

**City Planning**

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May 5, 2023

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**RE: Proposed Planning Act and City of Toronto Act, 2006, (Schedules 2, and 6 of Bill 97 - the proposed Helping Homebuyers, Protecting Tenants Act, 2023) ([ERO number 019-6821](#))**

On behalf of the City of Toronto, please find staff comments regarding the proposed legislative amendments to the *Planning Act* and *City of Toronto Act, 2006* contained in Bill 97, the Helping Homebuyers, Protecting Tenants Act, 2023. The City is interested in the outcomes of the legislative changes provided they are supported by good planning principles and advance the supply of affordable housing. We acknowledge the intentions of Bill 97, and our comments are directed to ensure that the new policies most effectively provide for the housing needs of Torontonians, in a timely and efficient manner.

**New effective date for Bill 109 planning fee refunds**

The *Bill 109 The More Homes for Everyone Act, 2022* introduction of a legislative requirement that municipalities refund application fees if the municipality fails to meet statutory deadlines for decisions on various development applications remains a concern to the City of Toronto. While fee refunds were initially set to come into effect on **January 1, 2023** we support the proposal of Bill 97 to delay the effective date of development application fee refund provisions until **July 1, 2023**. No fee refunds are required for applications filed and for which no decision has been made between January 1, 2023 and July 1, 2023. However, the City would request that the Province amend the effective date of development application fee refund provisions until **December 31, 2023**.

Bill 97 creates a Minister's regulation-making authority to exempt identified municipalities from the fee refund requirements in the future. The City supports the concept proposed by the Province of a regulation that would exempt the City of Toronto from the fee refund provisions. In the interim, the City requests an extension of the fee refund provisions to December 31, 2023. Notwithstanding either a further extension of the effective date of fee refunds or a fee refund exemption regulation, the City of Toronto continues the ongoing implementation of a new operating model for development review which will improve organizational structures, processes and technology to support better timeline management in addition to restructuring to better improve timelines. Additional time will enable the City to put in place these new processes and structures to better meet the legislated timelines prior to fee refunds being implemented.

City staff continue to remain of the opinion that Bill 109 introduced punitive legislated timeline provisions, which will severely hinder the City's ability to recover the cost of its development review service, particularly as the City does not have sole control over the legislated review timeline. As such, staff recommends that Bill 97 be amended to introduce a “**stop-the-clock**” provision to reflect shared responsibility between the City and applicants for the review timeline. Stop the clock provisions allow for the suspension of a statutory timeline or deadline. This means that the timelines are suspended to provide flexibility and accommodate unforeseen circumstances or information needs that may impact the ability of parties to meet a deadline and then resumes once the suspension is over. The introduction of a “stop-the-clock” provision better reflects the nature of development application review which is an iterative process between the City and applicants. The iterative process consists of the practice of building, refining, and improving a proposal through back-and-forth dialogue.

**Recommendations:**

- City staff supports, in principle, the extension of the timelines in Bill 97 to give municipalities more time to prepare to implement the changes in Bill 109.
- City staff recommend that the effective date of fee refunds be extended to December 31, 2023.
- City Staff encourage and support the issuing of a fee refund exemption regulation and request consideration of the City as a candidate municipality for such a regulation to be applicable to.
- City Staff recommend the legislation include “stop-the-clock” provisions to recognize the iterative planning process of back-and-forth discussions.

**Clarification of Parking for additional units**

*Bill 23 More Homes Built Faster Act, 2022* put in place the ability to require more than one parking space where additional residential units are permitted as of right. We understand that Bill 97 proposes to clarify that other than with respect to the primary residential unit, an official plan or zoning by-law may not require the provision of more than one parking spot for each residential unit. The City has removed most minimum parking requirements from our Zoning By-law, and it is not anticipated that the City would reintroduce minimum parking requirements that would impact the supply of housing.

**Recommendation:**

- City staff support the clarification provided in Bill 97 that additional parking spaces can be provided for additional units but not required

### **Amendment to the definition of “area of employment”**

Bill 97 proposes to replace the *Planning Act* definition for an “area of employment”, expressly excluding institutional uses and commercial uses, including retail and office uses that are not associated with the primary industrial or warehouse uses. The Bill also introduces a transition for areas of employment that contain these excluded uses, provided that the City puts in place policies in the Official Plan that acknowledges the continuation of these uses. Council decisions on the conversions or removal of areas of employment would not be subject to appeal to the Ontario Land Tribunal.

Bill 97 in addition, proposes to carry over the definition of “area of employment” to the proposed Provincial Planning Statement. However, “Institutional use” is a defined term in the PPS, but only for the purpose of not permitting these uses in areas prone to flooding, given that vulnerable populations visit or reside in institutional areas. Given that institutional uses are excluded from employment areas and there is no corresponding definition for the purposes of employment area policies, this will lead to multiple and potentially contradictory interpretations of institutional uses across the province.

### **Recommendations:**

- City staff do not support the revised definition as it has the potential to remove approximately 25% of the City’s employment areas (upon preliminary analysis) from the *Planning Act* definition. This potentially puts at risk approximately 150,000 jobs currently found in these areas.
- City staff support the introduction of transitional provisions in Bill 97 for lands that contain the proposed excluded uses (i.e., institutional, commercial, retail, offices), however City staff recommend that to ensure timely transition and conformity with the PPS the required Official Plan policies to put in place Bill 97’s proposed transition should – if adopted by City Council – not be subject to appeals to the Tribunal.
- City staff recommend that the Province apply the existing institutional use definition to the exclusion of such uses within employment areas.
- If the existing institutional use definition is not applied to employment areas, then City staff recommend that municipalities be required to define institutional uses in their official plans for the purposes of interpreting and implementing policies for employment areas.

### **Restores the right of appeal to the initial passing of an interim control by-law**

Bill 97 proposes to allow appeals of an Interim Control By-law (“ICBL”) within 50 days of the passing of the ICBL or the extension of the initial ICBL. Prior to Bill 97, no notice or hearing is required prior to its passing, as the municipality need only direct that a study be undertaken with

respect to land-use planning in the specified area. Currently, only the extension of an ICBL can be appealed. Over the past 5 years the City of Toronto has not adopted a single new ICBL although the City has amended or extended 5 ICBLs. The ability of a municipality to focus on planning outcomes associated with an interim control by-law as opposed to focussing energies on a OLT hearing upon the passing of an ICBL is an unfortunate direction and as demonstrated by the City's use of ICBL is an extraordinary tool seldom utilized by the City.

#### **Recommendation:**

- City staff do not support appeals of Interim Control By-laws upon their enactment as the proposed changes have the potential of focusing efforts at a litigated Tribunal hearing rather than channelling energies and addressing the identified potential issues through a vital planning study.

#### **New Ministerial Powers**

Bill 97 proposes to provide the Minister of Municipal Affairs and Housing with new powers under the *Planning Act*, when issuing a Ministerial Zoning Order. Bill 97 would give the Minister the power to order that policy statements, provincial plans and official plans do not apply to “downstream” approvals such as a license, permit, approval, or permission that is required before a use is permitted by the MZO. Downstream approvals related to the MZO could not be denied for the reason of non-conformity to provincial policy or municipal official plan policy. For example, an MZO may permit residential uses in an area where the Official Plan does not and will proceed through the approval process regardless of municipal policies. This has serious implications setting up a speculative, unpredictable planning regime in Ontario detached from long range planning objectives.

Provincial plans and the Official Plan policies related to life safety, flood hazards, and accessibility matters should be applicable to downstream approvals if the proposed new Ministerial power comes into effect. In addition, the proposal has the potential to reduce input of local policies, which can lead to decisions that do not reflect local priorities and existing or even planned context.

#### **Recommendations:**

- City staff do not support the Minister's ability to make Regulations and orders related to planning functions that would otherwise have been directed by local municipalities.
- City staff recommend that the legislation confirm that policies related to life safety, flood hazards, and accessibility continue to apply to all lands subject to a Ministerial Zoning Order.

**Seeking Feedback on Future Regulations To Create A Balanced Framework Around Municipal Rental Replacement By-Laws:** Ontario's Regulatory Registry - [Proposal Number: 23-MMAH005](#)

Bill 97 provides more details regarding areas for the Minister to make regulations under section 111 of the *City of Toronto Act, 2006*, relating to the following: imposing restrictions on the powers of the City to prohibit and regulate the demolition and conversion of residential rental properties; requiring an owner to make payments and require compensation, the amounts of the compensation, and who compensation should be paid to; transitional matters and steps the City must take or preconditions that must be met before passing a by-law; and, defining terms not already defined in the *City of Toronto Act*. Furthermore Bill 97 would enable a Minister's regulation on rental replacement to supersede existing legislation, such as the *Planning Act* or *Residential Tenancies Act*.

The accompanying draft regulatory framework for municipal rental replacement by-laws provides few details surrounding the Province's intended application of these new regulatory powers. As drafted, these changes could enable the Minister to fundamentally change the City's current rental replacement practices, including allowing owners to provide cash-in-lieu of replacement units, reducing tenant compensation, redefining rental housing and/or affordable rental housing in a way that would be inconsistent with the City's in-force income-based definitions, and limiting the City's ability to regulate rent for replacement units.

The new regulatory powers also create uncertainty for mid-stream rental housing demolition applications, as the Minister could determine transitional matters, which could result in different processes and protections for tenants compared to what was already communicated to them. The proposed legislation could require the municipalities to meet preconditions before passing a rental replacement by-law, which could cause confusion. Council will be considering the proposed regulatory framework and will provide detailed response to the proposed regulation.

The importance of maintaining the supply of over 276,000 of existing rental housing units in Toronto for the economy, given the comparatively affordable supply of homes for vulnerable populations, our workforce and newcomers cannot be over emphasized.

**Recommendations:**

- City staff do not support the proposed Minister's ability to make Regulations as these new provisions create uncertainty around future implementation of Toronto's existing rental demolition by-law and rental replacement policy.
- City Staff recommend deleting proposed subsection 111(8) of the *City of Toronto Act* as it is not appropriate for a Minister's regulation on rental replacement to be able to override existing legislation (e.g., Ontario Human Rights Code, *Planning Act*, *Residential Tenancies Act*).
- City Staff recommend the pre-condition requirement be deleted from proposed subsection 111(7)(d) of the *City of Toronto Act, 2006*, as Toronto already has an existing by-law.

- City Staff recommend the Province undertake meaningful consultation with the City, including consulting on a draft regulation that clearly outlines proposed regulations, prior to any regulations coming into force and effect.

The City would like to thank the province for providing an opportunity to comment on the proposed content of Bill 97. We would ask that the Province engage in meaningful dialogue with the City to ensure that the opportunities to address unintended consequences are avoided.



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