



SUBJECT: Statutory Public Meeting and Recommendation for a City-initiated Official Plan Amendment and Approach in Response to Bill 109 “More Homes for Everyone Act, 2022”

TO: Community Planning, Regulation & Mobility Cttee.

FROM: Community Planning Department

Report Number: PL-69-22

Wards Affected: ALL

File Numbers: N/A

Date to Committee: December 6, 2022

Date to Council: December 13, 2022

Recommendation:

Endorse the approach to implement the Provincially mandated changes resulting from Bill 109 as outlined in community planning department report PL-69-22; and

Approve Official Plan Amendment No. 130 to the City of Burlington Official Plan, as provided in Appendix A of community planning department report PL-69-22, to implement Bill 109 legislation; and

Deem that Section 17(21) of The Planning Act has been met; and

Instruct the City Clerk to prepare the necessary by-law adopting Official Plan Amendment No. 130, as contained in Appendix A of community planning department report PL-69-22.

PURPOSE:

To provide Council with an overview of Bill 109, the “More Homes for Everyone Act, 2022”, and recommendations for how to best address the new legislation and limit the overall risk that this legislation introduces for municipalities.

Vision to Focus Alignment:

This report aligns with the following focus areas of the *2018-2022 Burlington's Plan: From Vision to Focus*:

- Increase economic prosperity and community responsive city growth
 - Deliver customer centric services with a focus on efficiency and technology transformation
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Executive Summary:

The purpose of this report is to implement the changes to the *Planning Act* as a result of Bill 109. This report contains staff's analysis and recommendations of the financial, process, development application fees, and staffing implications resulting from Bill 109 and the City's response to minimize financial and legal risk to the Corporation.

This report also contains a proposed Official Plan amendment to the City of Burlington Official Plan to address the legislative *Planning Act* changes made by Bill 109. The proposed amendments relating to Bill 109 include updates to the information and materials required to deem a *Planning Act* application complete, notification requirements outlined in the Official Plan to address the legislative changes relating to required application fee refunds, to address development application process changes.

Background and Discussion:

In December 2021, the Provincial government struck a nine-member Housing Affordability Task Force ('the Task Force'), consisting of representatives of the development industry, the real estate industry, professional planning consultants, financial institutions and housing advocates. The Task Force did not contain any representation from local government or public sector professional planners. On February 8, 2022 the Province released the report of the Task Force, containing 55 recommendations that were intended to accelerate progress in closing the housing supply gap to improve housing affordability throughout the Province.

On March 1, 2022 Community Planning staff presented Report PL-27-22 which provided an overview of the Task Force's recommendations and highlighted the recommendations which staff found to have merit, those which had potential for staff support if additional information was provided and/or measures included, and those which staff identified as having concerns. On March 22, 2022 Council directed the Director of Community Planning to submit Community Planning Department Report PL-27-22 to the Provincial Ministry of Municipal Affairs and Housing as the City of

Burlington's response to the Task Force's report and directed the Director of Community Planning to monitor any actions emerging from the Task Force's report.

On March 30, 2022 the Provincial government released its "More Homes for Everyone Plan," and Bill 109, the "More Homes for Everyone Act, 2022", which it has described as a first step in implementing the recommendations of the Task Force. The Provincial government stated that it is committed to prioritizing implementation of all of the Task Force's recommendations over the next four years, with a housing supply action plan every year, starting in 2022/2023.

Bill 109, *More Homes for Everyone Act, 2022* ("Bill 109") received Royal Assent on April 14, 2022. While parts of Bill 109 came into force at the time of Royal Assent, significant portions of Bill 109 come into effect on January 1, 2023. Recently, the province introduced Bill 23, the *More Homes Built Faster Act*. At the time of writing this report, Bill 23 is open for consultation and has not received Royal Assent by the legislature. It may be amended through that process. As such, the focus of this report will be on Bill 109, with subsequent staff reports to Council dealing with Bill 23.

Implications of Bill 109

Bill 109 was introduced by the province with the stated intention of accelerating development application review timelines and streamlining the approvals process to allow new housing to be constructed quicker. Some of the more significant legislative changes resulting from Bill 109 come into effect on January 1, 2023, while others have been in effect since Royal Assent and July 1, 2022.

Key legislative changes resulting from Bill 109 include:

1. A requirement to refund Zoning By-law Amendment and Site Plan Application fees if a decision is not issued within legislated timelines;
2. Increase in time to issue an approval for a Site Plan Application from 30 days to 60 days;
3. An ability to deem a Site Plan Application as "complete"; and
4. The approval authority for Site Plan applications must be an "authorized person" and can no longer be undelegated to Council for a decision.

The table below summarizes the percentage of application fee refund by processing days for the Zoning By-law Amendment (ZBA), Combined Official Plan Amendment (OPA) and Zoning By-law Amendment, and Site Plan Approval processes.

Application Type	Refund by Processing Days			
	No Refund	50% Refund	75% Refund	100% Refund
ZBA	90	91	150	210
OPA/ZBA	120	121	180	240
Site Plan	60	61	90	120

Application fees are not a revenue generating tool. They are a cost recovery mechanism to facilitate the City's review of a development application. As such, if the cost of reviewing applications is no longer guaranteed through application fees, the City may need to find another source of funding (i.e. tax supported service).

Based on historic and anticipated development application trends, approximately \$2 million in reoccurring annual application fees are at risk of being refunded if they are not processed within legislated timelines. A single large-scale development that requires a Zoning By-law Amendment and Site Plan Approval could yield a refund nearing \$300,000 if it is not processed within legislative timelines. There could be a significant impact to the municipal operating budget if development applications are not processed within the legislated timelines.

To understand the volume of applications that have exceeded the legislated timelines, staff reviewed the Zoning By-law Amendment applications and Site Plan applications that were processed between January 1, 2019 and September 2022. In that timeframe, the City made a decision within the prescribed legislated timelines less than 10% of the time. The primary reason is that staff to-date have collaborated with applicants to try and achieve a successful planning outcome which often requires revised plans and studies, which lead to additional processing time.

Bill 109 fails to recognize that the planning approval process to-date has fundamentally been an iterative process whereby the community, applicants, city departments, and external agencies collaborate to find solutions that represent good planning outcomes, which typically takes longer than the prescribed timelines. Even with the increase in processing time for site plan applications, from 30 days to 60 days as provided for by Bill 109, staff would not have adequate time to successfully collaborate with applicants during the formal review process.

Indirectly, as a result of Bill 109, any opportunity to work collaboratively and in an iterative fashion with proponents has been transferred from the application review stage to the pre-application phase of the review process. As such, staff will continue to emphasize the importance of pre-consultations and public engagement (for zoning by-law amendment proposals), before a formal application is submitted. This will require continued relationship building with the development industry as we encourage an enhanced and collaborative pre-application phase.

Bill 109 now allows a municipality to deem a Site Plan Application as “complete”, similar to the review process for a Zoning By-law amendment application. This is a much needed amendment to the Planning Act that assists in improving the quality and completeness of Site Plan Applications. A complete Site Plan Application will be informed by a successful Pre-Consultation process that would ideally lead to an efficient review process. An Official Plan Amendment is required to establish the criteria and submission materials that must be provided for a site plan application to be deemed “complete”. A draft Official Plan amendment, which implements these changes is included at Appendix A.

The processing timelines outlined in the Planning Act coupled with the threat of refunds if the timelines are not met requires changes to the applicable review processes to work within these parameters. The most significant change is that revisions to plans and other application materials will no longer be accepted once a formal application has been received by an applicant. Staff will review and recommend a decision based on what was initially submitted. This process change reinforces the importance of effective consultations with proponents prior to application submission so that they have clarity on a path to success before the formal application is submitted.

The changes to the Planning Act resulting from Bill 109 will also limit the role of the Site Plan process as a technical review of implementation details for a proposed development, similar to a Building Permit application. Council no longer has the authority to make a decision on site plan applications or introduce public input on such. The Site Plan approval process must respect the independence of the “authorized person” (i.e. the Director of Community Planning or staff delegate) as the decision maker. As a professional planner, the Director is required to make decisions in accordance with his or her professional opinions and the professional opinions of other technical subject matter experts. Any perception of political interference could result in appeals or other challenges to the Director’s decision.

Bill 109 will also lead to the potential for less public engagement in the development review process, as the focus is on making decisions on applications within the legislated timelines. Consultation, although an important step in the process, is a time commitment and the City must consider the length of time required for these efforts as well as opportunities to streamline approval. In the case of a Zoning By-law Amendment, staff are recommending that the Statutory Public Meeting and Recommendation Meeting be collapsed into a single meeting, in an effort to expedite the review process. However, this approach would reduce the number of times that the public is able to delegate in front of Council on a specific file. As outlined earlier, the *Planning Act* timelines do not provide enough time to allow for plan revisions during the application review process to respond to comments, and as such, meaningful public engagement will be most effective at the pre-application phase of the review. To that

end, while not legislated, staff are recommending that the City continue with Pre-Application Community Meetings for Zoning By-law amendment applications, which provide the public an opportunity to review and provide feedback on a proposal, prior to formal application submission. In addition, the public will still have the opportunity to participate in the formal application process by submitting comments for consideration, once an application is submitted to the City. As previously mentioned in this report, Bill 109 no longer allows Council to undelegate the decision making authority on a Site Plan Application which will eliminate any public discussion during this review process.

The development review process is reliant on many external agencies for their comments, feedback, and to establish connections with their own permitting processes (i.e. MTO permit and CH permit). In the interest of customer experience and applicant success, staff have incorporated this into our development review and recommendation process. To manage the threat of application fee refunds, the City will require external agencies to amend their processes and accommodate their needs outside of a Zoning By-law Amendment or Site Plan Approval process. This will undoubtedly place additional accountabilities on the development industry and their consultants to resolve various technical matters outside of a formal municipal application process. It is possible that additional changes to these processes will be required in response to the recently introduced Bill 23 legislation, once it is in force. Staff will report to Council on necessary changes through reports regarding Bill 23.

Bill 109 will place new pressures on staff capacity and will require prioritization of files to minimize fee refunds. This could mean that applications subject to Bill 109 refunds (Zoning By-law Amendments & Site Plan Applications) may take priority over other types of applications (Subdivisions, Committee of Adjustment applications, etc.) that are not subject to refunds. Also, files submitted once this legislation takes effect on January 1, 2023 may also be prioritized over applications already in process that are not subject to refund.

While the overall goal of the legislation is to encourage faster review and approval of applications, the legislative timelines leading to application refunds eliminates the iterative and collaborative process typical of in Planning. As a result, City staff and Council may, in some cases, be left with no option but to refuse applications where the information provided does not provide sufficient or adequate basis to conclude that the statutory tests applicable to the application in question are satisfied. This could result in a significant increase in Ontario Land Tribunal (OLT) appeals, for which the City would incur further cost which cannot be covered or offset by application fees. There will be the need to continue to monitor staff capacity and resources closely and it is anticipated that additional staff resources will be required to avoid application fee refunds. It should be noted that hiring staff in all areas of development services has proven to be, and will

continue to be, an ongoing challenge given the highly competitive hiring market for all technical experts within development services.

Bill 109 also fails to recognize that there are periods of time when municipal councils are not able to hear matters including periods during election years and other breaks in Council decision making. The Council and Committee meeting schedules and internal timelines leading up to an item being on an agenda will require additional flexibility to meet legislative timelines without punishment for refunds. This will result in more meetings and more evening meetings to facilitate delegations.

Strategy/process

In reviewing the implications of Bill 109, it is evident that significant process changes will be required as the status quo will not suffice as it would lead to application fee refunds. In developing a response to Bill 109, City Staff worked closely with Halton Region, Conservation Halton and the other local municipalities within Halton Region to ensure alignment and consistency in terms of the collective response to Bill 109 within the Region. This group developed a series of high level guiding principles and objectives, as well as various options for consideration. The high-level guiding principles and objectives are as follows:

- Ensure active and meaningful citizen engagement throughout the planning and decision-making processes;
- Minimize, to the extent possible, the need to issue application fee refunds;
- Develop a consistent, predictable approach to processing development applications across the Region with nuanced differences to reflect local considerations; and
- Encourage a 'path to success' approach for the development industry through enhanced pre-consultation.

Options Considered

In order to respond to the financial, legal and resource challenges presented by Bill 109, municipalities and supporting agencies need to amend and improve application processes. Staff have considered options to amend our combined Official Plan and Zoning By-law amendment processes, the stand-alone Zoning By-law amendment application process and the Site Plan application process.

Options were considered for each stage of the application review process including the pre-application phase, the formal application phase and the post-application phase following a decision by the municipality.

The below charts outline the options that were considered for each type of application, whether or not staff are recommending that the option be implemented and the associated staff comments.

Combined Official Plan Amendment and Zoning By-law Amendment & Stand-Alone Zoning By-law amendment

Pre-Application Phase	Recommended?	Staff Comments
<p>1. Mandatory Pre-Consultation Process</p> <ul style="list-style-type: none"> • Develop standardized pre-consultation request form across Region • Provide standardized Terms of Reference documents for 13 cross-jurisdictional studies • Incorporate additional review into pre-con (i.e. urban design, policy analysis, technical review, etc.) to the extent possible • Look at fees for pre-con process and expiration dates for pre-con packages 	Yes	Indirectly, Bill 109 transfers the iterative aspect of development review to the Pre-consultation process. Staff will emphasize the importance of consultations before a formal application is submitted. This will require continued relationship building with the development industry as we encourage an enhanced and collaborative Pre-consultation process. The mandatory pre-consultation process will outline the 'path to success' for proponents.
2. Mandatory Pre-Application Community Meeting / Public Information Meeting	Yes	Continuing to facilitate pre-application public engagement provides the public an opportunity to review and provide feedback on a proposal, prior to formal application submission, which ultimately leads to better planning outcomes.
3. Mandatory Urban Design Review / Planning Policy Analysis	Yes	Integrating urban design reviews early in the review process reinforces the City's expectation for a high standard of design excellence resulting in a more efficient and effective

		municipal development review. Providing a detailed policy review and analysis at the pre-consultation stage will also provide an understanding of policy alignment early in the process.
<p>4. Voluntary Pre-Submission Technical Review</p> <ul style="list-style-type: none"> • 'Path to Success' – will provide clarity on threshold matters prior to application submission. • Failure to engage in this process may lead to refusal recommendations • Need to provide standardized timelines to ensure predictability 	Yes	Certain complex technical matters will require more review time than the legislation provides. In these scenarios, staff will encourage a voluntary pre-submission technical review to appropriately address matters prior to application submission. While the City cannot compel a pre-submission technical review, failure to engage in this process may lead to a refusal recommendation and resolution of these matters in the context of an appeal.
<p>5. Working with Clerks Department to develop an approach to allow for timely Council decisions</p>	Yes	Threat of application fee refunds requires agility in terms of the timing of Council meetings to allow for timely Council decisions that respond to the Bill 109 timelines.
Application Phase	Recommended?	Staff Comments
<p>1. Encourage proponents to unbundle applications (i.e. Official Plan Amendments & Zoning By-law Amendments; Zoning By-law Amendments & Plan of Subdivision)</p> <ul style="list-style-type: none"> • Amend application fees to remove combined application discount 	Yes	Bill 109 legislation contemplates combined Official Plan amendments and Zoning By-law amendments; however, bundling these with either a Subdivision application or Site Plan application will no longer be permitted. The principle of land use permissions (i.e. Official Plan and/or Zoning By-law designations) will need to be established prior to an

		application to facilitate the implementation of a proposal (i.e. subdivision or site plan) and will be part of the complete application requirements outlined in the Official Plan (see Appendix A).
2. Require 'sign-off' or approval of technical reports by a third-party (i.e. external agency) as part of a complete application	No	Staff will encourage complex technical matters to be resolved prior to application submission as part of the 'path to success' approach; however, we will not be able to compel an applicant to resolve all technical matters prior to application submission. Notwithstanding, failure to do so may lead to a refusal recommendation.
3. Redistribute fees to Official Plan Amendment, Subdivision, etc. to avoid impact of refunds <ul style="list-style-type: none"> Collect engineering review fees under the Municipal Act to avoid refunds 	No	The <i>Planning Act</i> does not allow for cross subsidization of application types and requires that each fee be designed to meet only the anticipated cost to process each type of application. Notwithstanding, staff are proposing that the City's fees be reviewed in Q2 2023 to ensure application fees accurately reflect the level of effort for each application type.
4. Provide recommendation on initial application submission – no time for resubmissions	Yes	Revisions to plans and other application materials will no longer be accepted once a formal application is under review. Staff will review and recommend a decision based on what was initially submitted. This process change reinforces the importance of effective consultations with proponents prior to application submission

		so that they have clarity on a path to success before the formal application is submitted.
5. Combined Statutory Public Meeting & Recommendation Report	Yes	An outcome of Bill 109 is the potential for less public engagement in the development review process. Collapsing the statutory public meeting and recommendation report into a single meeting condenses the review process; however, it also reduces the public's opportunity to delegate in front of Council. Given that revisions to plans will no longer be accepted during the application process, public engagement will be more effectively conducted at the pre-application phase. Staff are recommending that the City continue with Pre-Application Community Meetings, which provide the public an opportunity to review and provide feedback on a proposal, prior to formal application submission.
6. Recommend refusal of applications that cannot be resolved in legislated timelines	Yes	While the overall goal of Bill 109 is to encourage faster review and approval of applications, the threat of application refunds if timelines are exceeded, eliminates the iterative and collaborative process typical in Planning. As such, City staff and Council may, in some cases, be left with no option but to refuse applications, if matters are not appropriately addressed during the pre-application or formal application phases.

Post Application Phase	Recommended?	Staff Comments
1. Expanded Use of Holding Provisions (for Zoning By-law Amendments) to deal with appropriate matters (ex. Obtaining a Record of Site Condition)	Yes	Where determined to be appropriate, the expanded use of Holding Provisions, affixed to Zoning By-laws will allow certain matters to be addressed to the City's satisfaction after the approval of the Zoning By-law amendment.
2. Expanded Use of Holding Provisions (for Zoning By-law Amendments) to deal with any unresolved matters (ex. Determining the limits of a floodplain)	No	Holding provisions are an effective tool to delay development permissions until such time as the holding symbol is removed; however, conditions that can be applied to a holding provision are limited to items that are outlined in the City's Official Plan. Expanding the use of holding provisions to address matters beyond what is set out in the Official Plan is not permitted.
3. Investigate the use of Bill 13 to delegate authority to staff to remove holding symbol or other minor zoning by-law amendments	Yes	Staff believe that the use of Bill 13 legislation to increase staff's delegated authority permissions would be beneficial and will be further investigating this option as part of the continued strategy to respond to this legislation in 2023.

Site Plan Applications

Pre-Application Phase	Recommended?	Staff Comments
1. Mandatory Pre-Consultation Process <ul style="list-style-type: none"> Develop standardized pre-consultation request form across Region 	Yes	Indirectly, Bill 109 transfers the iterative aspect of development review to the Pre-consultation process. Staff will emphasize the importance of consultations

<ul style="list-style-type: none"> • Provide standardized ToR for 13 cross-jurisdictional studies • Incorporate additional review into pre-con (i.e. urban design, policy analysis, technical review, etc.) to the extent possible 		<p>before a formal application is submitted. This will require continued relationship building with the development industry as we encourage an enhanced and collaborative Pre-consultation process. The mandatory pre-consultation process will outline the 'path to success' for proponents.</p>
<p>2. Mandatory Urban Design Review / Planning Policy Analysis</p> <ul style="list-style-type: none"> • Urban Design Panel Review requirement for complete application 	<p>Yes</p>	<p>Integrating urban design reviews early in the review process reinforces the City's expectation for a high standard of design excellence resulting in a more efficient and effective municipal development review. Providing a detailed policy review and analysis at the pre-consultation stage will also provide an understanding of policy alignment early in the process.</p> <p>It should be noted that if the recently introduced Bill 23 legislation is enacted, as drafted, urban design will be removed from the scope of site plan applications.</p>
<p>3. Voluntary Pre-Submission Technical Review</p> <ul style="list-style-type: none"> • 'Path to Success' – will provide clarity on threshold matters prior to application submission. 	<p>Yes</p>	<p>Certain complex technical matters will require more review time than the legislation provides. In these scenarios, staff will encourage a voluntary pre-submission technical review to appropriately address matters prior to application submission. While the City cannot compel a pre-submission technical review,</p>

		failure to engage in this process would likely lead to complications during the review process and complex conditions of site plan approval.
Application Phase	Recommended?	Staff Comments
1. Only accept unbundled site plan applications (i.e. zoning to be in place as requirement of a complete application)	Yes	The legislated process to deviate from the Zoning By-law (i.e. Zoning By-law Amendment or Committee of Adjustment) is longer than the Site Plan process. It would be inappropriate to make a decision on a site plan application prior to a decision on any amendment to the Zoning By-law. To prevent the risk of a Site Plan Application fee refund, Site Plan applications will no longer be accepted without confirmation that it complies with the Zoning By-law.
2. Streamline site plan review process to only focus on narrow scope outlined in the <i>Planning Act</i>	Yes	In the interest of helping applicants, staff have historically used site plan applications to capture all aspects of a development application including applicable law for a building permit (i.e. MTO permits, CH permits, etc.). Staff will narrow its scope to only review the elements specifically identified in the Planning Act to minimize risk of litigation, delays, and refunds of application fees.
3. Look at potential to introduce clearing condition fees or final site plan approval fees	Yes	A development application fee review will be initiated in mid 2023 to ensure the City's

		costs as are covered in the revised site plan application process.
Post Application Phase	Recommended?	Staff Comments
1. Deem Site Plan Approval subject to Conditions as an “approval” under Bill 109	Yes	Site Plan Approval subject to Conditions is the only approval identified in the Planning Act for a Site Plan Application. Issuance of such within the legislated timelines has been deemed as the decision point to avoid a refund of application fees.
2. Standardized Site Plan Conditions of Approval across Region	Yes	Staff have been working with all four municipalities in Halton Region to create a consistent approach to the site plan approval process.
3. Standardized condition(s) to cover the Region’s requirements	Yes	Staff have been working with the Region of Halton to create a consistent approach to the Region’s requirements in the site plan approval process.
4. ‘Applicable law’ matters historically dealt with as part of the site plan process to be dealt with after site plan approval and prior to an application for a building permit.	Yes	The site plan process can no longer be used by staff to review all aspects of development, including applicable law for a building permit. This will put more accountability on applicants (and their consultants) to resolve these issues outside of a municipal process.

City-Initiated Official Plan Amendment (included as Appendix A)

This report contains a proposed Official Plan amendment to the in-force City of Burlington Official Plan to address the legislative *Planning Act* changes made by Bill 109. The proposed Official Plan amendments include updates to the information and

materials required to deem a *Planning Act* application complete, notification requirements outlined in the Official Plan to address the legislative changes relating to required application fee refunds, and to address development application process changes.

The proposed amendment is being considered as part of a combined Statutory Public Meeting and Recommendation report, with sufficient notification having been provided in accordance with the *Planning Act* requirements and Official Plan policies. The proposed amendment revises Part VI – Implementation policies relating to the required pre-consultation; pre-application community meetings; supporting information / materials to be provided as part of a complete application; qualified persons and peer reviews; complete applications; incomplete applications; preliminary notification; notice of public meetings; and statutory public meetings. In addition, the proposed amendment introduces a new Official Plan Table for complete application materials which shall be applied in implementing the Official Plan policies. The table may be updated in the future to reflect the City's up-to-date applications submission requirements.

The proposed amendment is consistent with the guiding principles of the Official Plan, and an appropriate amendment given the 'Monitoring' and 'Implementation' policies contained within the Official Plan. It is also generally consistent with the direction of the City's New Official Plan, 2020. As such, staff recommend that the proposed Official Plan amendment be approved, as proposed.

Next Steps

Planning legislation will continue to evolve in 2023. To that end, staff are committed to the following next steps:

- Report back to Council on Bill 13, to explore the use of “delegated authority” for minor zoning amendments such as Temporary Use By-laws and lifting of Holding Zones.
- Report back to Council on Bill 23, to discuss the various procedural amendments to various development approval processes.
- Monitor and evaluate the implementation of Bill 109 and its impact on customer experience, corporate culture, staff morale, retention, and attraction.
- Initiate a Development Application Fee review in mid 2023.
- Use the fee review process to confirm staff capacities under Bill 109 and bring forward business cases for additional staff across Development Services, as needed.
- Continue business process improvements and related technology enhancements across Development Services.

- Continue to standardize Terms of Reference documents for development review across Halton Region.
 - Monitor for Provincial regulations for Bill 109 to implement Bill 109 and report back to Council as needed.
 - Report back to Council on any update of Region of Halton Memorandum of Understanding (MOU) with municipalities and conservation authorities.
 - Amend the Delegated Authority By-law and Site Plan By-law as appropriate.
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Financial Matters:

According to the *Planning Act*, planning application fees shall only be designed to meet the anticipated cost to the municipality to process each type of planning application. As such, development application fees cannot be a revenue generator for the City. The operating costs for Development Services relies on a cost recovery model for the City's costs in providing these services. The threat of refunds leads to potential instability in the City's budget and operating costs.

As previously mentioned in this report, the threat of refunds eliminates the opportunity for collaboration in the development review process. There will not be enough time to accept revisions to plans and supporting materials once the formal review process begins. Staff will be forced to make a decision and recommendation based on what was submitted when the application was deemed complete. This may lead to an increase in recommendations for refusal which will inevitably lead to more appeals before the Ontario Land Tribunal (OLT). OLT hearings are a very time consuming endeavour for all staff involved (i.e. Legal, Planning, Engineering, Transportation, etc.). The time associated with the OLT, takes away from staff capacity to process development applications. It is noted that the costs for OLT hearings cannot be recovered with development application fees therefore these costs are currently, and will continue to be borne by the tax base.

In January 2022, as part of the Provincial Housing Summit with big city mayors and regional chairs, Premier Doug Ford announced the launch of the \$45 million Streamline Development Approval Fund (SDAF) Initiative. Ontario's 39 largest municipalities each received an allocation from the province to help modernize, streamline and accelerate processes for managing and approving housing applications. Burlington is utilizing this funding to complete the following initiatives:

- Review and optimize the timing and calculation of development charges during the development application process including proposed system enhancements;

- Optimize the pre-consultation and application submissions process along with other key activities related to pre-consultation;
- Review and optimize the pre-building permit review and approval process.

The on-going SDAF reviews may assist in streamlining the pre-consultation process for zoning by-law amendment and site plan proposals; however, the extent to which these reviews will mitigate financial risk to the corporation from Bill 109 refunds will be limited.

In October 2021, Council approved Report [PL-46-21](#), which approved 15 new staff positions within Development Services, funded by revenues (i.e. positions funded directly from development application fees). This was based on the principle that growth should pay for growth, and the anticipated sustained development activity needed to fund the new staff positions. It was noted in the report that the successful implementation of these positions would require continued strategic monitoring of application volumes and associated revenues; however, the report did not anticipate the refund of application fees, as required by Bill 109. It is difficult to predict the upcoming fluctuations and variability in application revenues moving forward; however, any application fee refunds resulting from Bill 109 will result in staff effort not being recovered from application fees. As such, the City needs to be prepared to look at options to address potential declining revenues, including but not limited to, the use of reserve funds and reliance on the tax base.

Community Planning will be looking at development application fees through a fee review, anticipated to be initiated in mid-2023. It will consider any changes in business processes, staff effort and capacity as we implement Bill 109. This will allow for an accurate up-to-date understanding the staff effort required in development services to review applications in the Bill 109 context; however, it will not allow the City to plan for application refunds nor the recovery of any application fee refunds resulting from Bill 109.

Total Financial Impact

As outlined in this report, staff's intent is to minimize, to the extent possible, application refunds; however, it is likely that there will be a financial impact from application fee refunds, the extent of which is difficult to predict. As such, there will be the need for continued strategic monitoring of application processes, revenues and refunds by each service area's management team. The purpose of this monitoring will be to assess staff capacity in our service delivery while ensuring application fee refunds are minimized.

Source of Funding

Development Services staff positions are currently funded from the Operating Budget and fully supported by revenues from development application fees. Refunding of application fees will reduce cost recovery, resulting in an operating budget impact, causing pressure on the city's reserve funds and/or tax base.

Other Resource Impacts

Bill 109 is not just a Planning issue. Bill 109 will introduce impacts on staff across the corporation beyond Development Services such as Legal, Clerks, Finance, and Human Resources. Staff are currently working at extremely high levels with limited capacity to deliver existing services. Bill 109 will likely lead to further human resource impacts such as burnout, stress and staff turnover. Staff capacity, performance, morale, and overall corporate culture will have to be closely monitored with a commitment to act quickly on any emerging issues.

Climate Implications

Not Applicable.

Engagement Matters:

The City of Burlington is committed to engaging residents on issues that affect their lives and their city. The goal of community engagement is to lead to more informed and, therefore, better decision-making. It is vital that residents continue to be engaged on development applications and development planning in their neighbourhood.

Residents in Burlington have come to expect that they will be informed and engaged on these matters through the various actions the City takes.

In 2019, the City made significant improvements to how residents are informed and updated about development applications. Comprehensive webpage(s) were created where residents could get all information related to a development application. This includes the status of the application, meeting information and all related documents. With the launch of a refreshed City website in July 2022, further improvements were made to those pages. These webpages allow residents to subscribe for updates and stay engaged about development applications.

Communications & Engagement staff will continue to work closely with Community Planning staff to make sure residents are informed during the development application process. This includes:

- Posting all pre-application neighbourhood and statutory public/recommendation meetings on the City's 'Public Engagement' calendar
- Posting statutory meetings on the on the City's Public Notices 'Newsfeed' online
- Regular and consistent social media posts about upcoming statutory public/recommendation meetings
- Regular communication campaigns about subscribing to the 'Public Engagement' calendar and development application webpages
- Regular communication about the list of appealed development applications before the Ontario Land Tribunal

The province has not yet released the regulations to implement Bill 109. This has led to some uncertainty in how to adjust development review processes, and how to effectively consult the public and the development industry. In the absence of any guidance from the province, staff have worked with our colleagues across Halton Region, including Conservation Halton, to develop a consistent, predictable approach to processing development applications with nuanced differences to reflect local considerations. The intent is to encourage a similar 'path to success' approach for the development industry no matter where they develop in Halton Region.

The response to the legislative changes from Bill 109 will require fundamental shifts in how municipalities and the development industry do their work. Municipal processes will require adjustment along with the relationships with the development industry. The expectations and requirements of external agencies will be considered differently by using the right process and mechanism to achieve the desired result. Staff have consulted the development industry on the City's response to the Bill 109 legislation and will continue to collaborate with them moving forward.

Conclusion:

The Bill 109 legislation requires the City to fundamentally redesign its development application review processes to avoid the need refund application fees, while ensuring that every effort is made to achieve the best planning outcome for each application. The goal of the Development Services team at the City has always been to streamline processes to create consistent, predictable and customer-focused services that result in the best possible planning outcomes. Through previous continuous improvement initiatives including concurrent application reviews, expanded use of AMANDA software and digital development application review, LEAN reviews of development planning processes, etc., City staff have implemented changes to create as many efficiencies as possible with the available staff compliment and resources.

In response to Bill 109, staff are recommending business process changes which will continue to create operational efficiencies with a goal of reducing processing timeframes. It should be noted that there will be growing pains as staff implement these changes. While all efforts will be made to minimize application refunds, it is likely that this legislation will create financial impacts to the City and will likely require additional staffing resources to avoid further financial impact. Staff will continue to monitor the rollout of the Bill 109 strategy and report back to Council with updates, as needed.

Respectfully submitted,

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Appendices:

A. Official Plan Amendment No.130

Report Approval:

All reports are reviewed and/or approved by Department Director, the Chief Financial Officer and the Executive Director of Legal Services & Corporation Counsel.