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**Date** September 29, 2022 **Report No.** 2022-600

**To** Chair and Members  
Planning Advisory Committee

**From** Nicole Wilmot, MCIP, RPP  
Chief Planner and Director of Planning and Development Services  
People, Legislated Services and Planning

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## 1.0 Type of Report

Consent Item ☐  
Item For Consideration ☒

**2.0 Topic** **Technical Official Plan Amendment to address Matters arising from the Supporting People and Business Act, 2021 (Bill 13) and the More Homes for Everyone Act, 2022 (Bill 109) [Financial Implications: None]**

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## 3.0 Recommendation

THAT the following comments of the Planning Advisory Committee regarding the technical official plan amendments discussed in Report 2022-600 BE INCLUDED in Staff's future report to the Planning Committee:

- 1) \_\_\_\_\_;
- 2) \_\_\_\_\_; and
- 3) \_\_\_\_\_.

## 4.0 Background

As a result of changing Provincial legislation with respect to land use planning and development, Planning Staff will be proposing amendments to the City of

Brantford Official Plan for Council's consideration. The Official Plan amendments relate to recent amendments to the *Planning Act*.

Bill 13, the *Supporting People and Business Act, 2021*, received Royal Assent on December 2, 2021. Bill 13 enables municipalities to deem certain zoning by-law matters as "minor" via official plan policy and the ability to delegate approval of such matters to an individual or committee other than the municipality's Council.

Separately from Bill 13, the Minister of Municipal Affairs and Housing (the "Minister") appointed a nine-member Housing Affordability Task Force to provide the Provincial government with recommendations to address market housing supply and affordability. That Task Force provided its final report on February 8, 2022 and it contained 55 recommendations for consideration on a range of topics related to the land development process with the aim increasing housing supply.

Following the Task Force Report, the Minister introduced Bill 109, the *More Homes for Everyone Act, 2022*, on March 30, 2022. Bill 109 amended five different acts including the *Planning Act*. The changes to the *Planning Act* reflected some, but not all, of the recommendations from the Housing Affordability Task Force. On April 14, 2022, Bill 109 received Royal Assent. Not all amendments from Bill 109 took effect immediately and some will come into force and effect as of January 1, 2023 while others require certain triggers.

Staff has completed an overview of Bill 13 and Bill 109 in Section 5 of this Report and outlined anticipated next steps to address each *Planning Act* amendment.

## **5.0 Analysis**

### **5.1 Bill 13, the Supporting People and Business Act, 2021**

Bill 13 made one amendment to the *Planning Act*, adding Section 39.2 which allows municipalities to deem certain zoning matters to be minor in nature by way of their official plans. Normally, the authority to approve and adopt zoning by-laws and amendments is regulation-making authority that Council cannot delegate; however, Council is able to delegate authority of minor zoning by-law matters, and can delegate its authority to a committee of Council or to an employee, officer, or agent of the municipality and subject to any conditions imposed by Council.

Section 39.2 of the *Planning Act* does not provide an exhaustive list of what can be deemed minor; it is up to each municipality to define for itself what is “minor”. To date, utilization by municipalities appears to be limited. Staff has found examples from the following municipalities:

- City of Hamilton minor zoning matters consist of:
  - To make amendments related to surplus farm dwellings and farm lot consolidation;
  - To remove or amend an existing holding provision;
  - To establish a new holding provision;
  - To add a use permitted by the City’s Official Plans;
  - To remove existing site-specific zoning and revert the zoning to the parent zone; and
  - Pass, adopt, and extend temporary use by-laws.
- Kingston minor zoning matters consist of:
  - Removal of an “additional residential unit constraint area overlay” where applied to address servicing concerns or the presence of floodplains;
  - To update and adjust the floodplain overlay when updated information becomes available from the conservation authority;
  - To make amendments related to surplus farm dwellings; and
  - Amending the new zoning by-law to bring forward site-specific zones from older by-laws, where the site specific zoning conforms with the City of Kingston’s Official Plan.
- City of London minor zoning matters consist of:
  - Removal of holding provision and symbol;
  - Correcting minor errors or omissions; and
  - Housekeeping updates to reflect amendments to referenced job titles, city departments, external agencies and organizations, or other policy documents, by-laws and legislation.
- City of Oakville minor zoning matters consist of:
  - Removal of holding provisions/symbols;
  - Authorizing a temporary use; and
  - Housekeeping by-laws to make clerical or other changes to assist in the interpretation of the zoning by-law.

Staff has reviewed the minor zoning matters adopted by each of the above municipalities and is considering the following matters to potentially be deemed minor:

- Removal of holding provisions and symbols where conditions are addressed. The removal of holding provisions is a technical process; the underlying principle of a use will have been discussed – with public consultation – at the time of a zoning by-law amendment when the holding provision is applied.
- Approval and extension of temporary use by-laws. Temporary use by-laws are frequently used for matters such as model homes in draft plans of subdivision and can be used to allow interim uses on a property for a limited time only. Temporary use by-laws can also be used as a flexible tool for unforeseen circumstances, such as the COVID-19 pandemic (e.g. restaurant patios).
- To add a use already contemplated by the official plan designation on a property. The City has at times considered zoning by-law amendments to add a use on the basis that it is similar to, but not the same, as an existing permitted use (e.g. allowing a “specialty retail store” (e.g. bicycle repair shop) in a vacant commercial unit on a property zoned for “retail stores”). When the City’s new (more flexible) comprehensive zoning by-law comes into effect, it is anticipated that there would be less need for these types of applications (i.e. changes of use). The change of a regulation (e.g. maximum height) would **not** be deemed minor.
- To update floodplain overlays based on the latest conservation authority floodplain mapping. This will allow for quick and efficient alignment of the City’s Zoning By-law to any future changes to floodplains within the City. This would be utilized both to remove floodplain overlays where they are no longer applicable (thus removing unnecessary regulations) as well as apply such regulations where updated floodplain limits include additional property (to ensure matters of life safety are considered as soon as possible).
- To correct typographical errors or update references to other documents, staff positions, etc. Though Staff makes every effort to prevent errors in the City’s Zoning By-law, from time to time they do occur. This would allow for correction of errors, corrections to section

cross-references, or updates to staff positions, city departments, or similar matters but not the introduction of new regulations.

As part of Staff's consideration of minor zoning by-law matters, Staff is also considering an opportunity to utilize alternative measures for consultation as contemplated in subsections 34(14.3) and 34(14.4) of the *Planning Act*. These subsections allow the City, via inclusion of policies in the Official Plan, to set out an alternative process to consult the public instead of the standard notice procedures (public mail out, posting of sign on the property, and statutory public meeting). An alternative process could allow for a shorter review period and faster decisions on minor zoning by-law matters.

The implementation of minor zoning by-law matters will require an amendment to the City's Official Plan which lists what is deemed to be minor. Changes to the public consultation process, if any, will also be implemented by an official plan amendment. Concurrently, Staff will update departmental procedures to establish criteria for reviewing minor zoning by-law matters including but not limited to: formal pre-consultation process; technical circulation; when to refer a matter to Council for a decision; application processing fees; and level of detail in Staff reports. Expansion of delegated authority to Staff to process routine or minor matters aligns with strategic recommendations of the Development Approval Process ("DAP") Review being undertaken by the City.

## **5.2 Bill 109, the More Homes for Everyone Act, 2022**

Bill 109, the *More Homes for Everyone Act, 2022*, made several amendments to the *Planning Act* which are discussed in subsections 5.2.1 to 5.2.8 below. Each subsection includes a summary of the changes, any needed official plan amendments, and steps proposed to be taken in response to the amendments, if necessary.

### **5.2.1 Official Plan Adoption and Ministerial Decisions**

New subsections have been added to Section 17 (approvals regarding official plans) of the *Planning Act* with respect to rules that apply when the Minister is the approval authority for the adoption of an official plan or official plan amendment. The new subsections:

- Allow the Minister to pause the 120-day review period. If the Minister does not make a decision within this 120-day period, a municipality may appeal the lack of a decision to the Ontario Land Tribunal (“OLT”) for a decision. When the 120-day period is paused, a municipality cannot appeal for lack of a decision.
- Allow the Minister to refer all or part of the Official Plan (or amendment) to the OLT for review and recommendations to the Minister, or for a decision.

Brantford’s new Official Plan was approved by the Minister on August 4, 2021, in conformity with Provincial plans including the updated Growth Plan for the Greater Golden Horseshoe and the most recent Provincial Policy Statement. Additionally, Ontario Regulation 525/97 exempts the City of Brantford from needing the Minister’s approval for most official plan amendments (except those that deal with a natural heritage system or a prime agricultural area, or are initiated as a Provincial plan conformity exercise under Section 26 of the *Planning Act*). On that basis, the above amendments do not affect the City of Brantford at this time but may be applicable in the future in certain select instances.

### 5.2.2 Refund of Zoning By-law Amendment Fees

Section 34 (zoning by-laws) of the *Planning Act* has been amended to require municipalities to refund zoning by-law amendment application fees if a decision is not made within a certain timeline. This amendment will take effect as of January 1, 2023 and will apply to zoning by-law amendment applications made after that date. The rules for fee refunds are as follows:

- **No fee refund** where a decision is made within 90 days of the application being deemed complete (increases to 120 days where there is a corresponding official plan amendment).
- **50% of the fee refunded** where a decision is made between 91 – 150 days after the application has been deemed complete (or 121 – 180 days where there is a corresponding official plan amendment).
- **75% of the fee refunded** where a decision is made between 151 – 210 days after the application has been deemed

complete (or 181 – 240 days where there is a corresponding official plan amendment).

- **100% of the fee refunded** where a decision is made 211 or more days after the application has been deemed complete (241 or more days where there is a corresponding official plan amendment).

In the above rules, the decision referred to is the decision of Council rather than a the decision of the committee at which the statutory public meeting is held (such as Planning Committee, or previously at Committee of the Whole – Planning and Administration). Additionally, there is no ability to “stop the clock” when additional information is required of an applicant or to agree to alternate timeframes. There is also no consideration for periods when Council does not meet (i.e. municipal elections) or for other associated applications like plans of subdivision which can be complex.

An amendment to the City’s Official Plan is not required to implement the fee refunds in accordance with the *Planning Act*; changes to City policies relating to the collection of City fees will be sufficient. In the event that a refund is to be issued, Staff is proposing to refund application fees sequentially as the above refund periods are triggered in order to ensure up-to-date tracking of application fees and budgeting. In light of this change, Staff will also be reviewing the following matters to reduce the time it takes to review a zoning by-law amendment application and avoid as many fee refunds as possible:

- Staff anticipates that Table 1: Required Studies in Section 9.11 of the Official Plan, regarding pre-consultation and complete application requirements, will be amended to introduce new possible required studies and adjustments to when certain information is required as part of a complete application.
- Preparation of detailed terms-of-reference for studies required by the City.
- The continued use of holding-provisions to address matters that may be addressed at later stages of a development

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proposal to allow decisions to be issued within the required timeframes.

- Review of City processes with respect to internal and external circulation.

At this time, a change in staff complement is not contemplated. Some municipalities, such as Hamilton, are considering the need for increase staff complement in order to process applications within the refund timeframes, based on their staffing and file workload. Brantford Planning Staff will monitor adherence to the fee-refund timelines and report back to Council should a staffing increase be needed to minimize fee refunds.

### **5.2.3 Minister's Order at Municipality's Request (Community Infrastructure and Housing Accelerator)**

A new section – 34.1 (Minister's order at request of municipality) – has been added to the *Planning Act* to establish new order-making authority for the Minister to use at a municipality's request, via council resolution. The order has the same authority as a zoning by-law passed by a municipality, but the order does not need to be consistent with any policy statement under the *Planning Act*, nor does it need to conform with a provincial plan or municipal official plan.

The *Planning Act* requires that municipal councils issue public notice and consult prior to passing a resolution requesting the Minister make an order under this new section. Additionally, the *Planning Act* requires that the Minister publish guidelines regarding how the Community Infrastructure and Housing Accelerator authority may be used before request to use it can be made. Ministry of Municipal Affairs and Housing Staff consulted the public regarding through Environmental Registry of Ontario posting [019-5285](#) from March 30<sup>th</sup> to April 29<sup>th</sup>, 2022; to date, final guidelines have not been published.

Municipal requests for this new type of order do not require enabling policy in a municipal official plan; Staff do not anticipate amendments to the Official Plan for the foregoing matter at this time, and review the guidelines when they are issued and consider if any changes to the Brantford Official Plan's public



consultation and development application policies, including complete application requirements, are warranted to facilitate the potential use of the CIHA tool in the City of Brantford.

#### **5.2.4 Scheduled Reviews of Community Benefits Charge By-laws**

Section 37 (community benefits charges) of the *Planning Act* gives municipalities the authority to pass “community benefits charge” by-laws and levy such charges to pay for facilities, services, or matters that are required because of new development. The facilities, services or matters which are funded by the charge are established through a community benefits charge strategy. Bill 109 amends Section 37 of the *Planning Act* to introduce a requirement that municipalities review their community benefits charge by-law (if they have adopted one) within five years of its adoption or its last review. Failure to meet the timelines would lead to automatic expiry of the community benefits charge by-law.

The City of Brantford does not have a community benefits charge by-law at this time. Staff does not anticipate any changes to the City’s Official Plan as a result of these amendments to the *Planning Act*.

#### **5.2.5 Site Plan Process Amendments**

Section 41 (site plan control area) of the *Planning Act* has been subject to several amendments, each of which is discussed under a separate heading below.

##### **5.2.5.1 Pre-submission Consultation with the City**

Bill 109 introduced language to Section 41 of the *Planning Act* regarding applicant consultation with a municipality before submitting a site plan application. The amendment also allows municipalities to explicitly require consultation by by-law.

Section 9.11 (Development Applications) of the City Official Plan (itself Schedule A to By-law 1-2021), as well as the City’s Site Plan Control By-law 90-2018, establishes a

requirement that formal consultation occur with the City and relevant commenting agencies prior to submission. Existing language in the Official Plan and Site Plan Control By-law 90-2018 is sufficient. Any future Site Plan Control By-law, adopted based on the findings of the Development Application Process Review, will include requirements for consultation prior to submission of a Site Plan application.

#### **5.2.5.2 Requirements for a Complete Site Plan Application**

New amendments, in force and effect as of April 14, 2022 allowed the City to establish material that is required as part of a site plan application for it to be deemed complete.

Policy 9.11.h of the Official Plan establishes that the City may require any/all of the studies listed in Table 1: Required Studies of the Official Plan in order for an application under the *Planning Act* to be deemed complete. This policy adequately satisfies the requirements of the *Planning Act* with respect to supporting material for site plan applications. Staff will be considering whether additional studies and materials need to be identified in Table 1: Required Studies in light of other changes to the site plan process, to ensure that there is sufficient information to review site plan applications once they are deemed complete.

#### **5.2.5.3 Appointment of Authorized Person for Approval Authority**

Bill 109 amended the *Planning Act* to require that authority to approve a site plan application be assigned to an “authorized person” by Council.

In Brantford, authority to approve site plans is currently delegated to the Chief Planner and Director of Planning and Development Services. This reflects a delegation of Council’s authority in line with best practices used in other municipalities. The amendments to the *Planning Act* will now require that the authority to approve site plans be delegated in order for site plan control to be utilized; Council will not be able to withdraw delegation – only reassign the delegated authority – if it wishes the municipality to retain use of the tool. Staff are proposing that Policy Corporate-010

(Delegation of Authority) be amended to reflect this new requirement but otherwise leaving the authority with the Chief Planner and Director of Planning and Development Services. This same authorization can also be reflected in a new Site Plan Control By-law.

#### **5.2.5.4 Refund of fees**

As of January 1, 2023, municipalities will be required to refund Site Plan Application fees if plans and drawings are not approved (with all conditions identified) within certain timeframes once the site plan application is deemed complete. The rules for fee refunds are as follows:

- **No fee refund** where a decision is made within 60 days of the application being deemed complete.
- **50% of the fee refunded** where a decision is made between 61 – 90 days after the application has been deemed complete.
- **75% of the fee refunded** where a decision is made between 91 –120 days after the application has been deemed complete.
- **100% of the fee refunded** where a decision is made 121 or more days after the application has been deemed complete.

The process review being completed with respect to items 5.2.5.1 and 5.2.5.2 will look at frequent sources of delay in the site plan process (e.g. comments from external agencies) and consider where information may be needed up front (i.e. to deem an application complete) or where information can be dealt with through conditions of site plan approval. Staff anticipates that Table 1: Required Studies of the City's Official Plan will be amended as discussed in Section 5.2.5.2 of this Report. The Development Application Process Review will also identify efficiencies with City procedures to ensure timeframes identified above are met as much as possible.

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### **5.2.6 Parkland Dedication for Provincially Identified Transit-Oriented Community Lands**

Sections 42 (conveyance of land for park purposes) and 51.1 (parkland) of the *Planning Act* have been amended to introduce rules for parkland dedication or cash-in-lieu of parkland where a property is part of a “transit-oriented community” designated under the *Transit-Oriented Communities Act, 2020*. The rules for parkland in such cases are as follows:

- If land proposed for development or redevelopment is 5 hectares or less in area, an alternative rate of parkland dedication or cash-in-lieu required cannot exceed 10% of the land or the value of the land, as the case may be.
- If land proposed for development or redevelopment is greater than five hectares in area, the alternative rate for parkland dedication or cash-in-lieu cannot exceed 15% of the land or the value of the land, as the case may be.

In addition to the above rules, additional amendments give the Minister of Infrastructure the ability to encumber lands for park purposes where the lands are within the transit-oriented community. Such lands would have to be conveyed to the municipality for park purposes and would count toward parkland requirements set out in the applicable parkland by-law.

There are no “transit-oriented community” lands or “priority transit projects” identified by the Province within the City of Brantford. The amendments to Sections 42 and 51.1 of the *Planning Act* will not require an amendment to the City’s Official Plan.

### **5.2.7 Extension of Subdivision Approvals**

Section 51 (plan of subdivision approvals) of the *Planning Act* has been amended as follows:

- Adding the authority to create a regulation that would limit the matters that could be dealt with as conditions of subdivision approval; and

- Adding new rules that would allow a one-time reinstatement of draft plan approval where the draft plan approval had lapsed, subject to certain conditions.

No regulation has been proposed to limit conditions of subdivision approval by the Province at this time but Staff will monitor Provincial consultation and report back to Council as necessary. With respect the extension or lapsing of draft plan approval, Staff will review current department process and determine if a change is required. An amendment to the City's Official Plan is not anticipated to be required to address the above matters regarding plan of subdivision approvals.

### **5.2.8 Regulation Making Authority Regarding Surety Bonds**

Section 70.3.1 (regulations re surety bonds and other instruments) has been added to the *Planning Act* to give the Minister authority to create regulations that prescribe the use of surety bonds (insurance), or other instruments to secure an obligation instead of the more common letter of credit securities, and may authorize the owner of the land (i.e. the Applicant) to specify which will be provided.

A regulation on the above matters has not yet been proposed by the Province. An official plan amendment is not necessary at this time and Staff will monitor for any consultation on a regulation and report back to Council as necessary.

Though there is no requirement for surety bond use as a form of security at this time, Planning Staff are working with Legal Services and Finance Staff to allow the use of surety bonds in Brantford alongside letters of credit or certified cheques (refer to [Report 2022-573](#)). Staff anticipates that draft policy for the use/acceptance of surety bonds in the development process will be presented for Council's consideration in December 2022.

## **5.3 Next Steps**

Staff anticipate the proposed Official Plan Amendment will be presented at a statutory public meeting of the Planning Committee and to Council in

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December, 2022. Notice of the statutory meeting will be provided in November 2022 along with a draft of the amendment.

## 6.0 Financial Implications

There are no financial implications to the City arising from this Report.

## 7.0 Conclusion

New legislation enacted by the Provincial government over the last year has resulted in amendments to the *Planning Act*. These amendments have introduced new tools for municipalities as well as introduced new obligations – both with the goal of finding efficiencies and reducing the amount of time development review requires in an effort to speed up development, particularly in regards to housing supply. Staff has identified proposed amendments to the City's Official Plan and is reviewing departmental procedures which will be subject to further consultation over the course of Fall 2022. The Planning Advisory Committee is given this opportunity to provide comments on these topics to Staff for consideration and inclusion in Staff's future report to the City's Planning Committee, and ultimately, to City Council.



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In adopting this report, is a by-law or agreement required? If so, it should be referenced in the recommendation section.

By-law required ☐ yes ☒ no

Agreement(s) or other documents to be signed by Mayor and/or City Clerk ☐ yes ☒ no

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Is the necessary by-law or agreement being sent concurrently to Council?

☐ yes ☒ no