

Legislative Changes to City Governance – Bill 3 and Bill 39

Date: December 7, 2022

To: City Council

From: City Manager, City Clerk and City Solicitor

Wards: All

SUMMARY

Bill 3, *Strong Mayors, Building Homes Act, 2022*

Legislative and regulatory changes that provide new powers to the Mayors of the City of Toronto and City of Ottawa came into force on November 23, 2022, with the proclamation of the Ontario government's Bill 3, [*Strong Mayors, Building Homes Act, 2022*](#) ("Bill 3"). Associated regulations were also released by the Province on November 23, 2022. The Bill and regulations are provided in Attachment 1 and 2 to this report. Further regulations to define provincial priorities under Bill 3 are not finalized at the time of writing this report. Language proposed by the Province with respect to provincial priorities is provided in Attachment 3 to this report. The Province has indicated that regulations confirming provincial priorities will be released when *Bill 39, Better Municipal Governance Act, 2022* is proclaimed.

Bill 3 amended the *City of Toronto Act, 2006* ("COTA"), the *Municipal Act, 2001* and the *Municipal Conflict of Interest Act*, to provide specific powers and duties to mayors that were previously provided to city councils for the City of Toronto and the City of Ottawa.

Amendments were also made to 1) eliminate the option of appointment before March 31 of an election year in case of vacancy in the office of Mayor and instead require a by-election; and 2) to provide that a person appointed as Mayor after March 31 in an election year will not have the powers of the Mayor under Part VI.1 and that those power are exercised by Council.

The *Municipal Conflict of Interest Act* was also amended to extend the declaration of interest provisions to the Mayor's exercise of his powers and duties outside of a meeting. Specifically, the Mayor is required to declare any interests in writing to the Clerk, not use the power and refrain from influencing the decisions of the City in respect of the matter. Further, if as a result of declaring an interest the Mayor is prohibited from using his powers to exercise his duty to prepare the City's budget in respect of a matter, City Council may pass a resolution to amend the proposed budget with respect to the

matter and the Mayor may not veto that amendment. The City is required to maintain a registry of any declared interests.

This report provides an overview of the new Mayoral powers for:

- Council governance;
- Organizational structure;
- Direction to staff;
- Prescribed provincial priorities; and
- Preparation of the municipal budget.

Once provincial priorities are finalized in regulation, the associated Mayoral power to veto or put matters in front of Council to advance such priorities will be in force.

Bill 39, *Better Municipal Governance Act, 2022*

On November 16, 2022, the Provincial government introduced Bill 39 the [Better Municipal Governance Act, 2022](#) (“Bill 39”) that proposes additional mayoral powers to those in Bill 3. At the time of writing this report, Bill 39 legislation has not yet been proclaimed into force. Information about the proposed additional mayoral powers in Bill 39 is provided in this report and a copy of Bill 39 is included as Attachment 4 to this report with the Province's proposed amendments to regulations included as Attachment 5 to this report.

Updates to Governance Processes and Procedures

The City Clerk has established templates and related processes and procedures to assist the Mayor in carrying out these new powers. An example of this already in use is the Mayoral Decision template, and the associated [online public-facing repository](#).

To ensure the Toronto Municipal Code chapters are updated to align with the changes arising from Bill 3 and Mayoral decisions made under Bill 3, some updates will be required to City by-laws including Chapters 27, Council Procedures and Chapter 169, Officials, City.

RECOMMENDATIONS

The City Manager, City Clerk and City Solicitor recommend that:

1. City Council amend Municipal Code Chapter 169, City Officials to provide that the City Solicitor and City Clerk are authorized to submit and process bills.
 - a. The City Clerk may process by-laws if the by-law is required as a result of the coming into force of Part VI.1 of the *City of Toronto Act, 2006* or a decision made by the Mayor under Part VI.1 of the *City of Toronto Act, 2006*.
 - b. The City Solicitor, in consultation with the City Clerk, may submit bills directly to Council for enactment where an action is required as a result of the coming

into force of Part VI.1 of the *City of Toronto Act, 2006* or a decision made by the Mayor under Part VI.1 of the *City of Toronto Act, 2006*.

FINANCIAL IMPACT

There are no financial impacts resulting from this report. The Chief Financial Officer and Treasurer has reviewed the financial impact statement and concurs with the financial impact statement.

DECISION HISTORY

At the July 19, 20, 21 and 22, 2022 meeting, City Council considered Member Motion MM47.107, Taking a Stand for Toronto's Local Democracy.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2022.MM47.107>

COMMENTS

A. Bill 3, Strong Mayors, Building Homes Act, 2022

On August 10th, the Province of Ontario introduced Bill 3, *Strong Mayors, Building Homes Act, 2022* ("Bill 3") to the Ontario Legislature. Communications released with the introduction of Bill 3 indicated it would provide the mayors of Toronto and Ottawa new tools to advance provincial priorities defined by regulations, including building 1.5 million new homes over the next ten years and the construction and maintenance of infrastructure to help build housing faster. Bill 3 received Royal Assent on September 8, 2022, and came into force on November 23, 2022.

Bill 3 amended the *City of Toronto Act, 2006* ("COTA"), the *Municipal Act, 2001* and the *Municipal Conflict of Interest Act*, to provide specific powers and duties to mayors (described as Heads of Council in the legislation) that were previously provided to city councils for the City of Toronto and the City of Ottawa. The Province has indicated these powers will be extended to other municipalities in the future. In addition, Bill 3 amended COTA to require a vacancy for Head of Council be filled by by-election up to March 31 of an election year.

The following is an overview of the changes to COTA that impact Toronto's governance as a result of Bill 3.

Council Governance

Bill 3 amended COTA to provide the Mayor:

- 1) The power to establish Committees of Council, assign their functions, and appoint the Chairs and Vice-Chairs. This power applies to Committees that are comprised solely of members of Council.

- 2) The Power to appoint Chairs and Vice-Chairs of Local Boards for prescribed boards. At this time, no boards are currently prescribed.

Organizational structure

Bill 3 amended COTA to provide powers related to the Chief Administrative Officer (City Manager) and the organizational structure of the City's administration to the Mayor. For example, Bill 3 amended COTA to provide the Mayor:

- 1) The power to appoint and assign duties to a City Manager.
- 2) The power to hire or dismiss a head of any division or the head of any other part of the organizational structure. Certain City officials are excluded from this authority, including the following City officials who will continue to be appointed by City Council:
 - The clerk or deputy clerk*.
 - A treasurer or deputy treasurer*.
 - An Integrity Commissioner.
 - An Ombudsman.
 - An Auditor General.
 - A registrar.
 - A chief building official.
 - A chief of police.
 - A fire chief.
 - A medical officer of health.
 - Other officers or heads of divisions required to be appointed under COTA or any other Act.
 - Any other prescribed persons.

**Reference to deputy clerk and deputy treasurer where this is recognized in law.*

- 3) The power to determine the City's organizational structure.

The Mayor may choose to delegate the powers listed in 1 to City Council and may delegate the powers listed in 2 and 3 to either City Council or the City Manager.

Directions to City Staff

Bill 3 provides the Mayor the power to direct City staff to undertake research, provide advice to the Mayor and City Council on City policies and programs and to implement Mayoral decisions related to the powers under Bill 3. Such direction must be provided in writing to the City Clerk and City Manager.

Powers to advance and/or prevent interference with Provincial Priorities

Bill 3 amended COTA to provide the Mayor with two new powers in relation to prescribed provincial priorities. At the time of writing, the Province has shared proposed regulations prescribing the following provincial priorities:

1. Building 1.5 million new residential units by December 31, 2031.

2. Constructing and maintaining infrastructure to support housing, including, transit, roads, utilities, and servicing.

The full text of the proposed regulations is included in Attachment 3.

The Province has communicated that regulations prescribing provincial priorities will be filed after Bill 39 comes into force. Once those regulations are filed, the following powers will be in force:

- 1) The power to veto a by-law if the Mayor is of the opinion that all or part of a by-law could potentially interfere with a provincial priority. The Mayor's veto does not introduce amendments or new by-laws; rather it nullifies Council's decision. Council may override a veto by a vote of 2/3 of members of Council.
- 2) The power to require City Council to consider a matter at a meeting that could potentially advance a prescribed provincial priority.

The Mayor may exercise the veto within 14 days of the date when Council voted in favour of a by-law, provided that the Mayor provided notice of intent to veto the by-law on or before the earlier of two days after the day City Council voted in favour of the by-law.

A graphical depiction of the process and timelines described in the legislation and regulation with respect to the Mayor's veto and Council override authorities is included in Attachment 6 (Page 1). Information on the impact of the veto on City processes is described in Section C of this report.

Preparation of the Annual Municipal Budget

Bill 3 amended COTA to provide for the Mayor to present the City's annual budget to City Council. Council has the power to amend the budget. The Mayor may then veto such amendments. The veto can be overturned by a 2/3 vote of members of Council.

Regulations released in relation to Bill 3 prescribe the following with respect to the annual budget:

- The Mayor may present a proposed City budget no later than February 1 by providing it to each member of City Council and to the Clerk. If the Mayor does not present a proposed budget, City Council must do so.
- City Council has 30 days to amend the proposed budget after the Mayor presents it or may choose to shorten this period (for 2023, Council adopted a meeting calendar with a Special Council meeting on February 14 for consideration of the proposed budget, which shortened this period). If Council does not amend the proposed budget within this time, the Mayor's proposed budget is deemed to be adopted.
- The Mayor may veto Council amendments up to 10 days after the time period for Council to pass amendments ends (the shorter of the 30 days or the shorter time adopted by Council) or the Mayor may choose to shorten this period. If the Mayor does not exercise his veto the amended budget is deemed adopted.
- City Council may override the Mayor's veto with a 2/3 vote up to 15 days after the time period for the Mayor to veto an amendment (the shorter of the 10 days or

the shorter time adopted by the Mayor), in which case the amended budget is deemed adopted. This time period may also be shortened by Council.

- If Council does not exercise an override of the Mayor's veto the proposed budget is deemed adopted.

A graphical depiction of the timelines and requirements for budget Council amendments and approvals as described in the regulations is provided in Attachment 6 (page 2).

While the budget approval process has been changed as described above, the adoption of revenue sources, including the tax levy, user fees, and direct taxes remains within the authority of Council.

For the 2023 budget process, the Mayor has created a budget committee to hear deputations from the public and provide advice to inform the budget the Mayor will propose to Council by February 1, 2022.

In-Year Budget Adjustments

Bill 3 also amended COTA to allow the Mayor, for the purposes of raising additional tax levies in-year, to prepare a proposed budget amendment. Similar to the process for the annual City budget, Council has the power to amend any such proposed budget amendment and the Mayor may then veto such amendments. The veto can be overturned by a 2/3 vote of members of Council.

A depiction of the process required under Bill 3 for such proposed in-year budget amendments is provided in Attachment 6 (Page 3).

B. Bill 39, Better Municipal Governance Act, 2022

On November 16, 2022, the Provincial government introduced Bill 39 the *Better Municipal Governance Act, 2022* ("Bill 39") that proposes additional Mayoral powers. At the time of writing, Bill 39 legislation is still working its way through the legislative process – on December 5, 2022, the Standing Committee on Heritage, Infrastructure and Cultural Policy concluded its review of the bill, and on December 6, 2022 reported it, without amendment, to the Legislative Assembly for Third Reading.

Bill 39 includes the following provisions related to Mayoral powers:

- Amendments to the *Municipal Act, 2001* and to COTA to enable the mayors of Toronto and designated municipalities to propose and amend certain municipal by-laws related to prescribed provincial priorities and enable Council to pass the by-law if more than one-third of members of Council vote in favour.
- Allow the provincial Cabinet to prescribe the provincial priorities for which the new mayoral by-law powers could be used and allow the Minister of Municipal Affairs and Housing to make regulations that establish rules related to the by-law power.

The Province has communicated that provincial priorities that are referred to in Bill 3 and Bill 39 will be prescribed in regulation when Bill 39 comes into force. Updates will be provided to Members of Council when this legislation is finalized.

Also, further proposed amendments (included as Attachment 5) to regulations were released on December 6, 2022 which propose to prescribe that the Heads of Council's new by-law power under Bill 39, if passed:

- Would apply to by-laws made under section 2 of the *Development Charges Act*.
- Would not apply to by-laws related to the municipal budget (process for the municipal budget is outlined in [O. Reg. 529/22](#)).
- Would not apply to procedural by-laws and decisions related to filling a vacancy on council.

C. Updates to City Processes and Procedures

Exercise of Powers in Writing

The amendments require the Mayor to exercise these new powers in writing and make a record available to the Clerk and City Council by the next business day. Decisions are also required to be made available to the public, subject to the *Municipal Freedom of Information and Protection of Privacy Act*. The City Clerk has offered to assist the Mayor in meeting his obligations and has established an [online repository](#) for these documents and developed templates for Mayoral decisions and directives. Through the process that has been established by the Clerk with the Mayor, the Mayor provides signed Mayoral decisions to the Clerk and once the Clerk has posted the decision in the repository, an email notification is provided to Council Members with a link to the decision.

In addition, the City Clerk has developed Mayoral Report templates for the Mayor to use when exercising reporting powers under the new legislation. Such reports will be made public with the publishing of the respective agendas. These instruments will make it clear to the public and members of Council when the Mayor is exercising powers under Part VI.1 of COTA, distinct from those assigned to the Mayor by the Council Procedures.

Impact of Veto on Enactment of By-laws

As noted, the Mayor may exercise the veto within 14 days of the date when Council voted in favour of a by-law, provided that the Mayor provided notice of intent to veto the by-law on or before two days after the day City Council voted in favour of the by-law. In order to enable the Mayor to consider the exercise of the veto or issuance of a notice of intent to veto, by-laws under COTA, the *Planning Act* or section 2 of the *Development Charges Act, 1997*, are not considered passed by the City until after those two days have expired or the Mayor provides approval of the by-law in writing, whichever is sooner.

As a result, the in-force date for all by-laws passed by Council, including confirmatory by-laws, will be the third day after being passed, unless the Mayor gives earlier written approval. The exception is that this does not apply to decisions or by-laws passed under Acts other than COTA, *Planning Act* or *Development Charges Act*. Historically there have been very few by-laws passed under other legislation. The two-day delay will apply to the passage of by-laws by Community Councils and committees under delegated authority of Council.

The City Clerk has established a business process to implement the confirmation of by-laws.

Updates to Toronto Municipal Code

The introduction of special powers and duties for the Mayor supersede and make redundant several provisions of the Toronto Municipal Code and other by-laws. This includes provisions of the Council Procedures (Chapter 27) and the City Officials chapters (Chapter 169). In order to maintain the accuracy and readability of the Municipal Code, the City Clerk and City Solicitor will undertake a review of the affected code chapters for alignment with the new legislation.

City Council should authorize the City Clerk and City Solicitor to submit and process bills that bring the Municipal Code into compliance with the legislation and the exercise of powers by the Mayor to eliminate confusion for readers of the Code. If authorized, this work will begin as soon as possible to ensure that that readers of the Municipal Code have an updated and accurate view of the prevailing law.

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ATTACHMENTS

Attachment 1 – Bill 3, *Strong Mayors, Building Homes Act, 2022* (in-force)

Attachment 2 – Associated Regulations (in-force)

Attachment 3 – Proposed Regulations Prescribing Provincial Priorities

Attachment 4 – Bill 39, *Better Municipal Governance Act, 2022* (not proclaimed)

Attachment 5 – Proposed Provincial Amendments to Regulations

Attachment 6 – Veto and Budget Process Scenarios