



**City of Kingston
Information Report to Council
Report Number 19-156**

To: Mayor and Council
From: Lanie Hurdle, Acting Chief Administrative Officer
Resource Staff: Holly Wilson, Manager of Intergovernmental Relations
Date of Meeting: May 21, 2019
Subject: Ontario Bill 108 – *More Homes, More Choice Legislation*

Executive Summary:

On May 2, 2019 the Honourable Steve Clark, Minister of Municipal Affairs and Housing, announced the Ontario government's '*More Homes, More Choice*' (*Bill 108*) legislation which outlined a suite of legislative changes across multiple ministries. In the 90 page Bill, 13 separate acts are impacted by these changes, including:

- Cannabis Control Act, 2017
- Conservation Authorities Act
- Development Charges Act
- Education Act
- Endangered Species Act, 2007
- Environmental Assessment Act
- Environmental Protection Act
- Labour Relations Act, 1995
- Local Planning Appeal Tribunal Act, 2017
- Municipal Act, 2001
- Occupational Health and Safety Act
- Ontario Heritage Act
- Ontario Water Resources Act
- Planning Act
- Workplace Safety and Insurance Act, 1997

Of these acts the most significant changes with impact to the City are in the Planning Act and the Development Charges Act. There are also financial implications to the City as a result of this legislation that staff are still working to understand and quantify.

Given the volume of information in the Bill there are still more details that will be better understood when the regulations are developed over the next several months. City staff are connected with staff at the Association of Municipalities of Ontario (AMO) and other municipal associations as resources to help understand the details and the timeframe for implementation.

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The City will be providing comments to the government prior to the June 1st deadline. However, given that the proposed regulations are not yet available, combined with the short timeline for comments, staff have not had the opportunity to fully understand the implications of the changes proposed through Bill 108. As part of the comments submitted before the June 1, 2019 deadline, staff will be requesting that the Province allow additional time for municipal comments on the proposed changes. Staff will continue to keep Council updated as new information becomes available.

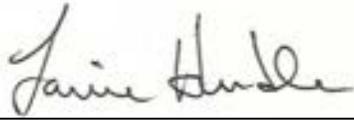
Recommendation:

This report is for information only.

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Authorizing Signatures:



**Lanie Hurdle, Acting Chief
Administrative Officer**

Consultation with the following Members of the Corporate Management Team:

Gary Dyke, Commissioner, Corporate Enterprise Services	Not required
Peter Huigenbos, Acting Commissioner, Community Services	Not required
Jim Keech, President & CEO, Utilities Kingston	Not required
Desirée Kennedy, Chief Financial Officer & City Treasurer	OK
Sheila Kidd, Commissioner, Transportation & Public Works	Not required

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Options/Discussion:

On May 2, 2019, the Honourable Steve Clark, Minister of Municipal Affairs and Housing, introduced Bill 108, *the More Homes, More Choices Act*, 2019 to address what the province and the Premier are characterizing as the shortage of affordable housing across the province by finding faster ways of getting a greater mix of housing supply on the ground.

This Information Report is to provide Council with an overview of the key items of importance in the Bill. A number of these changes will require regulations which will provide more details on implementation.

This summary also incorporates the analysis done by the Association of Municipalities of Ontario (AMO). It is important to note that the opinions on Bill 108 vary within the municipal sector – some changes are considered positive and other aspects may result in financial and service impacts that need to be determined. Below are the schedules of primary importance in the Bill.

Schedule 1- Amendments to the *Cannabis Control Act*

This schedule clarifies provisions for interim closure orders for illegal dispensaries and creates exemptions allowing police and other emergency responders to enter the premises for 'exigent circumstances.' The schedule also repeals a provision that exempted residences from interim closure orders. This is to deal with the tactic of putting a residency within an illegal dispensary.

Schedule 2 – Amendments to the *Conservation Authorities Act*

This schedule leads with some strong references toward the responsibility of Conservation Authorities and their governance. The opening of the Bill starts with: *imposing the duty on every member of an authority to act honestly and in good faith with a view to furthering the objects of the authority.*

This schedule then introduces a new concept of Conservation Authority 'core services,' this concept includes:

- Programs and services related to the risk of natural hazards
- Programs and services related to the conservation and management of lands owned or controlled by the authority, including any interests in land registered on title.
- Programs and services related to the authority's duties, functions and responsibilities as a source protection authority under the Clean Water Act, 2006.

Expectations on the standards and expectations for these core services will be set out in regulations. No timing on the regulations has currently been established.

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The draft amendments will also require CAs to enter into memoranda of understanding (MOU) with the city on service delivery. These changes will provide the city with more direction on what CAs are required to do, what is discretionary and how this impacts the levy.

This schedule also includes governance and oversight-related provisions such as CA board member training and Minister oversight. It also gives the Minister the authority to appoint a supervisor to investigate a CA's operations at any given time.

Schedule 3 – Amendments to the *Development Charges Act*

The Housing Supply Action Plan reflects the long-standing idea that growth should pay for growth but at the same time, brings some changes that will alter Development Charges (DCs).

The City of Kingston is currently undertaking its 2019 Development Charges Background Study and by-law update and will be monitoring these potential changes closely to understand implications. The proposed changes do not impact the expiry date of the City's existing DC bylaw and as such, it has been recommended that the City continue with its current DC update process based on legislation in effect today.

Proposed changes to the Development Charges Act include:

- Changes to eligible services, whereby soft services (recreation, library, housing) would be removed from the Development Charges Act and considered as part of a new Community Benefits Charge (CBC) regime under the authority of the Planning Act. Greater clarity is needed and will be provided through anticipated regulations. CBCs are discussed in greater detail under Schedule 12 (Amendments to the Planning Act).
- The City may now charge the full capital costs of waste diversion services in the calculation of development charges (removal of the 10% statutory deduction). This allows for full cost recovery of growth related expenditures from development charges.
- Proposed changes to the timing of payment of development charges if the development is rental housing, non-profit housing, commercial, industrial or institutional development. In these cases, development charges would be paid to the municipality in six equal annual instalments commencing from the date of occupancy. This will create cash flow pressures for the City of Kingston.
- Development charges would be calculated at an earlier point in the development process for developments proceeding through site plan or zoning bylaw amendment; for these developments, the DC charge would be determined based on the charges in effect on the day of the application with collection remaining at the time of building permit issuance. This is significant for the City because it would not offer an incentive for developers to accelerate construction following planning approvals. It would also create cash flow pressures for the City.

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- The City may charge interest from the time of building permit issue and the interest rate will be determined by regulation. Notably, front-ending payment agreements reached prior to the Act coming into force will be preserved.
- Second dwellings or dwelling units will be exempt from development charges. This is already exempted under the City's current development charges by-law so no further impact is anticipated.

Schedule 6 – Amendments to the *Environmental Assessment Act*

The province is proposing to increase the exemptions for low risk activities within the municipal class Environmental Assessment (EA). These could include speed bumps, de-icing, and streetscaping to name a few. The province has also exempted itself from a number of EA requirements related to transit, mines, parks and real estate. Although greater information around Duty to Consult, the sale of provincial brownfields and the bump up process is needed, these proposed changes reflect long term requests from AMO.

Schedule 5 – Amendments to the *Endangered Species Act*

The suite of changes contained in this schedule is intended to streamline development while protecting endangered species. The proposals remain science-based and seek to balance both species-at-risk protections and human endeavours in a new way.

The proposed changes would require that species at risk be considered in the broader geographic context (both inside and outside Ontario) when determining species' status. The role of the Committee on the Status of Species at Risk in Ontario (COSSARO) will remain the same. However, to increase predictability, their reports will now be due each year in January. Bill 108 also creates more realistic timelines, enables the phasing in of protection implementation and gives the Minister discretion to consider social and economic realities when determining a government response to species at risk.

A key change is that the Minister will be able to enter into 'landscape agreements'. A landscape agreement authorizes activities that would otherwise be prohibited with respect to one or more listed species. Agreements will include requirements to execute specified beneficial actions that will assist in the protection or recovery of species.

Bill 108 also establishes a Species at Risk Conservation Fund and an agency to manage and administer the Fund. The purpose of the Fund is to provide funding for activities that are reasonably likely to protect or recover species at risk. Where a municipal work or a development damages a habitat, a charge in lieu of meeting certain imposed conditions would be possible with a permit. The municipality or developer would still have to minimize impacts and seek alternatives. This creates an alternative path for development where protection of onsite habitat is problematic.

Schedule 10 – Changes to the *Occupational Health and Safety Act*

Currently, the Occupational Health and Safety Act includes provisions respecting the certification of joint health and safety committee members. Various amendments are made in

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this Act respecting the Chief Prevention Officer's power to, among other things, revoke or amend a certification or amend the requirements for obtaining a certification.

Schedule 9 – Amendments to the *Local Planning Appeal Tribunal Act*

The Local Planning Appeal Tribunal (LPAT) remains but will no longer evaluate appeals exclusively based on compliance with official plans and consistency with provincial plans and policy. Appeals would no longer be limited to just those grounds. Instead, the LPAT will return to a “*best planning outcome*” approach. This means a return to *de novo* hearings. This change could take final planning decisions out of councils' hands. Historically, the use of a *de novo* approach to appeals has drawn out hearings. It is unclear how this reversal will speed up housing development.

The Bill also proposes limits to third party appeals of subdivisions and promotes increased mediation to resolve appeals. There will also be new limits on the extent of testimony. As well, the province has committed to hiring 11 additional adjudicators to help deal with the existing LPAT case backlog that arose from the Ontario Municipal Board process and transition. It may be that current land use applications at Council tables are withdrawn to come in after Bill 108 rules take effect.

Schedule 11 – Amendments to the *Ontario Heritage Act*

The Bill proposes changes that would improve heritage register maintenance and transparency. The legislative amendments would require council to notify the property owner if the property is not formally designated but has been included in the register due to cultural heritage value or interest.

The proposed legislation also includes new timelines for a number of notices and decisions that are currently open-ended under the existing regime. The amendments also provide additional clarity to the meaning of ‘alteration’ and ‘demolition’. All of these changes should add more certainty to the process and make it more transparent and efficient.

Municipal decisions on designations and alterations under Part IV of the Ontario Heritage Act would now be subject to appeals to the LPAT, whose decisions will be binding. This would replace the current, non-binding decisions of the Conservation Review Board.

Schedule 12 – Amendments to the *Planning Act*

The proposed Bill touches on numerous land use planning policies. Overall, these changes are intended to contribute to increasing the mix of housing and speeding up the development approvals process.

To facilitate housing mix, the Bill proposed changes to the Planning Act which would require municipalities to authorize additional residential units in detached, semi-detached and row houses, in both the primary dwelling and in an ancillary building. Currently, policies are required to permit a second residential unit in either the primary dwelling or the ancillary building, but not in both.

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It also reduces timelines for making decisions related to official plan amendments from 210 to 120 days, zoning by-law amendments from 150 to 90 days and for plans of subdivision from 180 to 120 days. It also proposes to shelter plans of subdivision from third party appeals.

The schedule also proposes to change the conditions under which municipal governments can establish discretionary inclusionary zoning by-laws and policies to facilitate affordable housing development. The discretionary use of inclusionary zoning would be limited to areas around protected major transit stations or areas with a development permit system (now known as the Community Planning Permit System) in place. The Bill would also allow the Minister of Municipal Affairs and Housing to exercise authority to order an area to be subject to inclusionary zoning. These proposed changes will continue to allow municipal governments the ability to enact inclusionary zoning but will restrict the application of this affordable housing tool.

Another change is that either the municipality or the Minister can initiate the use of a Community Planning Permit System (CPPS) in areas strategic for housing growth. The CPPS (previously known as the development permit system) is a land use planning tool that combines the three separate planning application processes of zoning by-law amendments, minor variances and site plan control into one application submission and approval process.

The proposed legislation also replaces the existing density bonusing provisions (the provision of community benefits in exchange of increased height and/or density) with a new Community Benefits Charge (CBC) regime to address the costs of providing services to new residents as a result of growth. This change to Section 37 of the Planning Act would allow a municipality, through a by-law defining an area, to impose community benefits charges against land to pay for capital costs of facilities, services and matters required because of development or redevelopment in the area. Notably, costs of growth eligible for development charges are excluded from the new Community Benefits Charge framework.

A community benefits charge may be imposed in respect of development or redevelopment that requires:

- the passing of a zoning by-law or of an amendment to a zoning by-law;
- the approval of a minor variance;
- a conveyance of land to which a by-law passed under subsection 50 (7) applies;
- the approval of a plan of subdivision;
- a consent;
- the approval of a description under section 9 of the Condominium Act, 1998; or
- the issuing of a permit under the Building Code Act, 1992 in relation to a building or structure.

Similar to the Development Charges process, before passing a CBC by-law, the municipality would be required to prepare a community benefits charge strategy that identifies the facilities, services and matters that will be funded with community benefits charges; and complies with any prescribed requirements. A community benefits charge may not be imposed with respect to

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facilities, services or matters that are prescribed or that are associated with any of the services set out in subsection 2 (4) of the Development Charges Act, 1997 (for example roads services, water supply services, waste water services, policing and fire protection services, transit services), or such other facilities, services or matters as are prescribed. As well, the Ministry of Municipal Affairs and Housing will be preparing a list of eligible items for the charge, methodology for calculating the charge and any caps that they may deem necessary. AMO has discussed with the province the need for a transparent transition to this new means of recuperating the cost of growth.

Only one community benefits charge by-law passed by the council of a given municipality may be in effect at a time. It should be noted that the CBC will be held in a special account and these funds must be spent in keeping with the Act and regulations. Specifically, each year a municipality will have to spend or allocate at least 60 per cent of the monies that are in the special account at the beginning of the year. Certain lands (i.e. hospitals) will be exempted from the new Community Benefits regime. These exemptions will be listed in a future regulation.

Another proposed change relates to parkland dedication required under subsection 42 (1) of the Planning Act. Changes are proposed to provide that, subject to a specified exception, a by-law under subsection 42 (1) is of no force and effect if a community benefits charge by-law, passed by the municipality is in force. The section of the Planning Act that authorizes alternative rates for parkland dedication is proposed to be repealed.

Staff will continue to monitor the Bill as it moves through the House and any additional details as they become available. If Bill 108 becomes law, which is likely, many regulations would be required for implementation.

Schedule 13 – Amendments to the *Workplace Safety and Insurance Act, 1997*

The Schedule adds a section to the Act to provide that the Board may establish premium rates for partners and executive officers who perform no construction work that are different from premium rates established for the employers of the partners and executive officers and may adjust those rates.

Next steps

The provincial government is moving quickly to pass Bill 108. First Reading of the Bill was May 2, 2019. It is currently undergoing a Second reading debate. As the Bill moves through the legislative process the government is also undertaking public consultation in a parallel process. The government is asking for comments on the proposed changes to the Planning Act, the Heritage Act and the Development Charges Act by June 1, 2019, which is 30 days after the Bill received its First Reading. City staff are reviewing the legislation in more detail and will be participating in the consultations by written submission to the Ontario Environmental Registry before the June 1, deadline. However, given that the proposed regulations are not yet available, combined with the short timeline for comments, staff have not had the opportunity to fully understand the implications of the changes proposed through Bill 108. As part of the comments submitted before the June 1, 2019 deadline, staff will be requesting that the Province allow additional time for municipal comments on the proposed changes.

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City staff have also been in contact with the Minister of Municipal Affairs and Housing's Office to discuss some of the City's concerns related to the Bill and the process for consultation and implementation of the Bill. Staff are connected to AMO for additional insight into changes in the Bill as they also have regular meetings with the Minister and Ministry of Municipal Affairs and Housing through a Memorandum of Understanding (MOU).

The provincial/municipal changes reflected in the 2019 provincial budget as well as the changes related to Bill 108 means there is a significant amount of information to work through and much more information yet to come through regulations etc. City staff are trying to keep pace with the volume of new legislation, release of information and will keep council informed as more details are understood.

Existing Policy/By-Law:

Provincial

- *Cannabis Control Act, 2017*
- *Conservation Authorities Act*
- *Development Charges Act*
- *Education Act*
- *Endangered Species Act, 2007*
- *Environmental Assessment Act*
- *Environmental Protection Act*
- *Labour Relations Act, 1995*
- *Local Planning Appeal Tribunal Act, 2017*
- *Municipal Act, 2001*
- *Occupational Health and Safety Act*
- *Ontario Heritage Act*
- *Ontario Water Resources Act*
- *Planning Act*
- *Workplace Safety and Insurance Act, 1997*

Municipal

- City of Kingston Official Plan
- City of Kingston Zoning By-Law Numbers 8499, 76-26, 32-74, 96-259 and 97-102
- By-Law Number 2014-135, A By-Law To Establish Development Charges For The City Of Kingston

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- By-Law Number 2009-138, A By-Law To Impose Water Rates And Sewer Rates To Recover The Capital Cost Of Installing Water And Sanitary Sewer Services Necessary To Benefit Users Of The System
- By-Law Number 2013-107, A By-Law To Provide For The Conveyance Of Land For Park Purposes, Or Cash-In-Lieu Of Parkland Conveyance

Notice Provisions:

N/A

Accessibility Considerations:

N/A

Financial Considerations:

There will be some financial implications related to Bill 108. Those will be determined as more information becomes available and the regulations under the various acts are enacted.

Contacts:

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Other City of Kingston Staff Consulted:

Paige Agnew, Director of Planning, Building and Licensing

Desirée Kennedy, Chief Financial Officer & City Treasurer

Exhibits Attached:

N/A