

May 10, 2024

Electronic Submission only

ATTENTION:

Honourable Paul Calandra
Minister of Municipal Affairs and Housing
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Proposed changes to the Planning Act, City of Toronto Act, 2006, and Municipal Act, 2001 through Bill 185, the proposed Bill 185, Cutting Red Tape to Build More Homes Act, 2024

Ontario Regulatory Registry Posting [019-8369](#)

Background:

On April 10, 2024, [Bill 185, Cutting Red Tape to Build More Homes Act, 2024](#) was introduced in the Ontario Legislature, as part of Ontario's Spring 2024 Red Tape Reduction Package. In line with recent changes such as the [Bill 162: Get It Done Act, 2024](#), the stated intention of these new changes is to continue streamlining planning approvals and increase housing and infrastructure development across the province. Bill 185 proposes amendments to 15 Acts, including the *Planning Act*, 1990 and the *Municipal Act*, 2001.

Comments:

Please find below, City Staff's response to the proposed amendments to the *Planning Act*, 1990 and the *Municipal Act*, 2001:

Reduce Parking Minimums

A proposed change in the *Planning Act* eliminates parking minimums for new development around a higher order transit station or stop in areas with minimum density requirements and allows parking to instead be market driven. This change would apply to the City of Burlington's three protected Major Transit Station Areas. In December 2023, Council directed staff to initiate a "no-parking minimum pilot" focused on two Frequent Transit Corridors in the City to support the City's Housing Accelerator Fund (HAF) Application and in support of the City's HAF [Action Plan](#).

The approach is expected to spur development with the removal of costly parking requirements and allow for the savings to be directed to the building of affordable housing close to transit. However, staff caution that it will be critical to consider how parking will be provided for

Ontarians with disabilities. The parking requirements of the Accessibility for Ontarians with Disabilities Act (AODA) are tied to the number of required parking spaces. Staff recommend that the AODA be reviewed in this regard to ensure accessibility and to consider parking related to visitor/short term parking (including for maintenance vehicles and rideshare drop off) and car share space needs.

Staff generally support the change as they align with City objectives to increase the City's affordable housing supply and promote the use of sustainable transportation modes. For further consideration:

- The Province should provide assurance that the parking construction cost savings from eliminated parking minimums, will be passed on to the consumer through lower housing prices and/or affordable unit types.
- Staff recommend that the *Planning Act* changes be clear about the requirements of the AODA.
- Staff recommend that parking minimums be required for bicycle parking, visitor/short term and car share parking to support the basic functioning of both residential and non-residential uses.

Enhancing the Framework for Additional Residential Units (ARUs)

The proposed *Planning Act* amendments would provide the Minister with broader authority to remove municipal zoning by-law barriers that may be limiting the development of ARUs such as maximum lot coverage and limits on bedrooms per lot.

Staff generally support the idea of enhancing the framework to permit ARUs by removing barriers. Encouraging ARUs is an important action (Action 11) outlined in [the City of Burlington's Housing Strategy](#), the City's Housing Accelerator Fund [Action Plan](#) and a key interest of City Council.

However, it is critical to ensure while removing barriers, that any future regulation must recognize the critical role of local Zoning Regulations to protect the health and safety of residents and guide development that is responsive to the local planning and infrastructure context. Retaining the ability to be responsive to the local context will be crucial in understanding the comprehensive and cumulative impacts of gentle densification, including the impacts on the delivery of services, stormwater management, parks and active transportation provisioning. Staff recommend that the Province work with municipalities to enhance the framework to eliminate barriers to ARUs.

Additional comments pertaining to removing barriers for ARUs were provided through ERO 019-8366.

Community Infrastructure and Housing Accelerator (CIHA)

The proposed amendments to the *Planning Act* would remove the Community Infrastructure and Housing Accelerator (CIHA) tool from the *Planning Act* which was added to the Act through Bill 23 in order to avoid duplication with the Minister's Zoning Orders. The Province has provided new requirements on the [MZO Website](#) to which a municipality may request a Minister's Zoning Order to address a planning matter.

City staff have no comments to provide as the City of Burlington has not made use of the Community Infrastructure and Housing Accelerator tool.

"Use It or Lose It" Tools

The Province has identified that stalled developments are an impediment to municipalities meeting their housing targets. The proposed policy tools are intended to provide incentive to developers/builders to act on approvals, with lapsing conditions that would be required on approvals of draft plans of subdivision/condominiums and site plan control.

For example, if building permit applications are not received within the prescribed timeframe, the approval would be withdrawn. New provisions would also allow municipalities to apply lapsing conditions on previous site plan applications. Approvals for draft plans of subdivision given before March 27, 1995, would also be subject to lapsing within three years from the effective date of Bill 185 (with the exception of those with outstanding appeals).

The proposed changes to the *Municipal Act* would authorize municipalities to adopt policies by by-law (where they do not already exist) to formalize how water and sewage servicing of an approved development is managed. This enables servicing capacity to be allocated or reallocated to other projects if the approved development has not proceeded after a specified timeline and the servicing is needed elsewhere in the service area.

Staff support the proposed changes to expedite housing development and manage unused servicing capacity, as it will help the City meet both its housing and growth targets.

Third Party Appeals

Through Bill 185, the Province is proposing changes to the policies of the *Planning Act* that would limit third-party appeals for official plans, official plan amendments, zoning by-laws and zoning by-law amendments. The identified intent of this proposed change is to speed up the approvals process for housing projects, reducing costs and project delays.

Staff are supportive of the limitation of third-party appeals.

All *Planning Act* processes, whether city-initiated or privately-initiated, are subject to legislation and implementing regulation.

The *Planning Act*, its associated regulations, Provincial policy statements, Provincial Plans, Regional Official Plans and Local Official Plans provide guidance to decision-makers with respect to land use planning policy as well as process.

In any *Planning Act* process, guidance from these various documents set out the how and the what of these processes. Municipalities implement statutory processes through which they provide notice and details and receive and consider feedback. In accordance with statutory requirements and through the preparation of staff recommendation reports, details relating to how feedback was considered and influenced the recommendations of the report are included. The City of Burlington remains committed to the creation of an engaged community. Residents in Burlington will continue to be informed and engaged on these matters using existing *Planning Act* guidance and regulation.

Further, as enshrined in section 2 of the *Planning Act*, decision makers shall have regard to, among other matters, matters of Provincial interest. Section (5) also sets out that a decision of the council of a municipality as it relates to any authority related to a planning matter shall be consistent with the policy statements issued and shall conform with the provincial plans that in effect on that date or shall not conflict with them. By design, and in accordance with the *Planning Act*, decision makers are required to make decisions that address all of these requirements. Elected decision makers are held to account in making decisions that apply a local lens and meet the requirements of the *Planning Act* described above.

Elimination of third-party appeals (except for those by specified persons, public bodies, the Minister, and where relevant, the applicant) would support municipalities in establishing a policy framework that is up to date, reflective of Council's vision. Additionally, it would streamline the process of bringing the policies of the City's 2020 Official Plan into effect in compliance and conformity with recent and ongoing changes to Provincial and Regional policy. This would greatly increase the City's capacity to meet its housing pledge and other housing-related objectives.

For context, the City is in its fourth year of the OLT appeals process for its 2020 Official Plan with a multi-year, multi-stage process ahead which includes a number of appellants that are included in the class of third party appeals proposed to be eliminated. The elimination of such third-party appeals could have positively impacted the City's ability to approve policies to support the creation of new homes from the outset of that process. Hypothetically, the elimination of third-party appeals could have contributed to a more streamlined process, bringing the plan into effect, thus unlocking significant housing opportunities.

Staff raise the concern that additional policy changes such as the Regional Official Plan becoming a Plan of the City as of July 1, 2024, and the forthcoming Provincial Planning Statement, will further complicate the process of bringing the policies of the 2020 Official Plan into effect as it works to comply with Provincial Policy changes while moving through a substantial appeals process. The dismissal of third-party appeals for which a hearing on the merits had not been scheduled by April 10, 2023, would bring the 2020 Official Plan into full effect. This would better position the City to amend its OP and achieve alignment with the updated Provincial policy framework to advance the objectives of the Province and of the City.

Though supportive of the limitation of third-party appeals staff recommend that the Province consider reinstating the Region's appeal and party rights similar to the rights afforded other public bodies and utilities. Given that the Region continues to have responsibility for planning related matters such as housing, major infrastructure and its own land holdings, restoring its appeal rights would provide additional support to the City of Burlington in relying on the Region as subject matter experts. Further, this would enable the Region to effectively represent matters of Regional interest at the OLT.

Staff have provided additional comments related to third-party appeals through ERO posting 019-8370 posting.

Fee Refund Provisions

Schedules 5, 8 and 12 of Bill 185 propose changes to the *Planning Act* that would remove the fee refund provisions from the *Planning Act* for zoning by-law amendments and site plan control applications introduced through Bill 109. The fee refund provision resulted in the City adjusting its processes to meet timelines without giving refunds.

Staff are supportive of the removal of the fee refund provisions in the *Planning Act* in alignment with the comments that the City provided to the Province regarding Bill 109. The City remains committed to collaborating with development partners to process applications within the statutory timelines.

Supporting Municipal Incentives for Economic Growth

Currently, the *Municipal Act, 2001* prohibits municipalities from providing direct or indirect assistance to any manufacturing, industrial or commercial businesses.

MMAH is proposing legislative amendments to the *Municipal Act, 2001* to streamline the province's process for granting exemptions to municipalities from this prohibition to support provincial investment attraction.

MMAH is also proposing a Lieutenant Governor in Council (LGIC) regulation-making authority that would allow the LGIC to authorize a municipality to provide assistance to a particular recipient (i.e., allow a municipality to provide specified assistance to a prescribed recipient, despite certain statutory limits), if the LGIC was of the opinion that it is necessary or desirable in the provincial interest to attract investment in Ontario.

City staff raise the concern that the use of these exemptions in the GTA by any municipality may negatively impact the competitiveness of other GTA municipalities. Land and development costs in the GTA are significantly higher than in other more rural areas of Ontario. The incentives would need to be significant and likely have a long payback period in terms of new job/tax generation to offset the costs through economic growth. Staff recommend that the

Province explore the existing Provincial Community Improvement Plan (CIP) policies to increase the effectiveness of CIP programs. This could include the consideration of shorter statutory timelines and requirements to implement CIPs to provide a more nuanced and balanced policy approach as an incentive tool that ensures all businesses are benefitted equally.

Municipal Pre-Application Process

Proposed changes to the *Planning Act* would make pre-application consultation voluntary at the discretion of the applicant and allow an applicant to challenge complete application requirements to the OLT at any time, rather than only having a time-limited window once a municipality rejects an application as not being “complete”.

Staff comments pertaining to the proposed changes related to Pre-Consultation:

As it pertains to the changes proposed for consultation (in both Request for Amendment 22 (3.1) and Zoning By-laws 34 (10.0.1)), staff highlight that consulting ahead of an application submission is intended to reduce potential for dispute by providing clarity on the requirements of the Municipality and opens the lines of communication early in the process. Removing the ability of the Municipality to require consultation ahead of application submission is likely to result in: uncertainty around requirements; provision of incomplete or incorrect materials; and/or inaccurate fee payments, ultimately increasing the potential for dispute.

The absence of any required consultation will result in potentially avoidable disputes and increase the amount of time required to process applications. A significant amount of lead time is required in preparation of applications (studies and materials) and so it is unclear how a requirement to consult does anything more than provide certainty to an applicant on requirements; ensure complete information is provided from the outset; and provide accurate fee calculations, with the intent of facilitating expeditious application processing.

Staff comments pertaining to proposed changes related to Motion re: Dispute

As it pertains to the changes proposed for Motion re: Dispute (in both Request for Amendment 22 (6.2) and Zoning By-laws 34 (10.5)) it is unclear why (a) would apply before an application is submitted (either under subsection (1) or (2) for amendment, or application to amend a by-law). Staff are not supportive of the proposed changes given that it may result in lengthening approval times and contribute to the OLT backlog.

Evidence for the efficacy of consultation is demonstrated to some degree in all of the applications the City of Burlington processed in 2023. Highlighted below are two particular development application examples:

- 1160 Blair Road was an application for rezoning in an employment area for a redevelopment to include an expanded Place of Worship and Banquet Hall, a new Recreational Facility (Gym), Childcare, and new Office space. Given the introduction of

sensitive uses (particularly with the inclusion of the childcare), land use compatibility was a significant consideration. Staff were able to identify early in consultation the need for a land use compatibility study and engage in discussion around the childcare component. While these discussions did not result in the removal of the childcare from the ultimate application it did preface staff's concerns as it moved through the application process to recommendations to Council. Early and continued dialogue resulted in mitigating a potential dispute on staff's recommendation for modified approval that did not include the childcare. For 1160 Blair Road the consultation meeting was held on May 24, 2023, and was approved by Council on November 14, 2023, without dispute or appeal.

- Another important example can be found in an application for official plan amendment and rezoning to permit a retirement residence geared specifically toward memory care at New Street (3255-3265) and Cumberland Avenue (454-462) (New & Cumberland). The consultation process for New & Cumberland offered the opportunity to resolve questions raised about reduced parking as well as address public concerns on impact to immediately adjacent residential townhomes. The result of the consultation discussions was changes to the application to acknowledge parking rates more akin to long-term care facilities given the memory care nature of residents to the retirement home as well as the incorporation of landscaping provision to address concerns of neighbouring residents. For New & Cumberland the consultation meeting was held on March 15, 2023, and was approved by Council on January 16, 2024, without dispute or appeal.

These are examples of applications processed in less than 12 months from consultation to undisputed approval. Without consultation, the likelihood for dispute is significantly more likely.

Private Requests to Amend (Urban Boundary Expansion and Permitted Uses within MTSA's

Proposed changes within the *Planning Act* would allow applicants to appeal a municipality's refusal or failure to make a decision on a privately requested official plan or zoning by-law amendment that would change the boundary of an "area of settlement".

Though not similarly highlighted in the ERO overview, changes are also proposed to allow private applications to amend currently protected matters within the PMTSA, specifically to allow for private applications requesting to amend the "authorized" or permitted uses within a PMTSA, in accordance with the PMTSA sections of the *Planning Act*.

Staff are not supportive of these changes. Both would undermine the City's ability to maintain the City's Urban Structure and Growth Framework.

Specifically, as was set out in the City's Housing Pledge, Council reaffirms its position outlined in the council approved Strategic Plan to maintain the current urban/rural boundary and take every opportunity to advocate for the Greenbelt Plan. Local autonomy of Council to direct growth within the existing urban boundary set out as confirmed now through Bill 162 will protect

Burlington's critically important agricultural and natural heritage systems while still allowing the City to meet growth objectives, including the housing pledge.

With respect to permitted uses within the MTSAs, these areas have been subject to extensive planning to set a vision and policy framework supported by years of engagement, planning and technical analysis for the City's three MTSAs. These areas have been identified and approved as Protected MTSAs through the Minister's decision on ROPA 48. The City is also advancing a Community Planning Permit System By-law for these areas to streamline the development approvals process in a compressed 45-day period to advance more homes faster. Not only would allowing private requests to introduce new permitted uses undermine the community established vision for these areas, it would also trigger a lengthy process counter to the provincial objectives of streamlining and reducing red tape.

Facilitating Standardized Housing Designs

Proposed is a regulation-making authority that would establish criteria to facilitate planning approval for standardized housing, in an effort to exempt standardized housing designs from certain sections of the *Planning Act* or other certain planning barriers. The proposed changes would only apply to certain specified lands, of a minimum lot size, such as urban residential lands with full servicing.

The proposed amendments to the *Planning Act* include a new section (49.3(1)) that would provide for the non-application of Part V (Land Use Controls and related Administration) for detached, semi-detached and rowhouses, including units containing ARUs, and ancillary buildings located on a parcel of urban residential land that meets such criteria as may be prescribed.

Staff generally support the idea of creating a framework to permit a form of standardized housing unit designs. This approach to fast-track housing will help the City achieve its Municipal Housing Target Pledge of 29,000 new housing units by 2031.

However, it is difficult to provide detailed commentary in the absence of the proposed criteria as may be prescribed, or the prescribed area to which this might apply. It is critical to ensure that while removing barriers to the development of standardized housing, municipalities retain the ability to protect the health and safety of residents and respond to the local context through municipal policies and regulations. Removing all zoning requirements may be detrimental to municipalities being able to do so.

For consideration:

- The Province should work closely with municipalities and the Federal Government in order to provide a framework and program for standardized housing opportunities that is flexible and responsive to the local municipal context. Innovation and collaboration among the various levels of government will be critical to advance these shared objectives.

- Local application of standardized housing through municipal policies and regulations such as the Zoning By-law, would provide the opportunity for municipalities to identify appropriate adoption of provincially standardized housing opportunities.
- Develop a monitoring program to evaluate the success of the removal of barriers and adjust policy and regulation tools as required.

Staff request there be additional consultation on the proposed framework and forthcoming criteria, and how it can be applied.

Upper-Tier Planning Responsibilities

Bill 185 identifies that on July 1, 2024, planning authority will be removed from the Regions of Halton, Peel and York and will be defined as “upper-tier without planning responsibility”. Changes to other provisions of the *Planning Act* where the term “Upper-tier without planning responsibility” will also come into effect on July 1, 2024, including the removal of the Region’s ability to appeal or be a party to hearings on *Planning Act* matters including official plans and official plan amendments, zoning by-laws and zoning by-law amendments, minor variance, plans of subdivision and consent applications notwithstanding the Region’s interests as it relates to provisions of infrastructure, housing services, coordination and management of growth, protections of natural heritage systems and resources among others.

Staff note that through the identification of the Region of Halton as an “Upper-tier municipality without Planning Authority”, the Minister will become the City’s approval authority and as a result, future approvals will not be subject to appeal. This is generally a positive outcome for the City of Burlington.

More details are required from the Ministry related to the Minister’s role as direct approval authority. Staff request additional information about expectations, relationship-building opportunities, exemption protocols and process changes that will support the transition of the approval authority for cities like Burlington that have not traditionally benefitted from a direct relationship with the Ministry.

Given the broad group of municipalities in a similar situation and in the absence of the details and information requested above, staff recommend that the City of Burlington be identified as a municipality that is exempt from approval within O.Reg 525/97. This exemption would be limited by existing *Planning Act* provisions that do not permit certain decisions to be exempt from approval (Section 26 amendments and PMTSAs).

Expedited Approval Process for Community Service Facility Projects

The province is considering an expedited approval process for community services facilities starting with K-12 public schools and potentially extending in phases to long-term care and hospitals, in support of creating complete communities. Proposed changes would exempt

prescribed community service facilities from the *Planning Act* or may set out restrictions or limitations with respect to its application. This would potentially eliminate the need for planning approvals for community service facilities that meet prescribed requirements. The prescribed community facility projects and applicable prescribed requirements are still to be determined.

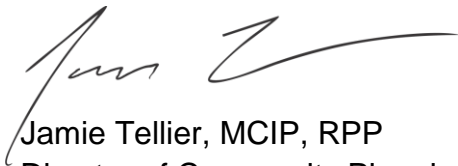
Staff raise the concern that it will be critical for municipalities to have the opportunity to review servicing capacity, traffic circulation and access, natural heritage impacts, and other development matters, particularly for large, complex facilities such as hospitals. Staff also have concern if there is no public review process. The City is committed to active and meaningful engagement with its residents on policy and development proposals. For consideration:

- Staff recommend that the prescribed requirements for community service facilities include a municipal development review role and allow for scoped public engagement. This will allow for development issues to be resolved early and thereby avoid development delays.

Next Steps:

Please accept this letter as the City of Burlington's submission on ERO posting 019-8369. Given the short period for consultation the comments have not been approved by City Council. This letter will be shared with the City's Committee's and Council at the earliest opportunity. Should Council determine any additional comments or refinements to these comments are required the Province will be advised at the earliest opportunity.

Sincerely,



Jamie Tellier, MCIP, RPP
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City of Burlington