

# Staff Report



Development Services Department

www.kitchener.ca

**REPORT TO:** Finance and Corporate Services Committee

**DATE OF MEETING:** April 25, 2022

**SUBMITTED BY:** Rosa Bustamante, Director of Planning, 519-741-2200 ext. 7319

**PREPARED BY:** Rosa Bustamante, Director of Planning, 519-741-2200 ext. 7319  
Natalie Goss, Manager Policy and Research, 519-741-2200 ext. 7648  
Janine Oosterveld, Manager Customer Experience and Project Management, 519-741-2200 ext. 7076  
Garett Stevenson, Manager Development Review, 519-741-2200 ext. 7070

**WARD(S) INVOLVED:** ALL

**DATE OF REPORT:** April 14, 2022

**REPORT NO.:** DSD-2022-192

**SUBJECT:** Province of Ontario More Homes for Everyone Plan (Bill 109)

---

## RECOMMENDATION:

That report DSD-2022-192 titled “Province of Ontario More Homes for Everyone Plan (Bill 109)” be submitted to the Province as the City of Kitchener’s comments on the More Homes for Everyone Plan which includes Bill 109; proposed guidelines for the Community Infrastructure and Housing Accelerator; and the Missing Middle Housing and Gentle Density Discussion Paper.

## REPORT HIGHLIGHTS:

- The purpose of this report is to provide an overview of the substantive changes proposed to planning and development process through the Province’s More Homes for Everyone Plan which includes changes to, among other things, the Development Charges Act and Planning Act through Bill 109;
- Bill 109 proposes that, effective January 1, 2023, application fees for site plan and Zoning By-law amendment (including combined Official Plan amendments) that are not decided on/approved within the required Planning Act timeframes, are required to be refunded between 50 and 100 per cent based on the amount of time that has passed since a complete application was received by the City. This proposed change poses the greatest risk to Kitchener in terms of application processing, revenue stream, and community/development industry perception;
- City of Kitchener Staff support the provincial objective to streamline development approvals to bring housing online efficiently to meet the needs of current and future residents. Corporately, the City has prioritized continuous improvement through the Development Services Review (DSR) which resulted in the creation of a customer-informed workplan that included 18 Lean improvement projects known as Kaizens involving over 111 staff. Additionally, projects are underway to implement

\*\*\* This information is available in accessible formats upon request. \*\*\*  
Please call 519-741-2345 or TTY 1-866-969-9994 for assistance.

recommendations from the provincially funded 2021 KPMG report on Digital Transformation as well as through Streamlining Development Approvals provincial funding awarded earlier this year to continue to refine our processes. As a result of improvements made to Kitchener's site plan process, approval in principle is issued on average between 3 and 6 months with full site plan approval being obtained on average within 16 months. The time it takes to obtain full site plan approval is partially dependent on how quickly the applicant can clear conditions;

- As a corporation we have worked hard to build relationships and develop key partnerships with the development industry and community. It will be increasingly challenging to engage and continue to build partnerships if fee refunds are required for complex planning applications that cannot be completed within the legislated timeframe. Minimizing the City's ability to involve the community, Council, and the development industry in discussing and resolving matters through a transparent process is of great concern;
- The proposed fee refund changes to the Planning Act have the potential to impact a key Planning and Engineering Division revenue source and could reduce staffing levels leading to an unintended consequence of slowing down applications further;
- This report has been posted to the City's website with the agenda in advance of the Council/Committee meeting. Staff also presented an overview of the More Homes for Everyone Plan to the Kitchener Developer's Liaison Committee (KDLC) on April 8. As per this initial discussion, staff understand that there is likely little support in Waterloo Region for the proposed fee refund requirements included in Bill 109, and;
- This report supports the delivery of core services.

#### **BACKGROUND:**

On March 30, 2022, the Province released the following for comment:

- Proposed [Planning Act changes](#) (Bill 109, the More Homes for Everyone Act, 2022);
- Proposed [Development Charges Act changes](#) (Bill 109, the More Homes for Everyone Act, 2022);
- Proposed [New Home Construction Licensing Act changes](#);
- Proposed [New Home Warranties Plan Act changes](#);
- Opportunities to increase missing middle housing and gentle density, including supports for multigenerational housing [discussion paper](#);
- Community Infrastructure and Housing Accelerator [Proposed Guideline](#); and
- Access to Provincial Financing for Not-for-Profit Housing Providers [proposal](#).

The above is available for comment on the Environmental Registry of Ontario (ERO) until April 29.

#### **REPORT:**

The purpose of this report is to provide an overview of the substantive changes proposed to planning and development process through recent legislative changes and to seek Council endorsement for the City of Kitchener's response to the proposed changes. Attachment 1 to Report DSD-2022-192 provides an overview of the benefits and concerns that the proposed legislative changes pose.

## **Bill 109 – More Homes for Everyone Act, 2022**

Bill 109 is an omnibus Bill proposing changes to the Development Charges Act, the Planning Act, the New Home Construction Licensing Act, and the New Home Warranties Plan Act. The following proposed change to the Planning Act through Bill 109 has been identified as having the greatest risk to Kitchener in terms of application processing, revenue stream and community/development industry perception:

- Effective January 1, 2023, for site plan applications that are not approved within the required Planning Act timeframe and Zoning By-law amendment (ZBA) applications (including combined Official Plan Amendment (OPA) applications) which are not decided on within the required timeframe, the application fees collected by the City would be required to be refunded between 50 and 100 per cent based on the amount of time that has passed since a complete application was received by the City. Table 1 below provides a summary of the proposed fee refunds required by Bill 109.

**Table 1: Summary of Bill 109 Proposed Fee Refunds by Application Type**

<b>Application Type</b>	<b>No Refund</b>	<b>50% Application Fee Refund</b>	<b>75% Application Fee Refund</b>	<b>100% Application Fee Refund</b>
<b>ZBA</b>	Final decision made by Council within 90 days	Decision made within 91 and 149 days	Decision made within 150 and 209 days	Decision made after 210 days
<b>Combined OPA and ZBA</b>	Final decision made by Council on ZBA and Regional Council on OPA within 120 days	Decision made within 121 and 179 days	Decision made within 180 and 239 days	Decision made after 240 days
<b>Site Plan</b>	Decision made by Manager of Development Review within 60 days	Decision made within 61 and 89 days	Decision made within 90 and 119 days	Decision made after 120 days

Staff are supportive of the Provincial objective to streamline development approvals to bring housing online efficiently to meet the needs of current and future residents. Corporately, the City has prioritized continuous improvement through the Development Services Review (DSR) which resulted in the creation of a customer-informed workplan that included 18 Lean improvement projects known as Kaizens involving over 111 staff. Additionally, projects are underway to implement recommendations from the provincially funded 2021 KPMG report on Digital Transformation as well as through Streamlining Development Approvals Provincial funding awarded earlier this year to continue to refine our processes.

The intent of the proposed free refund change through Bill 109 is to expedite approvals to increase housing supply throughout Ontario. However, it may do so at the potential detriment of good planning process and principles, dialogue with applicants, and the value added by the community through a comprehensive public engagement process that has been recently refined and improved through the City's Development Services Review.

Specifically, should Bill 109 be implemented in its current form, there are the following potential risks to Kitchener:

***Process, resources, and timing risks***

- Processing applications within the Planning Act timelines may not allow for consideration of the complex technical matters that some applications bring (e.g., Environmental Impact Studies, Heritage Impact Assessments, Urban Design Reports) which take additional time to review and assess, and may have seasonal field requirements;
- Advancing quality building design and the ability to negotiate with developers to achieve better outcomes for a development could be challenged with compressed review times;
- External commenting agencies add value to the process and time for technical review which may not be able to be achieved in all cases within the timeframes contemplated by the proposed changes to the Planning Act;
- The process is likely to result in unintended outcomes such as more recommendations for refusal of development applications and/or more appeals to the Ontario Land Tribunal (OLT). This would take decisions out of the local context and reduce time for issue resolution through the planning review process. Additionally, more appeals will require considerable additional Planning and Legal resources;
- Should a Planning recommendation report not be able to be brought to Council for a decision within the time required by the Planning Act or should Council defer a Planning staff recommendation, the result may be a refund of the planning application fees which will ultimately be borne by the tax base rather than the principle of growth paying for growth;
- It is widely understood by the development industry and planners that the legislative timelines do not provide adequate review time of average and complex development applications. More recently Kitchener has seen an increase in applications for multi-tower developments which are complex in nature and typically take a longer period of time to review. Kitchener has, on average, met legislative timeframes for minor applications that did not require more than typical levels of community engagement or, a detailed review of modifications to the proposal; and
- Substantial process changes beyond what the local development industry has identified through the Development Services Review will be required to achieve decisions within the proposed legislative timeframes. This will impact many business units across the corporation which will have to dedicate time to process overhauls.

Bill 109 requires the delegation of site plan approval to staff, which Kitchener has already done through its Site Plan Control By-law. Bill 109 also proposes to allow the Province, through a future legislative regulation, to prescribe complete application requirements for site plans. A pre-submission consultation process is already used by staff to outline complete application requirements for development applications including site plans. Once the Provincial regulations for complete applications for site plan are established, staff may have additional comments depending on the nature of the requirements proposed. In accordance with current Planning Act provisions, staff will continue to use the City's Official Plan to outline additional pre-submission requirements for site plans.

### ***Application fee risks***

- The City of Kitchener currently does not budget for or issue refunds of development application fees. Reduced planning revenues, which is what would occur if fees were refunded, will have the unintended consequence of reducing staffing levels which could limit the City's ability to work expeditiously to process development applications;
- Official Plan Amendment (OPA), Zoning By-law Amendment (ZBA), and Site Plan application fees are one of the primary revenue sources for the Planning Division and are collected to cover the cost of processing the applications (i.e. growth pays for growth);
- Application fees account for a very small proportion of a developer's proforma. Refunding application fees will do very little in the way of achieving housing affordability and costs to cover the staff time that are not covered through the application fee (i.e. the refunded portion) will have to be funded through the tax base, which will increase taxation costs to all Kitchener residents or may result in service cuts;
- The Planning Division collects fees and is the process owner for the OPA, ZBA, and Site plan applications. Planning relies on other divisions (Building, Transportation, Engineering, Operations, etc.) and external agencies (Region, Grand River Conservation Authority, Ministry of the Environment, Conservation, and Parks, Ministry of Northern Development, Mines, Natural Resources and Forestry Services, and Ministry of Transportation) to participate in the process. The City has very little to no ability to influence process change outside of the City. External agencies (except the Region) do not collect application fees and are not subject to the same fee refund requirements. Additionally, the City will have little ability to control response times for the applicant to address staff and agency comments; therefore, it could be in the applicant's interest to delay and recoup fee revenue, and;
- The increased volume and complexity of applications drives the need for additional permanent Planning resources, which cannot be provided without the certainty covering those costs through application fees.

### ***Perception risks***

The City of Kitchener's approach to planning includes a fulsome community-based process that involves building relationships with the community, development industry, and Council; sharing information; and receiving and considering feedback on planning proposals, projects, and processes. Placing emphasis on making planning decisions faster will result in fewer engagement opportunities with the stakeholders mentioned above. As a corporation we have worked hard to build relationships and develop key partnerships with the development industry and community. It will be increasingly challenging to engage and continue to build partnerships if fee refunds are required for complex planning applications that cannot be completed within the legislated timeframe. Minimizing the City's ability to involve the community, Council, and the development industry in discussing and resolving matters through a transparent process is of great concern.

Through the Development Services Review (DSR), City staff heard from the community that transparency, access to information, and meaningful, inclusive engagement were top priorities. Improvements have already been made to the engagement process using StoryMap and additional digital engagement platforms; the use of postcards instead of

technical letters to share information with the community about development proposals; and notifying all residents and property owners within 240 meters of a development proposal – double the requirement in the Planning Act.

According to the 2020 Building Industry and Land Development Association's (BILD) Municipal Benchmarking Study, it takes Ontario municipalities anywhere from 12 to 30 months to issue site plan approval for developments. As a result of improvements made to Kitchener's site plan process, approval in principle is issued on average between 3 and 6 months with full site plan approval being obtained on average within 16 months. The time it takes to obtain full site plan approval is partially dependent on how quickly the applicant can clear conditions.

Processing applications within the Planning Act timelines to avoid refunding application fees will most certainly require changes to the development application processes, specifically community engagement processes. These changes may move further away from the process and engagement improvements that have already been made through the DSR which in turn may result in lower levels of and less meaningful community engagement (e.g. not hosting multiple Neighbourhood Meetings, working groups, site walks, etc).

### ***Other matters of note***

Proposed legislative changes to Development Charges and Community Benefits Charges are relatively minor in nature and will have minimal impact on Kitchener's ongoing work in these areas. This work will continue to proceed to Council for decision in the format and timeframe as currently planned.

The Bill 109 proposed changes to the Planning Act include the ability for the Minister to "order" a municipality to accept certain lands as parkland. The types of land described in Bill 109 that could be ordered as parkland do not meet the current or proposed standards of acceptable parkland within the proposed Spaces Parkland Dedication Policy and By-law. These changes have the potential to impact the amount of cash-in-lieu that could be collected, most likely in intensification areas such as Kitchener's Major Transit Station Areas (MTSAs) and downtown. At this time, staff does not have a clear understanding of when or in what context the Minister may issue such an order. If this order is only at the request of a municipality, then it is unlikely that this situation would occur in Kitchener. However, if such orders can be generated in other ways, these proposed changes could significantly impair the ability to collect parkland or cash-in-lieu to the proposed standards within the Spaces Parkland Dedication Policy and By-law.

Bill 109 also includes provisions that enable municipalities to create a Community Infrastructure and Housing Accelerator to speed up approvals for housing and community infrastructure related applications (i.e., a Minister's Zoning Order (MZO) like process). The Province has also prepared proposed guidelines for how Community Infrastructure and Housing Accelerators would work. As the proposed changes to the Planning Act regarding this matter are enabling rather than a requirement, should Kitchener choose to enable this mechanism, it has the potential to have impacts on its robust community engagement approach and relationships that have been built with the community and Council. A fulsome discussion regarding the merits and drawbacks of this tool should occur prior to its use.

On March 30, 2022, the Province increased the Non-Resident Speculation Tax from 15 to 20 per cent and expanded the tax provincewide (beyond the Greater Golden Horseshoe). This tax applies to the purchase or acquisition of an interest in a residential property located in Ontario by anyone who is not a citizen or permanent resident of Canada or by a foreign corporation/taxable trustee. The Province has indicated that this change has the potential to assist with their plan to increase housing supply and affordability. There is no evidence to date that this tax addresses affordability.

**STRATEGIC PLAN ALIGNMENT:**

This report supports the delivery of core services.

**FINANCIAL IMPLICATIONS:**

The proposed fee refund changes to the Planning Act have the potential to impact a key Planning and Engineering Division revenue source.

This item would have Operating Budget Implications should the province implement the proposed bill. However, the magnitude of the impact is not known at this time and would ultimately depend on what portions of the application could be required and reviewed before deeming the application complete.

Capital Budget – The recommendation has no impact on the Capital Budget.

**COMMUNITY ENGAGEMENT:**

INFORM – This report has been posted to the City’s website with the agenda in advance of the Council / Committee meeting.

CONSULT – Staff from the Planning, Parks and Cemeteries, Finance, Legal Services, Legislative Services, Building, Realty Services and Equity, Anti-Racism, and Indigenous Initiatives (EARII) Divisions met to discuss the More Homes For Everyone Plan including Bill 109. The comments in this report are reflective of this cross-divisional discussion.

Staff presented an overview of More Homes for Everyone Plan, including Bill 109 to the Kitchener Developer’s Liaison Committee (KDLC) on April 8, 2022 to understand their perspectives and share initial staff comments. As per this initial discussion, staff understand that there is likely little support in Waterloo Region for the proposed fee refund requirements included in Bill 109.

**PREVIOUS REPORTS/AUTHORITIES:**

There are no previous reports/authorities related to this matter.

**REVIEWED BY:**

Ryan Hagey, Director Financial Planning and Reporting  
Katherine Hughes, Assistant City Solicitor  
Niall Lobley, Director Parks and Cemeteries  
Andrew Ramsaroop, Social Planning and Affordable Housing Program Lead  
Dianna Saunderson, Manager Council/Committee Service/Deputy City Clerk  
Danielle Sbeiti, Manager Realty Services

**APPROVED BY:** Justin Readman, General Manager Development Services  
Department

**ATTACHMENTS:** Attachment A – More Homes for Everyone Plan: Summary of City of  
Kitchener Comments