the titles O. Reg. 594/20, O. Reg. 595/20 and O. Reg. 596/20:

O. Reg. 596/20 for Blocks 3, 4 and 7 (373 Front Street East and 90 Mill Street): a zoning by-law amendment application to permit two 9 to 13-storey buildings and one 11-storey building with 870 residential units, 261 of which are affordable, and a 465 square metre community space. A final report on this application was to be before City Council this meeting. The Minister's Zoning Order is similar to the recommended approval that was before the City.

O. Reg. 594/20 for Block 20 (125R Mill Street): Official Plan and Zoning By-law

amendment application to facilitate a 45-storey and 32-storey mixed-use towers atop a 6-storey podium, with 661 residential dwelling units, 198 of which are affordable. An application was submitted on June 2, 2020, with review under way by City staff and a public consultation had been scheduled for November 2, 2020. The Minister's Zoning Order has added additional density, approximately 3,400 m<sup>2</sup> of additional gross floor area, to the site than what has been submitted by the developer.

O. Reg. 595/20 for Blocks 17 and 26 (approximately 153 to 185 Eastern Avenue). The site of the Dominion Foundry Complex, and per Waterfront Toronto's West Don Lands Block Plan and Design Guidelines, the largest concentration of heritage buildings to be preserved within the Precinct. No application has even been submitted to the City on this site. The Minister's Zoning Order permits up to three buildings, with one up to 141 metres in height and with a maximum residential gross floor area of 74,810.45 square metres for the entire site. A unit count is not provided, but likely represents hundreds of new units. Whether any units would be affordable is unknown.

Minister's Zoning Orders are a tool that the Province can invoke to either quickly provide permissions to allow development to proceed or in some cases freeze development permissions. As a result, the Order will take the place of municipal zoning. The City and the Province have collaborated recently to use them to respond to crises that require immediate attention, such as the Modular Housing Initiative as part of the HousingTO 2020-2030 Action Plan. Through the use of an Minister's Zoning Order, new housing units were able to come online in an expedited fashion. In those instances, the City brought the request forward to the Province after review by City Staff and after engaging with stakeholders. This was not a unilateral decision; due diligence was performed by both the City and the Province prior to the Minister's Zoning Order being enacted.

Much of the West Don Lands is provincially-owned land, including the three sites in question, and there is little doubt that these Minister's Zoning Orders may permit some new affordable housing units to be brought online in a more expedient manner. However, the timing of all three Minister's Zoning Orders is extremely problematic.

For Blocks 3, 4 and 7 (373 Front Street East and 90 Mill Street), the application, which had received significant public consultation, was about five days away from receiving City approval. From speaking with the applicant, this Minister's Zoning Order was issued to pre-emptively prevent a potential third-party appeal from neighbouring residents. If there was a concern about a third-party appeal to the Local Planning Appeal Tribunal slowing down this development, the Province could have waited to see first how City Council dealt with the application prior to enacting the Minister's Zoning Order and/or to wait to see if an appeal is received.

For Block 20 (125R Mill Street), an application for the site was under review. City staff have not finalized their review and have not provided comments to the applicant, and no consultation with the community had occurred as yet. Issues that staff had identified to be resolved in their preliminary report include, but are not limited to, the appropriateness of two towers in this location, built-form concerns, the need for additional community uses and rail safety mitigation measures.

Most critically for Blocks 17 and 26 (153 to 185 Eastern Avenue), there is a significant amount of intensification that has been approved for the site with no technical studies to

determine the impacts on this site or the surrounding community, including potential impacts on significant on-site heritage resources due to the presence of the Dominion Foundry Complex. There was no recent conversation with the City about the potential of this site, nor with the community. Any future discussion about this site is now hampered due to the approvals in the Minister's Zoning Order.

For Block 20 and Blocks 17 and 26 particularly, the City is now in a position where having not had the chance to properly review and consult with the public on either site, there is a significant chance that these Minister's Zoning Orders create an undesirable condition and planning precedents that we are now forced to live with. This is not collaboration, due diligence or good planning.

These Minister's Zoning Orders go beyond the potential built form impacts however. Both of the applications at Blocks 3, 4 and 7 and Block 20 were to create section 37 benefits for the local community, and any future applications at Blocks 17 and 26 would almost certainly have been subject to a similar review of community benefits. The issuing of the Minister's Zoning Orders from the Province has now brought into doubt the City's ability to collect these and future community benefits. Unless an alternative means of securing community benefits is provided, the Province has downloaded this cost for future benefits such as streetscape and park improvements that may have been secured with these developments onto the backs of all taxpayers.

It should be noted that we are not alone in bringing forth the concern of using Minister's Zoning Orders to fast track development. The Minister of Municipal Affairs and Housing has been frequently issuing Minister's Zoning Orders since the last provincial election on a scale and frequency that is historically unprecedented. Through Bill 197, the government has further enhanced the ability of the Minister of Municipal Affairs to utilize Minister's Zoning Orders. Both the Ontario Federation of Agriculture and Ontario Farmland Trust have raised concerns about Minister's Zoning Orders putting farmland at risk. Environmental Defence, an environmental advocacy group, has raised concerns about Minister's Zoning Orders that will allow new development on wetlands.

This is not about usurping good outcomes. It's about ensuring that Minister's Zoning Orders go through a process that is transparent and ensures the City and its residents are consulted and that outcomes are mutually agreed upon by both the City and the Province. If the Province is considering using a Minister's Zoning Order, it should be to reach an expected outcome similar to what City Council would have adopted. To achieve this, creating a framework with the Province is necessary.

This Motion is urgent as left unresolved, the Province may choose to issue further Minister's Zoning Orders for other sites in Toronto without the proper collaboration with the City.

### **Background Information (City Council)**

Member Motion MM25.30