

Report to Planning and Environment Committee

To: Chair and Members
Planning and Environment Committee
From: Scott Mathers, MPA, P. Eng.
Deputy City Manager, Planning and Economic Development
Subject: Planning Application Process Changes due to Bill 109, the
More Homes for Everyone Act, 2022
Date: November 28, 2022

Recommendation

That, on the recommendation of the Acting Director, Planning and Development, the following report with respect to changes to the City's planning and development application process as a result of Bill 109, the *More Homes for Everyone Act, 2022*, **BE RECEIVED** for information.

Executive Summary

On March 30, 2022, the Province introduced Bill 109, the *More Homes for Everyone Act, 2022* which proposes changes to the *Planning Act* and other statutes. The intent of the legislative changes is to implement some recommendations in the Ontario's Housing Affordability Task Force Report released on February 8, 2022 in order to help address the housing affordability crisis in Ontario. Bill 109 received Royal Assent on April 14, 2022.

One significant change made by Bill 109 is that municipalities will be required to refund application fees for zoning by-law amendments and site plan approval as a result of a failure to make a decision within the statutory timeline. To achieve the intent of this legislation and avoid issuing fee refunds, changes are required to our planning application review process.

This report provides an overview of the City's short-term response to the legislative changes and includes an indication of some of the medium and longer-term actions to be completed. The responses are intended to address potential budgetary and administrative pressure and ensure that applications continue to be reviewed and considered in a timely manner.

Linkage to the Corporate Strategic Plan

Changes to the planning and development application process are linked to the Leading in Public Service area of focus in the 2019-2023 Strategic Plan. The changes will support increased efficiency and effectiveness of service delivery in a timely manner to ensure that Londoners experience exceptional and valued customer services.

Analysis

1.0 Background Information

1.1 Overview of Bill 109

The Province appointed an Ontario Housing Affordability Task Force on December 6, 2021, to identify and implement solutions to address housing affordability by increasing the supply of market housing, reducing red tape, and supporting economic recovery and incentives. On February 8, 2022, the Task Force released a report that provides 55 recommendations aimed at supporting housing affordability.

On March 30, 2022, the Province introduced Bill 109, *More Homes for Everyone Act, 2022*. The Bill proposed changes to the *Planning Act* and other statutes to implement

some of the recommendations in the Task Force report. The Bill received Royal Assent on April 14, 2022.

Bill 109 adds financial penalties in the form of application fee refunds with respect to rezoning and site plan applications under Sections 34(10.12) and 41(11.1) of the *Planning Act*. If municipalities fail to meet the statutory timelines for decisions on applications received on or after January 1, 2023, they must gradually refund application fees in line with the refund schedule below.

Type of Application	No Refund	50% Refund	75% Refund	100% Refund
Zoning By-law Amendment (ZBA)	Up to 90 days	91 to 150 days	151 to 210 days	211 days or after
Combined Zoning By-law Amendment (ZBA) and Official Plan Amendment (OPA)	Up to 120 days	121 to 180 days	181 to 240 days	241 days or after
Site Plan	Up to 60 days	61 to 90 days	91 to 120 days	121 days or after

The approval timeline for site plan applications is extended from 30 days to 60 days, which will alleviate some pressure on meeting the statutory timeline. Bill 109 also requires municipal councils to delegate approval authority with respect to site plan control applications submitted on or after July 1, 2022.

On June 20, 2022, an information report was submitted to the Planning and Environment Committee to provide an overview of changes to the *Planning Act* and identify some possible updates to the City’s planning and development process required as a result of Bill 109.

1.2 Background on Planning Application Fees

Application fees are an important element of the planning and development process and are intended to ensure that at least 30% of costs associated with processing and application is recovered through application fees.

An information report introducing a recovery rate approach and recommending increased application fees was presented to the Planning and Environment Committee on August 13, 2018. In that report, a number of factors were considered when determining an appropriate fee, including the principle that growth should pay for growth while balancing that with the need to provide a competitive rate and recognize the public benefit provided by development.

The 2022 base fees for rezoning and site plan are summarized in the table below. No changes are proposed to these application fees in 2023.

Application Type	Application Fee
Zoning By-law Amendment	\$12,000
Combined Zoning By-law and Official Plan Amendment	\$21,000
Site Plan Approval	<div>\$1,205 base fee<ul style="list-style-type: none">plus variable fee for residential development of \$60 per residential dwelling unitplus variable fee for non-residential development based on the following calculation: (total Gross Floor Area sq.m. – 1,000 sq.m.) x \$1.24</div>

The City recognizes pre-application consultations as an important process prior to submission of planning applications under the Planning Pre-Consultation By-law C.P.-1469-217. Pre-application consultation is intended to facilitate early discussion between

an applicant and City staff pertaining to the application and to identify issues and required supporting materials to be submitted as part of a complete application. The City charges a pre-application consultation fee to allow for some cost recovery and provides guidance on proposal summaries. The pre-application consultation fee is deducted from the application fee if an application is submitted.

A review of planning application fees is scheduled for 2023 that could consider an updated analysis of the related to staffing costs for application review, indirect costs, a comparative analysis of municipal planning and development fees, and the potential impacts of Bill 109 process changes.

2.0 Impact of Planning Application Fee Refunds

An analysis of planning application activity in 2021 was completed to reveal the financial impacts that would have resulted from Bill 109 mandatory refunds. The table below indicates the number of applications that would have required a refund based on the number of days until a decision was made.

Application Type (2021)	Total Fees	Apps with No Refund	Apps with 50% Refund	Apps with 75% Refund	Apps with 100% Refund	Total Refund \$	Total Refund %
Zoning By-law Amendment	\$ 375,792	7	7	2	8	\$ 222,800	59%
Combined Zoning By-law and Official Plan Amendment	\$ 399,095	1	20	5	9	\$ 259,419	65%
Site Plan Approval	\$ 520,565	120	0	0	0	\$ 0.00	0%

In 2021, a significant number of decisions on Zoning By-law Amendment applications exceeded the statutory timeline, representing refunds of 59% and 65% of application fees collected, respectively. The City required an average of 160 days to issue a decision on a Zoning By-law Amendment and an average of 189 days on combined Zoning By-law and Official Plan Amendment. Many of the Zoning By-law Amendments that would require a 100% refund include those concurrently processed with a draft plan of subdivision or condominium.

There may be multiple causes of delay in the application review process that include how quickly comments are received, quality of application and need for major revisions, and applications being referred back to staff for further work. The subsequent sections of this report describe changes to the Zoning By-law Amendment application review process to avoid these delays.

The Site Plan Approval process is already set up to process applications within the 60-day period, so as a result no refunds would be required and no changes are necessary to the process moving forward.

3.0 Zoning By-law Amendment Process Changes

Immediate changes to the City’s application process with respect to Zoning By-law Amendments are required to ensure that decisions are made within the new timelines, thus reducing the likelihood of application fee refunds. These changes include a more structured approach with submission requirements and more time spent resolving issues during the pre-application consultation phase. This will ensure that applications are fully accurate and have no outstanding issues.

The new application process will also ensure greater coordination between City staff, applicants, agencies, and the public prior to formal applications. All commenting departments and agencies will need to have additional time devoted to pre-application consultation. This will allow the review of accepted applications to be more streamlined and efficient as all major issues should have been discussed earlier during pre-application consultation.

City Planning and Development staff consulted with other divisions and stakeholders to draft the new process described below, and while some concerns were identified it is widely acknowledged that the changes are necessary to achieve the intent of the new legislation and avoid application fee refunds. One concern that was raised during a Building and Development Liaison Forum meeting, which is a meeting between an Industry Stakeholder group and City staff, was the need for quick responses and thorough comments at the pre-application phase of the process. In order for issues to be resolved prior to submission of the application greater resources will be devoted to the pre-application phase to ensure comments are adequate to allow for complete applications to move efficiently through the review process. In addition, schedule targets are being developed to ensure a streamlined pre-application process.

The updated planning application review process is described below in three main phases – 1) Pre-application consultation, 2) File opening and circulation, and 3) Public Meeting and Council decision.

3.1 Pre-Application Consultation

Pre-application consultation is mandatory prior to submitting a Zoning By-law Amendment application with or without an Official Plan Amendment. The pre-application consultation is intended to provide applicants with an opportunity to discuss their proposals with City staff early in the process and identify any issues that need to be addressed in the supporting reports and studies that will make up the complete application. To initiate pre-application consultation a proposal summary is required to be submitted by an applicant. City staff review the proposal summary and consolidate comments from various departments to provide feedback on the proposal summary and outline required submission materials. Planning and Development staff bring the comments and the required materials to the pre-application consultation meeting to discuss with potential applicants. Following the meeting, a confidential record of pre-application consultation is provided that outlines all of the issues identified during the meeting and all supporting materials required for a complete application.

Pre-application consultation will continue to be an integral part of the application review process, and it will see its role increase with the proposed Bill 109 changes. The record of pre-application consultation will provide additional details of what issues need to be addressed in the required studies and reports for the application to be deemed complete. Meetings and correspondence may be required in addition to the pre-application consultation meeting with various departments, depending on the relevant issues, in order for them to be resolved prior to submitting the application. To ensure that pre-application work progresses in a timely manner targets are being developed that will include escalation to senior management in the event that time commitments are not met. This will ensure that work completed during the pre-application phase progresses in a timely manner.

3.2 File Opening and Circulation

A complete application submitted with all relevant and required information enables Council to make informed decision within the prescribed timeframes and ensures that the public and stakeholders have access to the relevant information early in the process.

The City has 30 days to review and assess the application for completeness as per the *Planning Act* and can either accept or return it to the applicant requesting further information. Deeming an application to be complete does not imply agreement by the City on the conclusions of each report or study, rather it is intended to ensure all required information is provided. The completeness review will include confirming that

all issues set out in the record of pre-application consultation have been addressed within each report or study. If an issue has not been addressed, the application may be deemed incomplete.

Supporting materials including studies and reports submitted as part of the application will be regarded as final. There will not be any opportunity to update such materials based on comments from commenting departments or agencies.

If the application is deemed complete, the file is opened and timelines for processing are established. Once the file is opened, major revisions that require recirculation will not be accepted. The target date of a Planning and Environment Committee meeting will be identified as part of file opening process.

The complete application is circulated to a standard list of agencies, departments, and nearby property owners for comment. It will be essential that all comments are received within the commenting period. On a separate, but related matter, members of Council have requested that the public notice circulation area of letter mail to residents in rural areas of the City be extended beyond the required 120 metres identified in the *Planning Act* and included in the notification policies of The London Plan. Consideration of a revision to the circulation process for rural areas is identified as a medium-term action under 4.1 of this report.

Following the circulation deadline, City staff review all comments and application materials and determine whether the application will be recommended for approval or refusal. Comments provided by the public, agencies and departments will be geared to Council to assist in their decision. Comments will not be written with the target audience since there is no opportunity to amend supporting materials. This type of issue resolution with applicants will be part of the pre-application consultation process.

3.3 Recommendations and Council Decision

Following the circulation and City staff's review, an optional meeting with the applicant may be arranged to advise of the direction on reporting. This meeting may be set up as part of the file opening procedure.

In the meeting, staff will identify whether the application is on the approval track, refusal track, or has minor issues that do not require recirculation. Where minor issues are identified during the circulation period staff will work with the applicant to see if they can be resolved. If the application requires major revisions or there are issues that cannot be resolved prior to the Planning and Environment Committee meeting, the application will be recommended for refusal. The Reasons for Refusal will identify the outstanding issues that could be addressed in a new application. Council will be advised to avoid referring applications back to staff for further review and will be informed of the financial implications of such decisions.

There is no change to the public participation meeting, which will be held at the Planning and Environment Committee as per the *Planning Act* to allow members of the public to speak to the Committee and the public about the application.

Where there is a recommendation for refusal based on planning policy conformity or other issues that cannot be resolved, there is no change from the current process before the Planning and Environment Committee. Planning and Development staff will continue to provide recommendations that ensure conformity to provincial and municipal plans and policies and represent good planning.

If refusal of an application is recommended based on outstanding technical issues or a lack of information necessary for the application to be approved, then the Reasons for Refusal could remain silent on the planning policy analysis. A report for this type of refusal will identify outstanding issues or missing information that would need to be addressed for the application to be approved, which may be achievable through a future application.

Comments received from commenting agencies, including Conservation Authorities, will

be appended to the report for reference. In instances where agencies have not provided comments within the circulation period, Planning and Development staff will proceed with a recommendation without their comments to ensure that the regulatory timelines are achieved. Where there are minor issues to be resolved at a future stage of development, such as through site plan approval, the report could recommend that Council request the Site Plan Approval Authority to consider their issues and have them addressed through that process.

3.4 Zoning By-law Amendment Process with Plans of Subdivision or Condominium

Plans of Subdivision or Condominium applications are not subject to mandatory refunds under Bill 109. However, Zoning By-law Amendment applications associated with a draft plan of Subdivision are subject to the mandatory refunds. As noted earlier in this report, staff have observed that decisions on the Zoning By-law Amendment applications combined with a draft plan of Subdivision or Condominium often exceeded the statutory timelines due to the complexity of the subdivision/condominium process and clearance of conditions. To avoid the issuance of refunds on these applications, Zoning By-law Amendments need to be decoupled from the Subdivision or Condominium approval process.

Zoning By-law Amendment applications will be processed as a separate application to ensure that they can be processed to a Council decision within the required timeline. Premature submission of Zoning By-law Amendment applications could result in refusal if the Subdivision or Condominium application has outstanding issues. Late submission of the Zoning By-law Amendment application could create unnecessary delays in the subdivision or condominium approval. Applicants will be advised to work with Subdivision staff to determine the optimal timing of Zoning By-law Amendment application.

4.0 Next Steps and Future Actions

While the process described above can be characterized as the short-term response to the legislation changes made by Bill 109, other actions may also be considered. Some of the medium and longer-term strategies are described below.

4.1 Medium-Term Actions

In order to streamline or otherwise improve the application review process under the Bill 109 changes, the following actions will be considered in 2023:

- Review fees by-law to align with Bill 109 process – The City’s Fees and Charges By-law A-57 is currently scheduled for 2023, and the scope of this project will be revised to consider possible implications of the Bill 109 process changes for Zoning By-law Amendments. Changes to be considered include possible refund or credit toward a future application where an application is withdrawn prior to a Planning and Environment Committee meeting, and possible restructuring of pre-applications consultation fees to reflect the larger role it will play in the development process.
- Develop terms of reference for frequently required reports and studies – In order for the new application process to be effective it will require high quality submissions from applicants. This will be achieved through more in-depth pre-application consultation, and could be aided by clear terms of reference for the most frequently required reports and studies. Terms of reference will provide details for what needs to be considered in each report, and establish expectations early in the process. This will ensure that all required information is provided with submitted application before acceptance of the application, thereby avoiding some refusals that are based on insufficient information.
- Develop standard requirements for a “Public Engagement Strategy” – A Public Engagement Strategy may be listed as a requirement for complete application on the record of pre-application consultation; however, at this time there is no guideline for what needs to be included in the strategy. On certain applications

with a high level of public interest a community information meeting can create an opportunity to listen to neighbourhood concerns and develop suitable design responses. Standard requirements for the public meeting may include direction on public notification, whether City staff should attend or participate, and how comments received are recorded.

- A separate review of the current public notification procedures in rural areas will be undertaken to address concerns expressed by Council. This review will explore the notification area to ensure that affected property owners within rural areas are adequately notified of opportunities to comment and voice concerns. Changes to be considered include possible expansion of the notification distance for the public meeting and/or circulation.
- Other actions to be determined – We recognize that this is a significant change in our approach that needs to be implemented abruptly due to the new requirements of the *Planning Act*. As such, staff will monitor the process and be ready to respond to unexpected issues that may arise.

4.2 Long-Term Actions

Throughout 2023 staff will monitor the impacts of the Bill 109 application process changes while also continuing ongoing efforts to streamline and improve existing application processes. Bill 109 will eventually be incorporated into these changes to determine an optimal process and will inform future assessments of resource requirements.

Conclusion

Bill 109 requires the City to gradually refund application fees if the City fails to issue decisions on zoning by-law amendments or site plan approval applications within the statutory timelines. The City has seen that the average number of days for decisions made on Zoning By-law Amendments exceeds the statutory timelines. Therefore, changes to our processes are required to meet the new legislation.

The new application process described in this report directs more time to pre-application consultation and completeness reviews. Pre-application consultation will play a greater role in issue resolution and ensuring that all necessary information is provided for Council to make its decision. Applications that are deemed complete will be reviewed and brought to Council for a decision without opportunities for major changes that would require recirculation. This new process will ensure that Council has the opportunity to make decisions within the new timelines.

Staff will continue to monitor the application process and the longer-term approaches. A report may be brought forward to a future Planning and Environment Committee meeting with observations and possible updates to the process.

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