

Proposed Framework for the Community Infrastructure and Housing Accelerator (CIHA) tool

Date: April 12, 2023

To: Planning and Housing Committee

From: Chief Planner and Executive Director, City Planning

Wards: All

SUMMARY

Recent changes to the Planning Act now provide the opportunity for municipalities to specifically request that the Minister of Municipal Affairs and Housing issue a zoning order. This report proposes a framework for the use of this tool, which is referred to as the Community Infrastructure and Housing Accelerator ("CIHA") tool. This tool would expedite priority developments as it involves a process that is more streamlined than that associated with a typical zoning bylaw approval.

Key differences between a CIHA Order and a zoning by-law amendment include:

- A CIHA Order can include conditions imposed by the Minister, including the requirement to register an agreement on title to the land. This may allow CIHA Orders to secure community benefits or other matters important for the orderly development of lands that may not otherwise be possible to secure under the existing legislative framework;
- The process for City Council to request a CIHA Order does not have the same consultation requirements as Zoning By-Law Amendments;
- A CIHA Order does not need to conform with the Official Plan; and
- A CIHA Order cannot be appealed to the Ontario Land Tribunal.

These differences would allow the City to expedite the approval process for developments that City Council has identified as key priorities, based on the benefits they will provide such as the creation of affordable and/or supportive housing. Priority projects that would qualify for the use of a CIHA may also include critical infrastructure projects, or projects with significant economic generating purposes. The use of a CIHA would eliminate appeals which often cause significant delays in approval processes, and in some circumstances can put project financing at risk resulting in the project not advancing.

The report provides an overview of the legislative context and applicable Provincial guidelines. The report also outlines how CIHA Orders would compare to typical

approval processes and provides a framework through which staff would consider recommending to Council that the City consider applying the use of CIHAs, and outlines projects where CIHAs would be appropriate.

RECOMMENDATIONS

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

1) The Planning and Housing Committee direct the Chief Planner and Executive Director, City Planning to undertake consultation and meet with key stakeholders regarding the proposed framework for the Community Infrastructure and Housing Accelerator tool and report back with final recommendations in Q3 2023.

2) The Planning and Housing Committee direct the Chief Planner and Executive Director, City Planning use the proposed framework for the Community Infrastructure and Housing Accelerator tool to assess any CIHA requests in the interim and advance such requests for City Council approval where appropriate, until final recommendations are approved by City Council, following the report referenced in recommendation 1.

EQUITY STATEMENT

The use of the Community Infrastructure and Housing Accelerator tool could help accelerate the delivery of homes across the full housing spectrum, including new emergency shelters, supportive and transitional housing, long-term care, social housing, affordable housing, and market-based housing.

The use of the CIHA tool would help support the HousingTO 2020-2030 Action Plan which envisions a City in which all residents have equal opportunity to develop to their full potential, and is centred on a human rights based approach to housing. This approach recognizes that housing is essential to the inherent dignity and well-being of a person and to building inclusive, healthy, sustainable, and livable communities. It also recognizes that resources must be prioritized to help those most in need.

The CIHA tool would also help support the Housing Action Plan 2022-2026. The Housing Action Plan will help support students, newcomers, low- and moderate-income households, renters, equity-deserving communities and individuals and families looking for more housing options across Toronto.

FINANCIAL IMPACT

There are no financial implications resulting from the recommendations included in this report in the current budget year or in future years.

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

DECISION HISTORY

On May 5, 2021, City Council adopted a report on a Recommended Framework for the Use of Minister's Zoning Orders, including recommendations for the Provincial government when utilizing Ministers Zoning Orders ("MZOs") powers to protect local public interest and ensure accountability. A number of the City's recommendations for the use of MZO's were incorporated into the Framework and Guidelines for the use of a Community Infrastructure and Housing Accelerator.

<https://www.toronto.ca/legdocs/mmis/2021/ph/bgrd/backgroundfile-165702.pdf>

On May 11, 2022, City council adopted a report responding to Bill 109: the More Homes for Everyone Act, 2022. The City Council decision included general support for the policies underpinning the Community Infrastructure and Housing Accelerator tool provided that it, and the Minister's Zoning Order powers, are utilized prudently and do not create a parallel approval process with little consultation and diminished adherence to provincial policy.

<https://secure.toronto.ca/council/agenda-item.do?item=2022.PH33.11>

On January 19, 2023, Planning and Housing Committee considered item PH1.7 requesting the Chief Planner and Executive Director, City Planning, to report back on the feasibility of applying the Community Infrastructure and Housing Accelerator tool to Housing Now sites, along with other priority affordable housing projects, including but not limited to the Quayside project.

<https://secure.toronto.ca/council/agenda-item.do?item=2023.PH1.7>

COMMENTS

Legislative Framework

The More Homes for Everyone Act, 2022 made various amendments to the *Planning Act*, including the addition of a new section 34.1 that provides authority and sets out a process whereby municipalities may request the Minister of Municipal Affairs and Housing to issue a zoning order. The Minister may respond to these requests by issuing a zoning order (a "CIHA Order"). This new tool is being referred to as the "Community Infrastructure and Housing Accelerator".

The *Planning Act* provides that a CIHA Order may include conditions that in the opinion of the Minister are reasonable. The municipality in requesting a CIHA Order may request that conditions be imposed as part of the order. When a condition is imposed by the Minister, the CIHA Order may also require an owner of the land to enter into an agreement that may be registered on title which would allow the Minister or municipality to enforce the conditions against the owner and any and all subsequent owners of the land.

In determining whether to issue a CIHA Order, the Minister is not required to consider a provincial policy statement, a provincial plan, or an official plan. If another planning

approval in addition to rezoning is required, the Minister may also provide that provincial policy statements, provincial plans and an official plan do not apply to those subsequent planning instruments.

CIHA Provincial Guidelines

The Minister issued [Guidelines](#) on the use of the CIHA on October 25th, 2022.

The Guidelines speak to, among other things, the types of developments that are considered a priority. The Minister may make a CIHA Order to expedite priority developments, including:

- community infrastructure projects that are subject to *Planning Act* approval including lands, buildings, and structures that support the quality of life for people and communities that provide public services; e.g. health and long-term health care facilities;
- any type of housing, including community housing, affordable housing and market-based housing
- development associated with transportation infrastructure
- buildings that would facilitate employment and economic development; and
- mixed-use developments

The Guidelines clarify that the Minister will only consider an exemption from the application of provincial and local land use policy requirements for subsequent approvals if the approval is needed to facilitate the proposed project, and the municipality provides a plan that would, in the opinion of the Minister, adequately mitigate any potential impacts that could arise from the exemption. This includes, but is not limited to, matters dealing with community engagement; Indigenous engagement; and environmental protection/mitigation.

Steps to Request a CIHA

In order to request a CIHA, a municipality must follow specific steps related to public consultation, including:

- Providing public notice. The legislation, however, does not specify any statutory notice requirements.
- Undertaking consultation with such persons, public bodies and communities as the municipality considers appropriate.
- Ensuring the CIHA Order once made is made available to the public.

In addition, within 15 days of passing the Council resolution to request the CIHA Order, the municipality must provide the Minister with the following:

- A copy of the municipal council's resolution identifying the requested amendments;
- A description of the consultation undertaken;
- A map showing the location of the lands to which the CIHA Order would apply;

- A description of any licenses, permits, approvals, permissions, or other matters that would be required before a use that would be permitted by the CIHA Order could be established; and
- Such information as may be prescribed.

The Guidelines indicate that the Minister may ask for additional information or material to be provided to help make the decision. This may include:

- Certain studies or reports, such as a planning justification report, an archaeological assessment, environmental impact statement and servicing study; and
- Additional information about the engagement completed with Indigenous communities about the proposed project.

CIHA versus Zoning By-law Amendment and Minor Variance Processes

The table below summarizes the key differences between the legislated approval processes for a CIHA Order, Zoning By-Law amendment, and Minor Variance.

	CIHA	Zoning By-Law Amendment (ZBLA)	Minor Variance (MV)
Legislated Approval Timeline	No specified timeline. Staff expect it to be similar to a ZBLA 90 day approval timeline. There is no prescribed timeline for the Minister to issue a CIHA Order.	90 days	30 days
Public Consultation Requirements	No specific consultation requirements or notice requirements. Staff recommend a similar consultation process as would occur for a ZBLA.	One public meeting with at least 20 days' notice provided to the public. The City also hosts a community consultation meeting in advance of the statutory public meeting. Such a meeting is not required by the <i>Planning Act</i> .	10 days' notice provided to the public in advance of the Committee of Adjustment hearing. Any member of the public may speak at the hearing.
Application of Provincial Policies and Official Plan	Not required	Required. Applicants can also apply for Official Plan Amendments.	Required. A Minor Variance must meet the intent and purpose of the Official Plan, among the four tests applicable under the Act.

	CIHA	Zoning By-Law Amendment (ZBLA)	Minor Variance (MV)
Conditions	The Minister may impose conditions including a requirement that the owner enter into an agreement that may be registered against title to the subject lands to secure such other conditions	In the absence of the necessary regulations, conditions may not be imposed under section 34 of the Planning Act.	Conditions may be imposed under section 45(9) of the Planning Act
Community Benefits	Community Benefit Charge would apply. Further community benefits may be possible as approval conditions, and implemented through agreements registered on title.	Community Benefit Charge would apply.	Community Benefit Charge would apply. Potential to secure other matters through a Section 45(9) agreement.
Primary Approval Body	Minister of Municipal Affairs and Housing	City Council	Committee of Adjustment
Appeal rights	None	Applicant, third parties, public bodies	Applicant, municipality, prescribed persons and public bodies

Staff expect that the municipal process to review and request a CIHA order would take a similar amount of time as the municipal review and approval process for a ZBLA application.

If there are no appeals of a ZBLA, a ZBLA would come into force sooner than a CIHA Order issued by the Minister. However, City Council's decision with respect to a ZBLA can be appealed to the Ontario Land Tribunal, creating uncertainty around when a final decision may be issued. An appeal would create significant delays for priority projects such as those advanced under the Rapid Housing Initiative.

Staff expect that the review and approval process for a CIHA Order may take longer than a minor variance approval process, depending on the consultation and approval approach taken when requesting a CIHA Order. The benefit of a using a CIHA to approve what might have been approved as a Minor Variance would be to shift approval from the Committee of Adjustment to City Council and the Minister. This would eliminate any risk that the Committee may not approve the application.

Primary Benefits of the CIHA process

When applied to projects initiated by public sector agencies, the primary benefit of a CIHA Order, when compared to a typical ZBLA process, is the restriction on appeals. This restriction provides certainty around the final approval that is not possible under the normal ZBLA process.

When applied to projects initiated by the private sector (including not-for-profit developers), there are two primary benefits of a CIHA process.

First, the legislation does not impose any limits on the conditions that the Minister can place on the approval of a CIHA Order. This may allow for agreements that secure matters such as infrastructure improvements or community benefits over and above what may already be secured through the Planning Act. From the City's perspective this would be the primary benefit for applying a CIHA to privately initiated projects.

Second, the restriction on appeals provides further project certainty for the applicant, which likewise helps provide additional certainty around the timely delivery of community benefits, assuming such benefits are secured as a condition of the CIHA Order.

The CIHA tool would also allow the City to advance projects that, while supportable, do not conform with the Official Plan. For example, a 5-storey long-term care home in a neighbourhood which restricts height to 4 storeys could be approved through a CIHA Order without requiring an Official Plan Amendment.

Risks in the use of CIHA

There are a number of potential risks in the use of CIHAs. Notably, there may be a perception of insufficient consultation prior to a CIHA being requested. Relatedly, there could be a perception of overreach by the municipality since CIHA orders may be seen as taking away appeal rights where they otherwise would have been allowed. These two risks can largely be mitigated through an appropriate and thorough public consultation process that informs City Council's final decision.

There are also risks with respect to CIHA Order. These include that:

- there is no specified timeline for the Minister to issue an Order;
- the Minister may refuse to issue the Order;
- the Minister may revoke a CIHA Order that has been issued; and
- the Minister may amend the Order requested, creating uncertainty as to the final permissions and/or conditions imposed.

Overall, the use of a CIHA order should be seen as an exception tool for priority projects rather than as a general replacement for the City's standard planning approval process. To this end, the use of the CIHA tool should not replace, or be seen as a replacement for, the City's overall effort to improve the approval process intended to make the system work better for everyone.

Proposed Framework for using the CIHA tool

In considering the feasibility of utilizing the CIHA tool, staff recommend that the following elements be evaluated to determine the appropriateness of requesting a CIHA order:

Delivery of Community Benefits: It is staff's opinion that CIHAs should be restricted to projects that deliver affordable housing and/or community benefits well beyond what can be secured through the current approval process.

When assessing the appropriateness of applying a CIHA, Council may also consider the delivery of other forms of non-market development that cannot be secured otherwise under the current legislative framework, such as long-term care homes, as an appropriate outcome for the use of a CIHA order. Likewise, critical infrastructure projects, or projects with significant economic generating purposes may be considered appropriate.

The requested zoning amendments are supportable: There should be a co-ordinated municipal assessment and position on the proposed changes to the zoning by-law to ensure they are supportable by staff and that they can be implemented successfully.

Any variances to the Official Plan Policies are supportable: One of the advantages of a CIHA Order is that it does not need to comply with the Official Plan. If there are any variances to the Official Plan, there should be a co-ordinated municipal assessment and position on the proposed variances to the Official Plan to ensure they are supportable by staff.

Staff are of the opinion that in most circumstances CIHA Orders should generally comply with the Official Plan and that a CIHA Order should not be requested if the proposed development would have required an Official Plan Amendment that can only be considered through a Municipal Comprehensive Review (e.g. an employment land conversion request).

Opportunity for Appropriate Consultation: The CIHA requirements provide more flexibility for consultation than a traditional ZBLA process.

As noted above, staff generally recommend using a similar consultation approach to that required for a typical ZBLA. However, there may be situations where a different consultation approach is appropriate. For example, one of the initiatives proposed by the Federal Housing Accelerator fund, announced in March 2023, is waiving public hearings on all affordable housing projects that conform to the official community plan. The CIHA tool would allow the City to act on this proposed initiative.

The project is implementable via site plan: Council recommendations for CIHA Orders should ensure that the associated development can be implemented at the site plan level. This involves ensuring servicing matters are appropriately considered prior to Council recommending a CIHA, with minor matters to be addressed as part of site plan approval.

In requesting the CIHA Order, sufficient direction should be provided by the municipality so that the Minister is not required to address site plan matters or impose conditions not included in the municipal request.

This condition is generally required for staff to recommend a typical zoning by-law amendment for approval.

The development will advance in a timely manner: Staff are of the opinion that the use of CIHA Orders should be limited to projects where the project proponent is committed to advancing the project in a timely manner, such as actively advancing site plan approval and building permits or seeking approvals in relation to a funding deadline. This requirement would help ensure that the community benefits secured are delivered in a timely manner, corresponding to the expedited approval being sought.

Proposed Process for Requesting a CIHA Order

Pre-application: Any projects that may qualify for a CIHA Order under the proposed framework should be reviewed in detail during the City's mandatory pre-application stage. Notably, this pre-application review should confirm that:

- the application will deliver appropriate community benefits;
- the proposed amendments to the zoning by-law are supported by staff;
- any adjustments to Official Plan designations or policies are supportable; and
- the applicant is committed to advancing the project following issuance of a CIHA Order.

Where staff are of the opinion that a CIHA Order is appropriate, the application could be submitted to request a CIHA Order rather than a ZBLA.

Application review: Under the Planning Act, ZBLAs are expected to be approved by City Council within 90 days of an application being submitted, and a similar review timeline should be expected of CIHA requests. Where possible, CIHA requests would be expedited by staff, particularly as the proposed changes to the zoning by-law should have staff support in advance of any application being submitted.

Public Consultation: As with zoning by-law amendment applications, staff recommend that at least one community consultation meeting be held prior to a final report being brought to committee and Council on the matter. This consultation session would allow the public to provide input on the requested order in advance of staff drafting an approval report.

The need for such a meeting could be waived for affordable housing projects that align with the Official Plan, consistent with the approach proposed by the Federal Housing Accelerator Fund guidelines.

Committee Meeting: Staff recommend that any CIHA Orders are considered by the Planning and Housing Committee prior to advancing to City Council. This meeting would be a public meeting where interested members of the public could speak to the proposed CIHA Order. As with zoning by-law amendment applications considered by

community councils, staff recommend that the public be provided with at least 20 days' notice in advance of a proposed CIHA Order being considered by the Planning and Housing Committee.

The need for such a meeting could be waived for affordable housing projects that align with the Official Plan, consistent with the approach proposed by the Federal Housing Accelerator Fund guidelines. In such circumstances a final report would be advanced directly to City Council for approval.

Approval: Following Planning and Housing Committee, a proposed CIHA Order would be advanced to City Council, who would request approval from the Minister. Following the Minister's approval, staff would notify the public as required by the legislation.

Future use of CIHAs

Based on the proposed framework, staff are of the opinion that CIHAs could be used to advance a variety of projects as part of the following housing initiatives.

Rapid Housing Initiative and Modular Housing Initiative projects: Requesting CIHA Orders is appropriate for projects under the Rapid Housing Initiative (RHI) and Modular Housing Initiative (MHI). Projects under the RHI and MHI streams deliver significant affordable housing, including deeply affordable units that would not be delivered by typical developments advanced by the private sector. The use of CIHA Orders would align with the established practice of requesting Minister Zoning Orders for these projects and there is a demonstrated need to advance this form of housing

MHI and RHI projects are sensitive to approval timelines based on the funding criteria for these projects. Approval delays, including any appeals against these projects may put project funding at risk and/or make these projects unfeasible. Consequently, MHI and RHI projects should be seen as a priority for the use of CIHA Orders.

Housing Now Sites: Depending on the individual project, CIHA Orders may be appropriate for Housing Now projects. Housing Now delivers significant community benefits, beyond what is secured through typical development applications, including affordable housing and new community spaces.

City or Agency initiated projects: A CIHA Order may be appropriate for Toronto Community Housing revitalization projects, applications initiated by Waterfront Toronto, ModernTO projects, or other publicly initiated or funded projects, such as new long-term care homes.

Open Door projects (Including co-op and non-profit housing): Projects receiving Open Door funding and/or incentives may be appropriate projects for the use of a CIHA Order where the proposed affordable housing units can be secured as a condition of the final CIHA Order.

Private Affordable Rental Housing developments: A CIHA could be appropriate for such projects where the proposed affordable rental housing would not otherwise be able

to be secured under the existing legislative framework, and where affordable rental housing units are provided and would be secured as a condition of the CIHA Order.

Private Affordable Ownership Housing developments: A CIHA could be appropriate where the proposed affordable ownership housing could not have been fully secured under the existing legislative framework, and where such units could be secured as a condition of the CIHA Order.

Summary

The CIHA tool offers an opportunity to provide an accelerated consultation, review and approval process that could be used to help deliver priority developments, including developments with new affordable housing units. Staff have proposed a draft framework for determining if a development proposal should be considered for approval under the CIHA tool versus more traditional planning approval processes. Staff recommend that consultation be undertaken, including discussion with key stakeholders regarding the proposed framework for the CIHA tool and report back with final recommendations in the third quarter of 2023.

In the meantime, strategic staff-initiated projects, such as RHI or MHI projects that formerly may have been advanced through an MZO process, may be advanced for approval under the CIHA tool. Other strategic projects may be considered on a case by case basis using the draft framework outlined in this report.

CONTACT

Kerri Voumvakis, Director, Strategic Initiatives, Policy & Analysis, City Planning Division, 416-392-8148, Kerri.Voumvakis@toronto.ca

Abbie Moscovich, Deputy Director, Planning and Administrative Tribunal Law, Legal Services, 416-392-6905, Abbie.Moscovich@toronto.ca

Mario Giambattista, Project Coordinator, Strategic Initiatives, Policy & Analysis, City Planning Division, 416-338-4995, Mario.Giambattista@toronto.ca

Graham Haines, Senior Planner, Strategic Initiatives, Policy & Analysis, City Planning Division, 416-392-8124, Graham.Haines@toronto.ca

SIGNATURE

Gregg Lintern, MCIP, RPP
Chief Planner and Executive Director
City Planning Division