

At the Speed of Lightning, Bill 109: More Homes for Everyone Act, 2022, Receives Royal Assent

Apr 19, 2022

By Paula Boutis

Introduced on March 30, 2022, Ontario's *More Homes for Everyone Act, 2022* (“**Bill 109**”) received Royal Assent on April 14, 2022. Some provisions are immediately in force, while others will wait for a later proclamation or come into force as of July 1, 2022, or January 1, 2023.

Bill 109 is a “first-step” response to the Ontario Housing Affordability Task Force Report’s 55 recommendations released on February 8, 2022. The task force recommended a dramatic increase to housing of 1.5-million homes over the next 10 years. The province has indicated it will use the task force report as its long-term road map.

Bill 109 amends five pieces of legislation: the *City of Toronto Act, 2006*; the *Development Charges Act, 1997*; the *New Home Construction Licensing Act, 2017*; the *Ontario New Home Warranties Plan Act*, and the *Planning Act*.

Planning Act and City of Toronto Act, 2006 Amendments

Exclusionary Zoning Is Not Ending Yet

An important component of the task force report’s recommendations was an end to exclusionary zoning by establishing as-of-right permissions for gentle densification in neighbourhoods. The province chose not to pursue this at this time, though it is currently consulting on this issue, with the comment period closing on April 29, 2022.

Refunds for Application Fees

The *Planning Act* amendments that have received the most attention to date relate to a requirement that municipalities refund fees on a graduated schedule over time, up to 100% refunds, if they fail to meet statutory deadlines for decisions on zoning by-law amendment or combined zoning by-law/official plan amendment (currently 90 to 120 days) and site plan applications (being revised from 30 days to 60 days). These new refund requirements will come into force on January 1, 2023.

Community Infrastructure and Housing Accelerator Tool

Another significant change coming out of the bill is an order framework for a municipally initiated request for a zoning order, called the “Community Infrastructure and Housing Accelerator.” Related implementation guidelines are now also out for comment until April 29, 2022.

The legislation requires public consultation and is specifically not permitted to apply to any lands within the Greenbelt. In making a decision under this new power, the following planning instruments will not apply: a provincial policy statement, a provincial plan, or an official plan.

In addition to a zoning by-law order through this process, if another permission is required following such an order and the municipality requests it, the Minister of Municipal Affairs and Housing (“**Minister**”) may also provide that provincial policy statements, provincial plans and an official plan do not apply to those subsequent instruments, either.

The draft guideline currently reflects a wide range of developments that can be subject to this new tool: it includes all types of housing, employment and economic development and mixed-use developments.

The draft guideline indicates the Minister would only consider an exemption from provincial policy requirements if a subsequent approval is needed and the municipality provides a plan that would adequately mitigate any potential impacts that could arise from the exemption, including environmental protection/mitigation.

The Minister is to make decisions in the public interest and can impose conditions as well as require agreements be entered into. The guideline must also be implemented in accordance with *Treaty Rights under section 35 of the Constitution Act, 1982*. Orders can be revoked under the legislation.

To make a request under this new power, the relevant municipal council must pass a resolution that identifies the lands to which the order will apply and indicates the uses proposed for the subject lands. The resolution must offer some grounds or reasons for the request and must also detail what other licences, permits or approvals will be needed for the desired land use to proceed. In reviewing the municipal request, the Minister has the authority to modify both the proposed land use and the land area that will be subject to the order. The Minister may also indicate that any future licence, permit or approval for the proposed land use will be exempt from compliance/conformity with provincial policies and/or the municipal official plan. If granted, the order is to be published by the municipal clerk.

This new order power does not replace the ministerial zoning order powers under section 47 of the *Planning Act*.

Ministerial Approval: Appeals, Referrals and Time Suspensions

Where the Minister is the approval authority for an official plan or official plan amendment (section 17(34)), the Minister may, before making a decision, refer all or part of the plan to the Ontario Land Tribunal (“OLT”) for a recommendation. If it is referred, the OLT shall make a written recommendation to the Minister. The OLT may hold a hearing “or other proceeding” and if it does, must provide notice of same. The Minister may then make a decision once it has received the recommendation.

Instead of referring for a recommendation, the Minister can elect to refer an official plan or official plan amendment to the OLT for a decision. Again, the OLT may, before making that decision, hold a hearing or “other proceeding” and if so, must provide notice for same.

Under subsection 17(36.5), there is no right of appeal from the decision of an approval authority in respect of an official plan if the approval authority is the Minister. Under the prior legislation, this provision applied to an amendment only if it was a revision adopted in accordance with the official plan review requirements of section 26. Bill 109 revised the *Planning Act* to also indicate that there is no right of appeal from an official plan amendment where the approval authority is the Minister and the Minister has rendered a decision following a referral to the OLT for a recommendation as described above.

The result of the foregoing is to reintroduce the OLT into matters where the Minister is the approval authority. The Minister can direct matters to the OLT for recommendations prior to rendering approval decisions. The Minister can also direct matters to the OLT for final decisions. It will be up to the Minister to determine when he/she will involve the OLT.

Finally, Bill 109 allows the Minister to suspend the timeline in which their decision must be rendered as approval authority. This appears to be a discretionary power akin to an upper-tier municipality’s power to suspend the timeline where the upper-tier municipality deems an official plan or official plan amendment, as adopted, to be inconsistent or out of conformity with a provincial plan, policy statement or the upper-tier official plan.

Site Plan

The *Planning Act* and the *City of Toronto Act, 2006* were also amended in relation to site plan applications. Municipalities, including the City of Toronto, may now pass by-laws mandating pre-consultation prior to the

submission of an application for site plan approval. Absent such a by-law, the municipal authority must permit (but may not require) such pre-consultation.

As well, the complete application requirements applicable to official plan amendments, zoning by-law amendments and draft plans will now apply to site plan applications. The municipality must first adopt an official plan policy setting out its site plan complete application requirements before it can rely upon this new authority to stop the appeal clock, which itself is revised from 30 days to 60 days.

Finally, section 41 is amended to require municipal authorities to delegate site plan approval authority to an officer, employee or agent. While the balance of the site plan-related changes come into force immediately, the provisions related to the new delegated authority requirement are delayed until July 1, 2022.

Surety Bonds

In response to the task force recommendation that surety bonds be offered as a means to secure planning obligations, the legislation also introduced the power to make regulations regarding the types of securities that can be used to secure municipal requirements as part of the approvals process. If implemented, these regulations can authorize owners of land and applicants for approvals to “stipulate the specified types of surety bond or other instrument to be used to secure an obligation imposed by the municipality.” This provision will come into force on a day to be named by proclamation.

Draft Plans and Lapsed Plans of Subdivision

The Minister will now have the power to prescribe, by regulation, matters that cannot form the basis of a draft plan of subdivision approval conditions pursuant to section 51(25). Presumably this is in response to the task force recommendation that plans of subdivision be standardized.

The legislation has also enabled a mechanism for lapsed plans of subdivision to be deemed by the municipality not to have lapsed subject to certain conditions, specifically: this cannot be done if more than five years have passed since the approval has lapsed; the approval has previously been deemed not to lapse under that subsection; or an agreement had been entered into for the sale of the land as described in the draft approved plan of subdivision.

Community Benefits Charges and Parkland Contributions

Other amendments relate to the community benefits charges (“CBC”) regime and parkland contributions. Periodic reviews of the CBC by-law will be required, being at least every five years. Maximum parkland contributions for “Transit-Oriented Communities” will be imposed, specifically 10% of lands or the value of the lands if five hectares or less, or 15% of the lands or value of the lands if greater than five hectares in area.

New Home Construction Licensing Act, 2017

Much less discussed changes relate to the *New Home Construction Licensing Act, 2017*. This regime establishes a requirement that no one can hold themselves out to be a builder, offer to construct a new home or construct a new home unless licensed under the Act to do so.

These amendments are aimed at better regulating builders, including refusing licence applications if the applicant is in contravention of the Act or the regulations, or will be if issued a licence; amending complaint procedures and including mediation and resolution provisions and, if the registrar determines that a licensee has contravened the Act or regulations, various disciplinary actions may be taken, including refusal to renew a licence; increasing fines; and finally amending provisions related to administrative monetary penalties, which regime has not yet come into force under the legislation.

Ontario New Home Warranties Plan Act

The *Ontario New Home Warranties Plan Act* establishes warranties for purchasers of a home. Specifically, under subsection 13(1), it must be constructed in a workmanlike manner free from defects in material; be

fit for habitation, and constructed in accordance with the Building Code. Further it must be free of major structural defects and is subject to other warranties that may be prescribed in regulations.

In and amongst technical amendments, this Act is being amended to permit regulations which extend the time of expiration of a warranty provided for under subsection 13(1) of the Act, including establishing conditions for an extension for items that are missing or remain unfinished. Related amendments have been made that impact the by-law making power of the Corporation established to administer this legislation. These will permit the Corporation, with permission of the Minister, to make by-laws addressing the expiration of warranties and establish any conditions for such extensions.

Development Charges Act, 1997

Under section 2, this Act allows a municipality to impose development charges against land to pay for increased capital costs required because of increased needs for services arising from the development.

Amendments to the *Development Charges Act, 1997* were relatively minor technical changes to section 43. These amendments will require the treasurer's report relating to development charge by-laws and reserve funds to be available to the public online or through prescribed means.

Next Steps

The Ministry of Municipal Affairs and Housing indicates key next steps relate to addressing housing needs in rural and northern Ontario; increasing the missing middle; ways to address illegal home building; and access to financing for non-profit housing developers. These are currently posted to the Environmental Registry of Ontario.

With the federal government's recent budget also seeking to inject \$10 billion into housing over the next several years, including supporting co-operative housing developments for the first time in 30 years, the province can make inroads into housing, including affordable housing.

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