



REPORT FOR ACTION

Amendments to the Municipal Code: Chapter 103 – Heritage, and Chapter 27 – Council Procedures

Date: October 5, 2020

To: Planning and Housing Committee

From: Chief Planner and Executive Director, City Planning

Wards: All

SUMMARY

On May 2, 2019, the Minister of Municipal Affairs and Housing introduced Bill 108, the Province's Housing Supply Action Plan (More Homes, More Choice Act). Through Bill 108 the Province passed, but has not yet enacted, significant amendments to the Ontario Heritage Act ("OHA"). Many of the OHA amendments will require Council to make decisions, specifically in relation to designations, alterations and demolitions, within very tight timelines (90 days). As such, it will be imperative that Council be able to make decisions as quickly as possible. Failure to make a decision within the prescribed time limits will, as a result of the amendments, result in deemed consent. On September 21, 2020, the Province has released a draft regulation associated with the amendments for consultation and comment.

This report recommends amendments to Chapter 27 of the Municipal Code, Council Procedures, to allow the Chief Planner, when required, to report on specified heritage matters directly to Council in order to meet timelines prescribed by the OHA.

This report also recommends amendments to Chapter 103 of the Municipal Code, Heritage, in order to delegate authority to the Chief Planner to agree to the extension of timeframes at an owner's request to extend of deadlines prescribed by the OHA and expand on and update the heritage complete application requirements.

RECOMMENDATIONS

The Chief Planner and Executive Director, City Planning recommends that:

1. City Council amend the New Business provisions of the City of Toronto Municipal Code, Chapter 27, Council Procedures, to authorize the Chief Planner and Executive Director, City Planning to report directly to Council, in order to make recommendations on decisions under the Ontario Heritage Act, when a matter is deemed urgent.

2. City Council amend the City of Toronto Municipal Code, Chapter 103, Heritage, directing that all reports recommending designation of a property under Part IV of the Ontario Heritage Act report to Planning and Housing Committee, after consultation with the Toronto Preservation Board, except in cases where the Chief Planner and Executive Director, City Planning reports directly to City Council as contemplated in Recommendation 1.
3. City Council amend the City of Toronto Municipal Code, Chapter 103, Heritage, Article 8, Delegation of Authority, to delegate authority to the Chief Planner and Executive Director, City Planning or designate(s) to negotiate and sign heritage easement agreements, to agree to extensions of statutory timelines where permitted under the Ontario Heritage Act and other administrative decision making powers.
4. City Council amend the City of Toronto Municipal Code, Chapter 103, Heritage, Articles 3 and 4 to update the complete application types and requirements as generally described in Attachment 1 of this report.
5. City Council authorize the City Solicitor to introduce the necessary Bills to give effect to City Council's Decision and to make any necessary clarifications, specifications, refinements, modifications, technical amendments, or By-law amendments as may be identified by the City Solicitor, in consultation with the Chief Planner and Executive Director, City Planning, in order to give effect to the implementation of changes to the Ontario Heritage Act, including coordinating the enactment date of the municipal code changes with proclamation of the relevant provisions of the Ontario Heritage Act.
6. City Council direct the Chief Planner and Executive Director, City Planning to review options on introducing a fee associated with the review of the required applications under the Ontario Heritage Act.

FINANCIAL IMPACT

The City Planning Division confirms that there are no financial implications resulting from the recommendations included in the report in the current budget year.

It should be noted that while the City does not currently charge fees for applications under the OHA, the recent amendments by the Province to the Act will require that the City implement a more comprehensive application process. It is anticipated that the number of formal applications the City receives under the OHA will increase. City Planning staff are currently developing a more regimented application process than currently exists and will report back on potential fees for heritage applications on a cost recovery basis.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial impact information.

EQUITY IMPACT STATEMENT

The report makes recommendations to manage implementation of proposed legislation, in order to maintain and improve the liveability of the city for all citizens, to ensure continued and meaningful community engagement in the city-building process and heritage conservation outcomes and to ensure that the lead role that the city plays provincially in upholding the tenants of good planning practice continues.

DECISION HISTORY

At its meeting of May 14, 2020, Toronto City Council adopted a report from the Chief Planner and Executive Director, "Proposed Bill 108 (More Homes, More Choice Act, 2019) and the Housing Supply Action Plan - Preliminary City Comments." This report provided Council with City Planning staff comments on Bill 108 and recommended a number of revisions to the Province with respect to the OHA.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.CC7.3>

At its meeting of February 19, 2020 Toronto City Council adopted the 2020 Capital and Operating Budgets. The approved operating budget included two new temporary application technician positions and two new temporary research and evaluation positions. The two application technician positions were created to allow the Division to respond adequately to changes to the Ontario Heritage Act and associated processes and timelines brought about through Bill 108 and allows for the creation of a better integrated OHA application process as it relates to planning and development generally. The two research and evaluation positions were created to undertake upfront heritage research and evaluation to inform development review, and to provide early identification of potential heritage resources with the amendments to the OHA that establish new timelines for property designation in conjunction with the planning process. These positions are funded by the Development Application Review Reserve Fund, and will be reviewed at the end of 2021.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.EX13.2>

COMMENTS

Bill 108 (More Homes, More Choice Act) made significant amendments to the OHA that will have an impact on how the City undertakes heritage planning. The amendments to the Act have not yet been proclaimed. On September 21, 2020, the Province has released a draft regulation associated with these amendments to the OHA. City Planning staff anticipate that the regulations and that the amendments will be proclaimed early in 2021.

The amendments include:

- Prohibition on designation after 90 days under Section 29(1) of the OHA after a "prescribed event" (yet to be defined) subject to exceptions that may be prescribed by regulation
- introduction of appeal rights in relation to designation bylaws and alteration applications to the Local Planning Appeal Tribunal
- the creation of a complete application process for alterations and demolitions
- a new 60-day timeline for notifying property owners if their applications for alteration and demolition are complete
- a new requirement to make decisions in respect of these applications within 90 days after the complete application date, failing which, the OHA provides for deemed consent for the respective application
- an objection process related to the listing of properties on the City's Heritage Register

The amendments to the Act are explained in further detail in the report from the Chief Planner and Executive Director, Proposed Bill 108 (More Homes, More Choice Act, 2019) and the Housing Supply Action Plan - Preliminary City Comments, dated May 14, 2019 (referenced above).

Procedural Amendment

Many of the amendments to the OHA will require that Council make decisions, specifically in relation to designations and alteration and demolition applications, within very tight timelines. As a result of these timelines, City Planning staff are recommending amendments to Chapter 103 – Heritage and Chapter 27 – Council Procedures, of the City's Municipal Code, to enable decisions to be made more efficiently.

Where a municipality has constituted a municipal heritage committee, as contemplated by the OHA, the municipal heritage committee must be consulted prior to council making a decision in respect of certain matters under the OHA. The City's constituted municipal heritage committee is the Toronto Preservation Board (TPB) and as such, the TPB must be consulted in advance of Council giving notice of its decisions on designations, alterations, and demolitions.

In accordance with 103 of the Municipal Code, current practice has City Planning staff reports going to the TPB and the appropriate committee of Council, and then on to City Council for a final decision. There is significant front-end work required of City Planning staff in order to research a property and make recommendations respecting a heritage designation. Likewise, the review of alteration and demolition applications requires detailed and thoughtful review. This front-end work allows the TPB to consider the recommendations of City Planning staff in context and provide advice to Council. Similarly, Council relies on these reports as part of the basis for its decision making. Where a matter is appealed (currently this would only pertain to demolition applications), reports assist City Planning staff in supporting Council's decisions.

The reports need to be submitted to the City Clerk in time to meet all relevant agenda deadlines. The meeting of the TPB is sometimes scheduled weeks prior to the corresponding committee meeting. Once the OHA amendments take effect it may become impossible for reports to be considered by both the TPB and Committee prior to Council making its decision, within the statutory time limits.

While City Planning staff will attempt to continue to route reports through Committee, it is expected that this may be challenging or technically difficult to achieve within the timeframes introduced by the amendments. As such, it is proposed that Municipal Code Chapter 27- Council Procedures be amended to allow the Chief Planner to bring new business directly to Council where the matter is time sensitive and therefore urgent. The required consultation with the TPB is intended to continue to occur prior to the report going to Council.

Prescribed Event

The introduction of the "prescribed event" and 90 day period, subject to exceptions as may be prescribed by regulation, will affect City Council's ability to designate properties under Part IV of the Ontario Heritage Act. In some circumstances, this may mean consideration of the designation by City Council well in advance of a planning application being considered by City Council. Restrictions on the ability to designate a property at any given time during the planning process will also impact City Council's ability to protect significant heritage properties from alteration and/or demolition.

To address the new designation restrictions outlined above, City Planning staff recommend that City Council alter the current process of providing recommendations for designations of heritage properties under Part IV of the Ontario Heritage Act by routing such reports through Planning and Housing Committee instead of the local Community Councils by way of a revision to Chapter 103, Heritage. This will ensure a consistent approach to managing the identification and protection of heritage properties on a City-wide basis. Alterations and demolitions of designated heritage properties will continue to be considered at the local Community Councils as those requests are usually directly related to an associated development application under consideration within the district.

Objections to Listing in the City's Heritage Register

Under the current legislation, owners have no avenue of appeal or objection to a municipality placing a property on its Heritage Register. Commencing January 1, 2021 OHA amendments will allow owners to object to the inclusion of a property on the City's Heritage Register at any time. Objections to listing must be reviewed by City Council but no further action is required should Council remain in support of the listing.

In order to ensure that all objections are considered by Council in a routine way, within a reasonable time period, it is proposed that the Municipal Code be amended to provide for the Chief Planner to report to City Council, through Planning and Housing Committee for consideration of objections. Objection reports may be provided on every other Council cycle, quarterly or alternative timeline satisfactory to the Chief Planner

and will contain a list of all addresses (City-wide) subject to an objection during the period of review.

Delegation of Authority

This report also recommends that Chapter 103 - Heritage be amended to provide further delegated authority to the Chief Planner and to clarify the authority that has been previously delegated to the Chief Planner for the issuance of routine heritage permits.

The OHA amendments provide municipalities with the ability to consent to an extension of time frames prescribed in the OHA for decisions related to alteration and demolition applications. Such extensions allow for City Planning staff to continue discussions with owners beyond the prescribed timelines in an effort to resolve concerns and build consensus on an application. Certain delegations to consent to timelines are already included in Chapter 103. It is recommended that the ability to consent to an extension of time limits continue to be delegated to the Chief Planner or designate and that any outstanding delegations that are not included related to consent to timelines be included in Chapter 103, Heritage.

The proposed amendments to the Municipal Code in this respect are intended to capture any opportunity to consent to extensions, including an opportunity to consent to extension of timelines as may be permitted by an exception to the regulation associated with a "prescribed event". This would streamline the process and provide express delegated authority to the Chief Planner or designate to consent to such extensions, where necessary and appropriate.

In addition, in order to streamline and expedite the process of negotiating and executing Heritage Easement Agreements (HEAs) within the planning approvals process, it is recommended that the Chief Planner or designate be delegated authority to negotiate and sign HEAs. Currently, the Chief Planner has limited delegation under Chapter 103-6.14 to negotiate and sign heritage easement agreements implementing, in part, the Heritage Property Tax Rebate Program.

Delegation of Authority - Classes of Alterations

The OHA contemplates that a municipal council may delegate the consent to classes of alterations. Prior to delegating any consent to alterations, Council must first consult with the TPB prior to authorizing the class of alterations. Once the complete application requirements are finalized and the Province's regulations are in force and in effect, City Planning staff will review whether it is appropriate to recommend certain classes of alterations where consent can be granted through delegated authority. The Chief Planner will report back if such options are determined feasible and assist in expediting the development review process, while ensuring consistent application of the OHA.

Delegation of Routine Matters

Currently Articles 3 and 4 of Chapter 103 delegate authority to the Chief Planner to issue approval for certain types of routine matters provided that proposed changes maintain the heritage character of the property and/or that they are compatible with the

guidelines of an applicable Heritage Conservation District. This report seeks Council's authority to update and clarify the language in these articles to ensure that the Chief Planner has sufficient delegated authority to approve applications for all such routine applications. Routine work is work that is consistent with the Standards and Guidelines for the Conservation of Historic Places in Canada and or other guidelines adopted by Council or produced by the Province and includes restoration, minor work that does not impact any heritage attribute.

Article 4 (B) will also be amended to ensure that the Chief Planner has the delegated authority to approve routine matters as they pertain to properties subject to Heritage Easement Agreements.

Applications under the Ontario Heritage Act

The OHA currently requires that owners of designated heritage properties obtain the written consent of Council prior to altering or demolishing a heritage property. Chapter 103 of the Municipal Code prescribes the process that property owners must follow in order to obtain Council's approval under the Act.

The OHA amendments introduced the notion of a complete application. The amendments also indicate that the Province may prescribe the minimum content of an application by regulation, but also authorize municipalities to create their own minimum standards. It is recommended that Articles 3 and 4 of Chapter 103 of the Municipal Code be amended to clarify complete application requirements for the various applications contemplated by the OHA.

City Planning staff are also recommending that the existing application requirements prescribed in Chapter 103 be updated to provide further clarity on the scope and impact of proposed work. Certain additional specifics may include, typical standard form requirements including e-mail address; the provision of a site plan and/or location plan depicting the location of existing buildings, landscape features and, photographs of the existing condition, plans and/or drawings of proposed work, with such other details, including metric scale, depicting materials, colours, dimension, massing and extent of work as well as further information to identify such works undertaken; where applicable historic documentation of a previous condition; heritage reports and condition assessments prepared by qualified professionals related to the type of application being made; written and/or visual specifications of works to be undertaken, including statements of works describing potential impacts to cultural heritage values and attributes and consistency with the Parks Canada Standards and Guidelines. The amendments to the Municipal Code in this respect will be submitted to a future Council meeting as it would be preferable to finalize the City's complete application requirements after the Province completes the consultation on the regulation.

Properties with Cultural Heritage Value or Interest (Part IV of the Ontario Heritage Act)

An owner of a property that is designated under Section 29 of the OHA is required to obtain the consent of Council prior to altering the property, and prior to the demolition or removal of a structure on the property. The amendments add an additional provision to

demolition of heritage properties that prescribes a process for the demolition or removal of a heritage attribute. Such applications are currently dealt with as alterations. As such, it is recommended that a new application type, Demolition of a Heritage Attribute, be added to Article 4 of Chapter 103 to address this significant change to the Act.

Properties within a Heritage Conservation District

Owners of properties within a Heritage Conservation District (HCD) are required to obtain a permit from Council prior to altering any part of the property other than the interior of any structure or building on the property and prior to erecting, demolishing or removing any building or structure on the property. Similar to the above described amendments in the context of designated properties, the amendments have restructured the alteration and demolition process for Heritage Conservation Districts and added a new requirement that prescribes a process for the demolition or removal of a heritage attribute. In response to this amendment, it is recommended that Article 3 Chapter 103 be amended to add new application types as follows:

- Application to Alter a Property Designated Under Section 42
- Erect a Building or Structure Designated Under Section 42
- Demolish or Remove a Heritage Attribute on a Property Designated Under Section 42
- Demolish or Remove a Building or Structure Designated Under Section 42, and to include associated application requirements.

Heritage Application Process

The amendments introduce additional emphasis on expeditious decision-making and mandatory adherence to a complete application review for all alterations and demolitions. As a result, City Planning will need to provide owners with a more structured application process, including a clear set of requirements for a complete application, than is currently in place.

City Planning staff are working on improved application processes for all of the application types discussed in this report. It is anticipated that these application processes will involve standard application forms and continued streamlined integration within the Toronto Building permitting process. To the extent possible, City Planning staff will also continue to try to align the OHA approval process with the application processes under the Planning Act, in order to ensure that the heritage policies of the Provincial Policy Statement (2020) and Growth Plan (2020) are satisfied.

Through this report City Planning staff are seeking authority to amend the City of Toronto's Municipal Code, Chapter 103, Heritage to revise the City's complete application requirements for applications made pursuant to the OHA. City Planning staff are also working on standardized application forms. The intention is to ensure that applications contain sufficient content to allow City Planning staff to process the application and to make appropriate recommendations to Council (or a delegated decision maker) on an application.

City Planning staff anticipate that once the amendments to the OHA come into force the volume of applications that the City receives will significantly increase while decisions will have to be made more quickly. City Planning staff are reviewing the need for fees to be introduced to support cost recovery, this may take the form of an interim administrative fee and/or fee structure for applications all of which is to be reviewed. Such a recommendation would be the subject of a separate report to Council or as part of the upcoming fee review report. City Planning staff will consult with the Building Industry and Land Development Association (BILD) on newly established application processes and fees.

CONCLUSION

Bill 108 (More Homes, More Choice Act) has introduced the most significant amendments to the Ontario Heritage Act in nearly two decades. In response to these amendments and to ensure that the City is able to continue to meet its heritage conservation objectives, City Planning staff are recommending amendments to Chapters 27 and 103 of the Municipal Code. These amendments to the Municipal Code will allow the City to meet the timelines set out in the OHA amendments, and include permission for the Chief Planner to report directly to Council in certain urgent circumstances related to timing; increased delegated authority allowing the Chief Planner to consent to the extension of deadlines under the Act; and further detail respecting complete application requirements. City Planning staff are currently working on a new application process to ensure that the City is ready to receive and process applications more efficiently and will conduct a fee analysis in the future.

CONTACT

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SIGNATURE

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ATTACHMENTS

Attachment 1 - Ontario Heritage Act Application Types

City Planning staff recommend that the existing application requirements prescribed in Chapter 103 be updated to provide further clarity on the scope and impact of proposed work. Certain additional specifics may include, typical standard form requirements including e-mail address; the provision of a site plan and/or location plan depicting the location of existing buildings, landscape features and, photographs of the existing condition, plans and/or drawings of proposed work, with such other details, including metric scale, depicting materials, colours, dimension, massing and extent of work as well as further information to identify such works undertaken; where applicable historic documentation of a previous condition; heritage reports and condition assessments prepared by qualified professionals related to the type of application being made; written and/or visual specifications of works to be undertaken, including statements of works describing potential impacts to cultural heritage values and attributes and consistency with the Parks Canada Standards and Guidelines. The amendments to the Municipal Code in this respect will be submitted to a future Council meeting as it would be preferable to finalize the City's complete application requirements after the Province completes the consultation on the regulation.

The general application requirements above, including those that may be prescribed by the Provincial Regulation under the Ontario Heritage Act will be refined by the following application types to be created, amended or updated:

- Application to demolish a listed heritage property under Section 27 of the Ontario Heritage Act;
- Application to alter a designated heritage property under Section 33 of the Ontario Heritage Act;
- Application to Demolish a Heritage Attribute of designated heritage property under Section 34 of the Ontario Heritage Act;
- Application to Demolish a designated heritage property under Section 34 of the Ontario Heritage Act;
- Application to Alter a Property Designated Under Section 42 of the Ontario Heritage Act;
- Application to Erect a Building or Structure Designated Under Section 42 of the Ontario Heritage Act;
- Application to Demolish or Remove a Heritage Attribute on a Property Designated Under Section 42 of the Ontario Heritage Act; and
- Application to Demolish or Remove a Building or Structure Designated Under Section 42.