

Implementing Bill 109 - 2023 Annual Update

Date: November 16, 2023

To: Planning and Housing Committee

From: Deputy City Manager, Development and Growth Services

Wards: All

SUMMARY

In December 2022, Council adopted the report "Implementing Bill 109 - the *More Homes for Everyone Act, 2022*" ([2022.EX1.4](#)). This report provides a summary of progress in 2023 under the two guiding principles established in December 2022:

- Continue to focus on and prioritize good city-building outcomes; and
- Mitigate risk to cost recovery of development review services.

Putting these principles into practice has driven change in practice but as predicted, has revealed the unintended consequences of the legislation. Legislated review timelines do not take into consideration Toronto's complex urban environment. They ignore the reality that positive results are commonly achieved through collaboration over time during the review. To mitigate risk to cost recovery in the near term, the City faces long-term risks to good city-building outcomes. Without further legislative change or regulation that recognizes the City's unique development context, the ability to work together with applicants to implement the City's strategic priorities will be diminished.

The City continues to make considerable progress in the areas of staff recruitment, policy and process change, and implementation of new technology, as outlined in this report. Despite best effort and ongoing engagement with our industry partners, risk to cost recovery will not be fully mitigated in 2023 and is expected to continue into 2024.

In addition to an update on progress in 2023, this report responds to Council direction on item [2023.PH6.2](#) which requested that the Chief Planner and Executive Director, City Planning and the City Solicitor report to the November 30, 2023 meeting of the Planning and Housing Committee with possible measures, if any, that could be taken by the City of Toronto to avoid planning application fee refunds as prescribed in Bill 109 amendments to Section 114 of the *City of Toronto Act, 2006*. The City Solicitor has been consulted in the preparation of this report.

RECOMMENDATIONS

The Deputy City Manager, Growth and Development Services, recommends that:

1. City Council request the Minister of Municipal Affairs and Housing to consult with the City prior to issuing any draft regulations associated with Bill 109, specifically related to definitions included in the legislation, limitations on refund eligibility, waivers, a "stop the clock" mechanism, and other implementation tools.
2. City Council request the Minister of Municipal Affairs and Housing to consult with the City regarding a "reasonable timeline" within which residential development applicants who receive planning approval must commence construction.
3. 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 City Council when recommending refusal of an application for an Official Plan Amendment and/or Zoning By-law Amendment.

FINANCIAL IMPACT

Bill 109 presents significant risk to the City's cost recovery model of development review services, including:

- the City's ability to retain revenue generated through the processing of development applications; and
- the cost of right-sizing the development review service's staff complement to better meet new legislated requirements.

Anticipated Impact to Development Application Fee Revenue

Anticipated annual average revenue from development applications is approximately \$77 million ([2022.PH34.6](#)). Bill 109 introduces punitive legislated timeline provisions, including a schedule of development application fee refunds, for three application types: combined Official Plan Amendment/Zoning By-law Amendment (OPA/ZBA), Zoning By-law Amendment (ZBA) and Site Plan Control (SPC). These three application types represent annual average revenue of approximately \$69 million. Refund provisions came into force and effect on July 1, 2023 and present a significant risk to anticipated annual revenue.

Based on typical application processing times over an approximately five-year period between 2019 and 2023, if there were no change in how the City processes applications, approximately 93% of OPA/ZBA and approximately 99% of ZBA and SPC application fees would be eligible for refund.

Despite significant improvements to the operating model - including staff recruitment, policy and process change, and implementation of new technology - Bill 109 will continue to severely hinder the City's ability to fully recover the cost of its development

review service in 2023 and 2024.

Impact of Complement Right-sizing

The City's ability to meet legislated timelines relies, in part, on additional staff resources to adequately implement the new operating model. In December 2022, Council approved 150 new permanent positions needed to improve adherence to legislated timelines while ensuring high-quality review outcomes. Those 150 positions have since been approved as part of the 2023 Budget.

At the time the 150 new permanent positions were initially approved in December 2022, the anticipated cost of the positions in 2023 was \$14.148 million. In 2023, the projected cost of positions filled is approximately \$6.0 million. The cost of these positions in 2024 is projected at approximately \$17.7 million. Staffing costs are drawn from the Development Application Review Reserve Fund (XR1307) in 2023 and 2024, until the next Development Application Fee Review is approved by Council, enabling cost recovery.

All positions identified above are eligible for cost recovery through the Fee Review, which will be reported back to Council with a recommended tariff of fees by late 2024. However, full cost recovery of these positions relies on the City's ability to retain development application fees. While fee revenue is expected to meet budget in 2023, it is not yet clear whether a development slow down and reduced application volume may impact 2024 revenues.

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

EQUITY IMPACT STATEMENT

Bill 109 is based in large part on the premise that reduced housing affordability is primarily a function of an increase in population and a lack of housing supply. The stated purpose of the legislation is to reduce "red tape", accelerate development application review timelines, and streamline the approvals process. Bill 109 fails to recognize that the planning approval process is a fundamentally iterative one in which the public, applicants, city divisions, external agencies and provincial Ministries collaborate in an effort to achieve good city-building outcomes.

Bill 109 has been analysed at the definition and planning stage for potential impacts on Indigenous, Black and Equity-seeking groups of Toronto. Availability, access and affordability of housing is complex, requiring an all-of-government and community response. While the housing crisis is widespread, it impacts Black, Indigenous and equity-deserving communities more significantly than others. Systemic and institutional barriers have resulted in lower household incomes and as a result, the high cost of housing has pushed equity-deserving and lower income Torontonians farther from home ownership, rental options and overall economic security. Bill 109 has and will continue to significantly alter local decision making with respect to the development application process, creating further delays.

DECISION HISTORY

On October 12, 2023, City Council adopted the report "Bill 109 Implementation, Phase 3 - Recommended Official Plan and Municipal Code Amendments respecting Site Plan Control," to establish policy tools to address the impacts of Bill 109, including a new requirement for in-effect zoning compliance as part of a complete Site Plan Control application (OPA 688), and updates to the City's Site Plan Control Exemption by-law, and Mandatory Pre-Application Consultation by-law.

<https://secure.toronto.ca/council/agenda-item.do?item=2023.PH6.2>

On July 19, 2023, City Council adopted the report "Bill 109 Implementation, Phase 2 - Recommended Official Plan and Municipal Code Amendments respecting Delegated Authority for Minor Zoning By-laws," to establish new policy tools that enable the City to better address recent changes to Zoning By-law Amendment decision-making timelines in the *Planning Act* under Bill 109.

<https://secure.toronto.ca/council/agenda-item.do?item=2023.PH5.1>

On March 29, 2023, City Council adopted the report "Bill 109 Implementation, Phase 1 - Recommended Official Plan and Municipal Code Amendments," to implement complete application provisions for Site Plan Control applications.

<https://secure.toronto.ca/council/agenda-item.do?item=2023.PH2.1>

On February 28, 2023, Planning and Housing Committee adopted the report "Bill 109 Implementation - Near-term Process and Technology Improvements," to address improvements to the Application Information Centre (AIC) and information and materials to replace the Preliminary Report.

<https://secure.toronto.ca/council/agenda-item.do?item=2023.PH2.2>

On December 15, 2022, City Council adopted, as amended, the report "Implementing Bill 109 - The *More Homes for Everyone Act, 2022*," from the Interim Deputy City Manager, Infrastructure and Development Services regarding the City's approach to addressing the impacts of the legislation. City Council directed the Chief Planner and Executive Director, City Planning to report back to Planning and Housing Committee with recommended Official Plan and Municipal Code amendments.

<https://secure.toronto.ca/council/agenda-item.do?item=2023.EX1.4>

COMMENTS

Background

In December 2022, Council adopted the report "Implementing Bill 109 - the *More Homes for Everyone Act, 2022*" ([2022.EX1.4](#)). The report recommended a comprehensive but phased approach to implementing Bill 109, including the roll out of a new operating model for the City's development review service. The new operating model includes the organizational structure, process improvements and technology upgrades required to ensure optimal functioning of the model as the City responds to existing and evolving legislative change. Additionally, the report identified the policy and

process measures necessary to ensure the City continues to achieve good city-building outcomes while mitigating risk to cost recovery of its development review service.

In June 2023, the City established Development and Growth Services (DGS), and appointed a new Deputy City Manager ([2023.CC7.2](#)). The transition to DGS will accelerate the implementation of the new operating model. With transformation initiatives well underway, Bill 109 continues to severely hinder the City's ability to recover the cost of its development review service. The risk has not been fully mitigated in 2023 and is expected to continue into 2024. Ongoing organizational, policy, process and technology improvements will support improved performance against legislated timelines.

This report is organized in four parts, reflecting the structure of the December 2022 report and adding a "2024 Outlook" section to summarize future improvements:

- **Part 1 - Improved Organizational Structures:** This section details progress to date on filling the 150 net new positions approved by Council to support right-sizing staff complement within a team-based organizational structure.
- **Part 2 - Policy Measures:** Successive Official Plan and Municipal Code Amendments in 2023 address legislative conformity matters and establish a policy basis for process improvements. Work in this area is ongoing, with additional policy measures anticipated throughout 2024.
- **Part 3 - Process & Technology Improvements:** In December 2022, staff detailed six near-term process improvements to be implemented in 2022-2023. Most of these improvements have now been implemented. Continuous process improvements are required in these and other areas in 2024. Technology improvements to support the implementation of the new operating model are ongoing.
- **Part 4 - 2024 Outlook:** This section summarizes ongoing and forthcoming improvements expected in 2024.

Part 1 - Improved Organizational Structures

The recommendation to transition to a new operating model was approved by Council in September 2019 through the End-to-End Review of the Development Review Process Report ([2019.PH8.7](#)). Implementation of the new operating model has been ongoing since March 2020 through the Concept 2 Keys (C2K) program. The operating model includes three pillars - organizational structure, process improvements, and new technology.

The City has implemented a team-based structure to streamline the processing of all development applications. The new team-based structure, operational city-wide, comprises a core development review team of staff from Community Planning, Urban Design, Transportation Planning, Engineering and Construction Services, Transportation Services and Parks, Forestry & Recreation.

Optimal performance of the team-based structure relies, in part, on a right-sized staff complement. To respond to the impacts of ongoing legislative change, 150 new permanent positions across all divisions engaged in development review were approved in the 2023 Budget. In 2023, 89 of the 150 positions (59%) have been filled, with 61 positions (41%) in active recruitment. Due to the progressive nature of many of the positions, senior positions were filled first, knowing promotions would contribute to additional vacancies in less senior positions.

As broader organizational restructuring occurs through the DGS transition in 2024, additional positions may be identified.

Part 2 - Policy Measures

In 2023, staff advanced a broad slate of policy measures to address legislative conformity matters and establish a policy basis for process improvements, including three Official Plan Amendments and four rounds of related Municipal Code Amendments. A summary of amendments is included below. A table indicating the status of each and links to in-force by-laws is available in Attachment 1 to this report.

Official Plan Amendments

[OPA 641](#): Changes to pre-application consultation, complete application, delegated authority, and timeline to appeal for Site Plan Control applications came into effect on July 1, 2022 under Bill 109. The intent of OPA 641 was to bring the Official Plan (Chapter 5 and Schedule 3) and Municipal Code (Chapter 415) into conformity with in-force Provincial legislation. The amendment did not establish or add any new application requirements to any part of the Official Plan or amend or remove any existing requirements. It redefined existing requirements, that were previously "encouraged," into "mandatory" requirements for Site Plan Control applications. Technical amendments to ensure consistent use of terminology related to submissions, minimum application requirements and complete applications were also included in OPA 641.

[OPA 660](#): This Official Plan Amendment established new policies 5.1.9 and 5.1.10 related to delegated authority for minor zoning by-laws and alternative measures for informing and obtaining the views of the public, respectively. The Official Plan now identifies three types of minor zoning by-laws that Council may choose to delegate to a committee or City official, including: Removal of a Holding ("H") Symbol, amendments to incorporate lands into Zoning By-law 569- 2013, and enactment of housekeeping/technical by-law amendments to the city-wide Zoning By-law. Only one of the by-law types - Removal of a Holding ("H") Symbol has been delegated to the Chief Planner through a related Municipal Code amendment, described below. OPA 660 also addressed alternative measures for informing and obtaining the views of the public regarding minor zoning by-laws, including streamlined notice and public meeting requirements.

[OPA 688](#): OPA 688 establishes an in-effect zoning compliance requirement as part of a complete Site Plan Control application. The purpose of the requirement is to ensure that the development sought in the Site Plan Control application is permitted in the in-effect

zoning by-law applicable to the site. This requirement enforces sequential consideration, decision-making and approval of development applications to support scoped and more expeditious review of Zoning By-law Amendment and Site Plan Control application types and better timeline management under Bill 109. OPA 688 has been appealed to the Ontario Land Tribunal (OLT).

Municipal Code Amendments

Amendments related to Site Plan Control: Amendments to Chapter 415 of the Municipal Code regarding delegated authority and complete application provisions for Site Plan Control approval were required to ensure conformity with recent amendments to the *Planning Act*. Code amendments related to Council bump-up provisions, complete application, and Preliminary Reports were included in the December 2022 report.

Delegated Authority for Minor Zoning By-laws: To implement OPA 660, described above, Council adopted a delegation by-law to delegate authority to approve minor zoning by-law amendments (e.g. Removal of a Holding ("H") Symbol) to the Chief Planner.

Site Plan Control Exemption By-law: Municipal Code Chapter 415, Development of Land, Article V, Site Plan Control was repealed and replaced in October 2023. The purpose of the amendment is to ensure conformity with Bill 23 and Zoning By-law 569-2013; clarify and broaden the list of permitted exclusions from Site Plan Control where there is limited value in site plan review; reduce duplicative processes and streamline review; and, support consistent interpretation through improved organization and legibility. These amendments help to focus staff effort through the Site Plan Control review and approval process on matters that have the greatest benefit to the City. The amendments also ensure alignment with policy direction to facilitate missing middle development within complete communities, supported by necessary infrastructure and a sustainable and vibrant public realm.

Municipal Infrastructure Agreements: The purpose of this amendment is to enable the City to enter into a Municipal Infrastructure Agreement (MIA) with a developer without the requirement of a Site Plan Control application.

Mandatory Pre-Application Consultation By-law: To support continuous improvement of the pre-application consultation process, two amendments to the Mandatory PAC By-law were adopted in October 2023, including the introduction of a validity period to ensure the Planning Application Checklist Package (Checklist) issued at the end of the mandatory PAC process reflects current policy, regulation, legislation and application requirements. For Checklists issued prior to April 3, 2023, the validity period is 12 months. For those issued on or after April 3, 2023, the validity period is 24 months. Additionally, the Mandatory PAC by-law has been amended to stipulate that PAC meetings for Site Plan Control applications are not permitted to occur concurrently with a meeting for any other application type. This change supports the intent of OPA 688, noted above.

Proposed amendment to Council Procedures By-law: The 2024 City Council schedule includes several periods where City Council is only able to make a decision within

legislated timelines if staff recommend, based on the merits of the proposal, to refuse the application. A recommendation to refuse an application does not require a public meeting at Community Council or Committee. Recommendation 3 of this report proposes that City Council authorize the Chief Planner to add Refusal Reports directly to the City Council agenda to provide Council the opportunity to make a decision within the legislated timeline and mitigate the risk of application fee refunds.

Part 3 - Process & Technology Improvements

In December 2022, six near-term process improvements were prioritized for implementation. Most of these improvements were implemented in 2023. Until regulations are issued under the legislation, the City has prioritized implementation of existing tools under the *Planning Act*, which are concentrated at the front end of the process (i.e., mandatory pre-application consultation and determination of complete application). Increasingly, the City's development review process is underpinned and supported by legislative and policy tools (e.g., mandatory pre-application consultation) over non-legislated practices (e.g., Preliminary Reports).

Near-term technology improvements support the implementation of new or improved processes while a longer-term transformation of the City's backend workflow management system is underway.

Mandatory Pre-Application Consultation (PAC)

The City's Mandatory PAC by-law came into force and effect on April 3, 2023. Between April 3 and September 30, 2023, the City completed 99 mandatory PAC processes. On average, the PAC process takes approximately 51 business days from intake of an applicant request for a meeting to the City issuing a Planning Application Checklist Package. This falls above the City's service standard of 40 business days. Ongoing improvements to the PAC process are reflected in periodic by-law updates, including those noted in Part 2, above. If a PAC meeting results in an application submission, the Planning Application Checklist Package - including staff comments on the proposal - is posted as public information to the Application Information Centre (AIC). Further improvements to the Mandatory PAC process are planned for 2024.

Complete Application

Since December 2022, Staff have advanced policy, process and technology change that support the review of complete applications. On May 6, 2023, complete application provisions for Site Plan Control applications came into force and effect (see OPA 641 in Part 2, above). On August 1, 2023, the City's back-end workflow software, IBMS, was reconfigured to support two-step circulation for all file types. These policy and technology changes support a new process of first deeming an application complete (Step 1) prior to circulation for review and comment (Step 2). Two-step circulation is critical in managing legislated timelines as it enables staff to prioritize complete applications that meet the City's requirements and are ready for decision (OPA/ZBA) or approval (Site Plan Control).

STAR Timelines

In December 2022 Council adopted a staff recommendation to discontinue the use of STAR Timelines, as target application review timelines under the STAR program no longer reflect legislated timelines. STAR Timelines were removed from the City of Toronto Development Guide in Spring 2023. File prioritization strategies that address timely review of applications received both before and after July 1, 2023 are being implemented through the new operating model.

Preliminary Reports for Official Plan and Zoning By-law Amendment Applications

Preliminary Reports were removed from the OPA/ZBA and ZBA application process in December 2022, as the average timeline to have preliminary information considered by Community Council typically exceeded the total legislated timeline to make a final decision on OPA/ZBA and ZBA applications.

In place of a Preliminary Report to Community Council, Council directed the Chief Planner to produce a “simplified summary” of each OPA/ZBA and ZBA file, to be provided to the Councillor and the public when the application has been deemed complete and prior to a community consultation meeting. To address Council direction, staff have developed a Preliminary Summary template that is posted to the Application Information Centre (AIC) once an OPA/ZBA or ZBA application is deemed complete (on Day 30). The Preliminary Summary is no more than a few pages in length and includes the Community Planner's contact information, a brief description of the application, key site statistics, an overview of the applicable planning framework, information about the community consultation meeting, key items to be considered through the review, links to information and resources, and key maps. This has improved access to preliminary information about an application that would have previously been made available months into the review process and better supports earlier community consultation.

Community Consultation Meetings (CCMs)

In early 2023, staff established community consultation meeting schedules to group meetings on set days and times within each district. Staff have also established a target to hold the community consultation meeting within approximately 45 days of an application being submitted to the City (provided the application is deemed complete). Implementation of these timeline management measures has been variable city-wide. Staff, applicant, Councillor and public feedback indicates that timeline management measures are challenging to implement without broader policy, process and technology changes. To ensure that community consultation occurs as early as possible in the planning process to better inform the issues to be resolved, to support a more consistent approach to consultation city-wide, and to reduce the time staff spend on administrative tasks, staff will seek Council direction to consult (through a separate report to a Q1 2024 meeting of Planning & Housing Committee) on a number of matters related to public consultation and report back with recommendations in 2024.

Changes to the Site Plan Control Process

Bill 109 implements significant changes to the Site Plan Control process. Through various policy changes in 2023, the City's Site Plan Control review process has been

brought into conformity with the *Planning Act*. This includes implementation of complete application requirements, delegated authority for approval to the Chief Planner (including removal of the Council bump-up provision), and implementation of mandatory pre-application consultation for Site Plan Control applications. To more accurately scope and better manage timelines for Site Plan Control applications, staff advanced OPA 688 to require in-effect zoning compliance as part of a complete Site Plan Control application. OPA 688 has been appealed to the Ontario Land Tribunal.

While the City awaits an OLT decision on the matter, other measures are in place, including:

- Updates to the Mandatory PAC by-law stipulating that PAC meetings for Site Plan Control applications are not permitted to occur concurrently with a PAC meeting for any other application type.
- Updates to the Planning Application Checklist Package, Letter of Incomplete Application, and Notice of Complete Application notifying applicants that Site Plan Control applications submitted prior to in-effect zoning that permits the development proposed in the application *may be* refused by the City.

In some cases in 2023, where a Site Plan Control application has been submitted prematurely and, based on the merits of the application, staff are unable to issue NOAC within 60 days, the application has been refused by the City.

Introduction of New Technology

Application Submission Tool (AST): In December 2021, the C2K team launched the Application Submission Tool (AST) to enable digital application submission. The tool facilitates better communication between staff and applicants, including real-time application submission updates. The AST was updated in April 2023 to support implementation of mandatory pre-application consultation (PAC), enabling applicants to use the same submission process for PAC as they do for application submission. Further updates to support the PAC process and application resubmission process are scheduled for 2024.

File Circulation Tool (FCT): To streamline, improve and increase the transparency of the file circulation and commenting process, the City is developing a File Circulation Tool (FCT). The FCT will integrate with the City's backend technologies, such as the Integrated Business Management System (IBMS) and the Application Information Centre (AIC), to enable digital commenting, circulation, and performance tracking. It will also support better collaboration between City staff and applicants. A first release of FCT is slated for Q2 2024, starting with the pre-application consultation process. Other development application types will be added to the FCT on a quarterly basis.

Application Information Centre (AIC): In February 2023, Planning & Housing Committee adopted a report recommending modernization of the Application Information Centre (AIC). Improvements focused on accessibility, user experience, and greater public awareness of the tool. In mid-July 2023, AIC moved to a modern platform accessible across a range of devices. Improved legibility and search functions provide users with

more intuitive navigation options. Public consultation features have been grouped together in a more interactive format and automatic email distribution lists have been established on a Ward basis to enable frequent, transparent communications about new applications. An updated milestone timeline provides quick access to new public materials such as the Planning Application Checklist Package and the Preliminary Summary. Ongoing updates to AIC based on user feedback will continue into 2024.

IBMS Transformation: Transformation of the City's backend workflow management system, IBMS, is also underway. The Community Development Regulatory and Licensing (CDRL) Program Phase 1 is expected to launch in Q2 2026.

Part 4 - 2024 Outlook

The City is continuing to take a phased approach to implementing Bill 109. In 2024, staff will prioritize:

Organizational Structure Transformation: Right-sizing the City's development review service continues through recruitment efforts in all disciplines and districts city-wide. Broader organizational structure changes will continue in 2024 through the transition to Development and Growth Services.

Policy and Process Modernization: Official Plan and Municipal Code amendments will continue with a focus on establishing a policy basis for best practice process improvements. Pre-application consultation, community consultation meetings, and alternative measures to inform and obtain the views of the public (e.g., providing notice) will remain a focus in early 2024. Operationalizing recent changes to the City's policy framework through OPAs 641, 660 and, pending the outcome of appeal, 688, will be ongoing in 2024.

Technology Implementation: As noted above, a first release of the File Circulation Tool for the pre-application consultation process is expected in Q2 2024. Further modernization of the Application Information Centre is required, in partnership with Technology Services Division, to continuously improve public-facing tools related to the development review process.

Accurate Cost Recovery: The 2023-2024 Development Application Fee Review is underway and expected to report back through Planning and Housing Committee in Q3 2024.

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SIGNATURE

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Development and Growth Services

ATTACHMENTS

Attachment 1: Summary Table of Official Plan and Municipal Code Amendments

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	Short Description	Link to By-law	Date of Council Decision	In Force & Effect
Official Plan Amendments				
OPA 550	Mandatory Pre-Application Consultation	45-2022	February 3, 2022	March 8, 2022
OPA 641	Complete Application for Site Plan Control	287-2023	March 31, 2023	May 6, 2023
OPA 660	Delegated Authority of Minor Zoning By-laws Alternative Measures for Informing and Obtaining the Views of the Public	700-2023	July 20, 2023	August 24, 2023
OPA 688	New Requirement for Complete Site Plan Control Applications	964-2023	October 12, 2023	Under appeal to the OLT
Municipal Code Amendments				
Chapter 415-17 415-19 415-19.1	Delegated Authority for Site Plan Control Applications, Plan of Condominium Applications Remove references to Preliminary Reports	286-2023	March 29, 2023	April 3, 2023
Chapter 415-18.2 169-2.4 169-5.2	Delegated Authority of Minor Zoning By-laws	701-2023	July 19, 2023	July 20, 2023
Chapter 415 Article V 415-20	Site Plan Control Exemption By-law Municipal Infrastructure Agreements	966-2023	October 12, 2023	October 12, 2023
Chapter 415-19.2	Mandatory Pre-Application Consultation	965-2023	October 12, 2023	October 12, 2023

