

Item:



Committee of the Whole (Working Session) Report

DATE: Thursday, January 17, 2019

WARD(S): ALL

**TITLE: BILL 66, RESTORING ONTARIO'S COMPETITIVENESS ACT,
2018 - LEGISLATIVE REVIEW**

FROM:

Tim Simmonds, Interim City Manager and Chief Corporate Initiatives and Intergovernmental Relations

Jason Schmidt-Shoukri, Deputy City Manager Planning & Growth Management

ACTION: FOR INFORMATION

Purpose

The Province's consultation stage is open until January 20, 2019 in response to Bill 66, *Restoring Ontario's Competitiveness Act, 2018*. The Province will accept submissions from all those who wish to comment, including municipalities. This report outlines the Ontario government's draft Bill 66 and identifies a number of implications for the City resulting from the proposed amendments. This report will form the basis for the City's response to the Ontario government's consultation initiative.

Report Highlights

- The Province is consulting on proposed legislative changes aimed at reducing the regulatory burden on businesses seeking development sites
- Various City services, initiatives and portfolios may be impacted by this draft legislation
- The proposed legislation does not prevent a municipality from adopting any processes it deems appropriate to assess the merits of passing an “open-for-business” planning by-law
- The “open-for-business” planning by-law, proposed under amendments to the *Planning Act*, could be used by municipalities to streamline development approvals, reducing turnaround times
- A municipality is not obligated to use this new planning tool under Bill 66 to pass an “open-for-business” planning by-law
- An “open-for-business” planning by-law could be approved without public consultation, for site-specific projects to achieve economic development objectives
- Bill 66 remains as draft legislation, having only received first reading

Recommendations

The Interim City Manager and the Deputy City Manager, Planning and Growth Management recommend:

1. THAT, Council receive this report for information and that the comments form the basis for City staff to respond to the Ontario government’s consultation,
2. THAT, the City Clerk circulate this report to the Minister of Economic Development, Job Creation and Trade, local MPPs, and Regional Municipality of York Chair and CAO, and
3. THAT, City Staff continue to review and engage the Ontario government about the proposed changes contemplated by Bill 66 and its associated regulations and continue to provide comments on further drafts of the proposed legislation.

Background

The *Restoring Ontario’s Competitiveness Act*, 2018 (Bill 66) was tabled in the Legislative Assembly of Ontario on December 6, 2018, proposing amendments to legislation within the jurisdiction of 12 separate Ontario ministries. Attachment 1 identifies the affected statutes.

The legislation is intended to streamline municipal planning approvals to support economic development and municipal approvals to stimulate employment creation by providing an option for municipalities where job creating development proposals would not be subject to certain pieces of legislation. Business and job growth are fundamental to the City's economic and social vitality. Attracting and retaining high quality, good-paying jobs across a broad range of sectors promotes resilience and ensures that residents can work and thrive where they live. Major employment and economic growth supporting developments could be exempt, should a by-law be passed, from several legislative requirements including sections of the following:

- *The Planning Act* (various sections)
- *The Clean Water Act, 2006*
- *The Greenbelt Act, 2005*
- *The Oak Ridges Moraine Conservation Act, 2001*
- *The Places to Grow Act, 2005* (The Provincial Growth Plan)
- *The Lake Simcoe Protection Act, 2008*
- *The Great Lakes Protection Act, 2015*
- *The Metrolinx Act, 2006*

The Province has provided a description of the forthcoming Regulation, which will form the basis for the implementation of this planning and economic development tool. This proposed tool requires confirmation that a site-specific proposal is a new major employment use. In addition, there is a minimum job creation threshold of 100 jobs for municipalities with a population of more than 250,000 people. This planning tool can be considered for uses such as manufacturing and research and development, but not for residential, commercial, or retail as the primary use. The forthcoming Regulations will prescribe how notice is to be given to the Minister of Municipal Affairs and Housing in order to pass an "open-for-business" planning by-law.

The focus of Bill 66 is centered on a proposed amendment to the *Planning Act*, which allows municipalities to enact "open-for-business" planning by-laws, subject to conditions deemed necessary by the Municipality. Attachment 2 provides a synopsis of the proposed changes to the *Planning Act*.

The proposed amendments to the *Planning Act* represent an opportunity to advance the approval of key investments of strategic local interest that will produce employment opportunities for new major employment uses and economic growth. Although the legislation is broadly drawn, it provides municipalities with leverage to act, as deemed necessary. However, we are of the opinion that this needs to be balanced with public consultation, transparency, environmental protection and sustainability, in line with Council's principles and policies.

There is a potential for Vaughan Council to be left with mitigating the risks of passing an “open-for-business” planning by-law. The Act and the Regulation, at this point, provide minimal guidance as to how the municipality would decide on whether to proceed and how it may wish to consult with the public.

Two fundamental points should be noted:

- A municipality is not obligated to use this new planning tool under Bill 66 to pass an “open-for-business” planning by-law
- The Legislation does not prevent the municipality from adopting any processes it deems appropriate to assess the merits of and implement a request to pass an “open-for-business” planning by-law

Previous Reports/Authority

N/A

Analysis and Options

Bill 66 provides a municipality with additional authority to promote economic development, which comes with greater responsibility.

Bill 66 is unique in respect of the power, discretion and responsibility it grants municipal Councils towards pursuing their economic development objectives. Councils may zone lands for a new major employment use without being subject to the steps typically associated with a zoning amendment application but ideally should do so by balancing its need to consider its broader interests and responsibilities. The overall intent of the City’s Official Plan and the integrity of other City policy documents (e.g. the various Servicing Master Plans and the Economic Development Strategy) must be maintained.

Insufficient detail is provided to properly assess the implications of the proposed Regulations.

The Act is dependent on the Regulations. Given the key role they will play in its implementation, it would be beneficial to have input on the proposed Regulations which currently have not been provided in draft. The current Environment Registry of Ontario (ERO) posting only provide a description of the Regulation with the type of information that may be required. As such, the ability to comment is limited.

The Planning Act amendments of Bill 66 must be assessed in the context of the needs of the City of Vaughan.

The proposed amendments will apply to a multitude of dissimilar municipalities in Ontario, each of which is unique with their individual needs and aspirations. The use of the “open-for-business” planning tool would be better suited for the consideration of

larger projects of significance to the City of Vaughan that provide major employment opportunities. It is a site-specific economic development and planning tool.

The City has a large reserve of designated and undeveloped employment land.

Given Vaughan's geographical context and potential land supply, the City will remain an attractive destination for business investment. Vaughan Official Plan (VOP) 2010 sets out the City's land use budget to 2031, which is designed to accommodate a projected employment base of 286,400 jobs. Both the Region's Municipal Comprehensive Review (MCR) and the City's Official Plan Review (OPR), currently underway, will be looking to accommodate a projected growth in employment to 321,500 jobs by 2041. These targets would be accommodated in the City's designated Employment Areas and Mixed-Use Areas (like the VMC and Primary Centres), thereby potentially designating more lands for employment purposes, more intensification or a combination of both.

The major challenges faced in developing the City's Employment Areas would not be addressed by Bill 66.

Vaughan's major challenge in developing its current employment land rests with obtaining sufficient water and sewage infrastructure to service its designated areas. Another challenge to the City's Employment Areas are proposals to convert parts of the City's existing inventory to non-employment uses. There would be little benefit in pursuing this type of by-law if it adds more un-serviced employment land.

There are potential risks to the City's existing Employment Areas as a result of passing an "open-for-business" planning by-law

The City's Employment Land supply is made up of three main components. These include: the built areas; areas that have Secondary Plan approval; and areas that have Block Plan approval. Great care would have to be taken to ensure that existing and future planning for the City's broader employment areas is not disrupted due to the impact of a site-specific by-law.

Aspects of the Bill 66 Planning Act amendments may not be in line with Council's approach to public consultation.

There is no statutory requirement for public consultation prior to passing an "open-for-business" planning by-law under Bill 66. In the past, Council has moved in the direction of increasing public consultation beyond the *Planning Act* minimum requirements and directing that community meetings be held to provide for further input.

The Act does not provide guidance as to how the municipality would decide on whether to pursue the enactment of an "open-for-business" planning by-law.

A key consideration will be for Council to determine how to decide on whether to proceed with an "open-for-business" planning by-law. Bill 66 does not provide direction on the process that a municipal Council would need to follow in deciding on whether to proceed with a by-law and adopt a resolution advising the Minister of its intent to act. A

process map will have to be developed in conjunction with a guiding policy for this specific planning tool.

The City's decision-making process should continue to be transparent and reflect its values, priorities and policies.

If Council considers enacting a site specific “open-for-business” planning by-law, it would have to satisfy itself that it was appropriate to proceed. Consistent with *Green Directions* it would need to assess a proposal's impact on the community, the environment and the economy, along with being satisfied that the process was sufficiently transparent to meet its standards and the expectations of the public. Developing a process to conduct this type of evaluation would be a necessity.

Environmental Sustainability.

Should the City pass an “open-for-business” planning by-law, provisions of Section 39 of the *Clean Water Act, 2006*, would not apply. The City would not be directly affected by the exemption of the applicable provisions because York Region has responsibility over source water protection and the plans to protect source water. The source water protection plans are part of the multi-barrier approach to delivering safe drinking water. All of the water the City receives is sourced from Lake Ontario and treated by Peel Region and the City of Toronto. The City of Vaughan's water distribution system is governed by the *Safe Drinking Water Act*.

An “open-for-business” by-law would not be subject to certain requirements of the *Greenbelt Act, Oak Ridges Moraine Conservation Act, Places to Grow Act*, etc. In this circumstance, previous environmental protections on the lands may no longer apply. Council may not wish to modify its approach to sustainability, prior to completing the Official Plan Review and only provided there was a substantial benefit of doing so and without having a detailed understanding of the impacts on the environment and the community.

Financial Impact

No direct financial implications resulting from the analysis and options in this report.

Broader Regional Impacts/Considerations

In a memo to Regional Council dated December 13, 2018, Regional staff noted that as currently proposed, Bill 66 contemplates that development may be approved outside of the Region's designated urban area that would be potentially contrary to the Region's planned urban structure, infrastructure master plans and the objective of achieving of complete communities. It also noted that a more comprehensive review of the proposed changes contemplated by Bill 66 was underway, which will inform a Regional

staff response, which will be provided to the Province by January 20, 2019. In addition, Regional staff will provide another update to Council following submission of staff's comments on the proposed Bill 66.

Conclusion

The proposed Bill 66, *Restoring Ontario's Competitiveness Act*, 2018 legislation has significant interest for municipal governments, in particular amendments to the *Planning Act*, which introduces a new planning tool to help expedite major economic employment initiatives. With the first reading of Bill 66, there is an opportunity for the City to provide input into the development of the legislation and regulations. This report has identified some key provisions and their potential implications.

The concept of the legislation and having the flexibility to expedite an implementing zoning by-law to advance a strategic and job-creating investment should be embraced. However, it should be carefully used to ensure that the outcomes remain positive and that no other aspect of municipal responsibility is compromised.

While the proposed "open-for-business" planning by-law has captured much of the interest surrounding Bill 66, the draft legislation remains in the early stages. More details from the Province, including detailed Regulations, will allow municipalities to better assess the scope and viability of an "open-for-business" planning by-law.

Similar to prior legislative changes, the City of Vaughan welcomes the opportunity to continue working with its City-building partners in the Provincial government through future consultations on assessing the full merits of the forthcoming detailed regulations implementing Bill 66.

Attachments

1. Summary of Changes identified in proposed Bill 66, *Restoring Ontario's Competitiveness Act*, 2018
2. A synopsis of the proposed amendment to the *Planning Act*- Schedule 10 to Bill 66

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Attachment 1

Summary of Changes identified in proposed Bill 66, *Restoring Ontario's Competitiveness Act, 2018*

Legislation	Proposed Changes
<i>Agricultural Employees Protection Act, 2002</i>	<ul style="list-style-type: none"> • Extends the application of the Act to employees who engage in ornamental horticulture
<i>Farm Registration and Farm Organizations Funding Act, 1993</i>	<ul style="list-style-type: none"> • Changes to the process for obtaining a farming business registration number
<i>Ministry of Agriculture, Food and Rural Affairs Act, 1990</i>	<ul style="list-style-type: none"> • Provide Minister of agriculture, Food and Rural Affairs with the Authority to establish or make changes to loan guarantee programs • The Lieutenant Governor would retail authority over the amount and form of the guarantee
<i>Pawnbrokers Act, 1990</i>	<ul style="list-style-type: none"> • Repeal of the Pawnbrokers Act and amendments to the Personal Property Security Act • By-law licenses pawn brokers, staff will need to review the related section of the Business Licensing By-law to see if there is any need to amend or repeal
<i>Child Care and Early Years Act, 2014</i>	<ul style="list-style-type: none"> • Removes restriction in home-based child care providers by increasing flexibility in the number and ages of children they can care for. • Lowering the age of children that authorized recreation programs can serve from 6 to 4.
<i>Ontario Energy Board Act, 1998</i>	<ul style="list-style-type: none"> • Removes reference to sub-metering of units and adds reference to unit smart meter providers.
<i>Toxics Reduction Act, 2009</i>	<ul style="list-style-type: none"> • Repeals of the Toxics Reduction Act and Regulation 455/09 and 296/18 and associated regulations on December 31, 2021. • Rely on the Federal Chemicals Management Plan
<i>Pension Benefits Act, 1990</i>	<ul style="list-style-type: none"> • Allows private-sector employers to more easily merge single-employer pension plans with jointly sponsored pension plans
<i>Technical Standards and Safety Act, 2000</i>	<ul style="list-style-type: none"> • Amended so no longer applicable to upholstered or stuffed articles
<i>Wireless Services Agreements Act, 2013</i>	<ul style="list-style-type: none"> • Repeals the Act and the associated regulations to harmonize with Federal regulations
<i>Long-Term Care Homes Act, 2007</i>	<ul style="list-style-type: none"> • Modernizes and streamline administrative requirements for the operators of long-term care homes.
<i>Employment Standards Act, 2000</i>	<ul style="list-style-type: none"> • Eliminates the requirement for employers to apply for Ministry of Labour approval for excess weekly hours of work and overtime averaging • Stops the requirement for employers to post the Employment Standards Act poster in the workplace • This will need to be assessed to determine if there are possible HR and Collective Agreement implications

<p><i>Labour Relations Act, 1995</i></p>	<ul style="list-style-type: none"> • Amended to deem municipalities and certain local boards, hospitals, colleges, universities and public bodies to be non-construction employees • Trade unions no longer represent employees of these employers • This will need to be assessed to determine if there are possible HR implications for outside workers
<p><i>Planning Act, 1990</i></p>	<ul style="list-style-type: none"> • New section allowing local municipalities to pass “open-for-business” planning by-laws • Written approval from the Minister required to pass this type of by-law if prescribed criteria are certified • Exempts applications proceeding under this by-law from Provincial Policy Statements, Provincial Plans, Official Plans, Zoning By-laws.
<p><i>Highway Traffic Act, 1990</i></p>	<ul style="list-style-type: none"> • Allows electronic versions of permits to satisfy the requirements on the Act including surrendering the permit to police

Attachment 2

A synopsis of the proposed amendment to the *Planning Act*- Schedule 10 to Bill 66

The provisions of the legislation as it affects the *Planning Act* are summarized below. This synopsis is intended to provide a better sense of the proposed process, the roles of the Province, the Minister and the municipalities, the extent to which this legislation departs from the current provisions of the *Planning Act* and the opportunities and responsibilities the municipalities will need to accept in applying the new tool.

Bill 66 provides municipalities with the opportunity to pass an “Open-for-business” planning by-law

Schedule 10 to Bill 66 sets out the proposed amendment to the *Planning Act*. It amends Section 34 of the *Planning Act*, which is contained in Part V of the Act, “Land Use Controls and Related Administration”. Section 34, “Zoning By-laws”, specifically authorizes local municipal councils to pass zoning by-laws for the purposes of, among other things, restricting or regulating the use of land, buildings or structures in conformity with the City’s Official Plan. Section 34 also sets out the rules for amending a by-law, including the requirements for pre-consultation, public hearings and the appeal and mediation processes. Bill 66 inserts a new Section 34.1 after Section 34, which provides for “open-for-business” planning by-laws.

The passing of an “open-for-business” planning by-law is subject to the new Section 34.1 and Provincial regulations

Section 34.1 allows the local municipality to pass an “open-for-business” planning by-law that involves:

- The exercise of the municipalities’ powers under Section 34, i.e. to pass a zoning by-law for the purposes noted above
- Impose conditions on the use of land or the erection, location and use of buildings or structures as specified in 34. 1 (8), i.e. a blending of zoning and plan control measures

Enactment of the “open-for-business” planning by-law cannot take place unless two conditions have been satisfied:

- The municipality has received approval in writing from the Minister of Municipal Affairs and Housing
- The prescribed criteria for Provincial approval, if any, have been met. The details of the proposed criteria (Ontario Regulations) are not available

The municipal request for Provincial approval to pass the by-law must include:

- A Council resolution

- The prescribed information. The details of the Regulation setting out this information are not available

The Minister's approval to pass an "open-for-business" planning by-law may be subject to conditions as the Minister may provide.

Section 34.1 also provides that "open-for-business" planning by-laws shall not authorize the use of land, buildings or structures except for a prescribed purpose. The detail of the Regulation setting out the purposes is not available at this time.

"Open-for-business" planning by laws have been exempted from the provisions of normally applicable Provincial Acts

To advance the objective of promoting economic development and obtaining expedited approvals for a specific employment-generating development, the new Section 34.1 (6) provides that the following Provincial Acts do not apply to "open-for-business" planning by-laws.

- **Subsection 3 (5) of the *Planning Act*** requiring consistency with the Provincial Policy Statements and conformity with Provincial Plans
- **Section 24 of the *Planning Act*** requiring zoning by-laws to conform to the official plan, thus allowing the local municipality to enact an "open-for-business" planning by-law that does not conform with its official plan
- **Subsections 34 (10.0.0.1) to (34) of the *Planning Act*** regarding the administration of zoning amendments, including but not limited to pre-consultation, submission requirements, the need for a public hearing and the appeal process for the enactment or failure to enact a by-law and the provision for mediation. Among other things, this eliminates the requirement for public hearings, notification and appeals)
- **Section 36 of the *Planning Act*** regarding the use of Holding provisions
- **Section 37 of the *Planning Act*** regarding bonusing for public benefit in exchange for additional height and density
- **Section 39 of the *Clean Water Act, 2006*** regarding the need to conform to the significant threat and designated Great Lakes Policies or have regard to any other policy set out in a source protection plan prepared under the *Clean Water Act*
- **Section 20 of the *Great Lakes Protection Act, 2015*** regarding the need to conform to initiatives created under Section 11 of the *Great Lakes Protection Act*, or have regard to any other policy set out in Schedule 1 of the *Great Lakes Protection Act*
- **Section 7 of the *Greenbelt Act, 2005*** regarding the need to conform to the Greenbelt Plan
- **Section 6 of the *Lake Simcoe Protection Act, 2008*** regarding the need to conform or have regard to the policies of the Lake Simcoe Protection Plan
- **Subsection 31.1 (4) of the *Metrolinx Act, 2006*** regarding the need to be consistent with designated policies set out in the transportation planning policy statement

- **Section 7 of the Oak Ridges Moraine Conservation Act, 2001** regarding the need to conform with the Oak Ridges Moraine Conservation Plan
- **Section 13 of the Ontario Planning and Development Act, 1994** regarding the need to conform to a development plan that is in effect
- **Subsection 14 (1) of the Places to Grow Act, 2005** regarding the need to conform with the Growth Plan
- **Section 12 of the Resource Recovery and Circular Economy Act, 2016** regarding the need to be consistent with the applicable policy statements
- **Any prescribed provision** as may be imposed by the Province through a Regulation

The collective effect is that the Council, in considering the passing an “open-for-business” planning by-law, is dealing with a minimally regulated landscape. This provides exceptional flexibility.

The Act allows the “open-for-business” planning by-law to impose conditions on the use of land or the erection, location or the use of buildings or structures and requiring agreements to implement the conditions

The Conditions

Under the new Section 34.1 (7), Section 41 of the *Planning Act*, “Site Plan Control Area” does not apply to lands zoned under an “open-for-business” planning by-law, except as specified in the Act (Bill 66) in Section 34.1 (8). However, it sets out conditions that may be imposed in the by-law some of which are similar to site plan control. These include:

- **A requirement that any use of the land, erection, location or use of buildings or structures take place in accordance with:**
 - Plans showing the location of buildings, structures and works, including facilities to provide for persons with disabilities;
 - Drawings showing plan, elevation and cross-section views of buildings sufficient to show massing and conceptual design; the relationship to adjacent buildings, streets and exterior areas; the provision of interior walkways, stairs, elevators and escalators to which the public has access from streets, open spaces and interior walkways in adjacent buildings; and facilities designed to have regard for persons with disabilities.
- **Any condition that can be imposed by a local municipality under Section 41 (7):** This includes, among other things, conveyance of road widenings and transit rights of way, access and signage, parking and loading, walkways and walkway ramps, facilities to provide accessibility, lighting, landscaping and buffering of adjacent lands, garbage storage, servicing easements, the grading of the land; and requirements for the maintenance of the facilities and entering into agreement(s) to ensure the provision of all required works.
- **Any condition that can be imposed by an upper-tier municipality under subsection 41(8):** This includes, the conveyance of road widenings and transit

rights of way, access ramps and signage, parking and loading facilities, grading and disposal of storm water, facilities to provide accessibility; and requirements for the maintenance of the facilities and entering into agreements to ensure the provision of all required works.

- **Any requirement that is reasonable for and appropriate to the use of the land and that the municipality considers necessary for the protection of public health and safety.**
- **A requirement that the owner of the land enter into one or more agreements respecting one or more conditions imposed by this subsection.**

Exceptions

Under Section 34.1 (9), certain matters are not subject to conditions with respect to a building. They include:

- The colour, texture and type of materials; window, construction and architectural detail; and interior design
- The layout of interior areas excluding interior walkways, stairs, elevators and escalators
- The manner of construction and construction standards

Content of Agreements

If an agreement is entered into in accordance with a required condition:

- The agreement may be registered against the land to which it applies
- The municipality may enforce the agreement against the owner and all subsequent owners

The public consultation, notice, approval and appeal procedures for “open-for-business” planning by-laws are unique to this type of by-law

Under Section 34, “Zoning By-laws” the *Planning Act* sets out requirements for Council public hearings, notice of enactment of the by-law and the appeal process for zoning by-law amendments. The new Section 34.1 (9) provides for a unique approach to “open-for-business” planning by-laws. This includes:

- No public notice or public hearing is required prior to the passing of the by-law
- The municipality shall give notice of the passing of the by-law to:
 - The Minister, within three days of the by-law’s passing, in the prescribed manner (the details are not available);
 - Any persons or public bodies the municipality considers proper in a manner the municipality considers proper within 30 days (Note; this is only for the purposes of notice, it does not provide an opportunity for an appeal);

- The by-law comes into effect on the on the 20th day after it is passed; or a date specified by the Minister, if the Minister notifies the municipality of that day in writing, before the day on which the by-law would normally come into force
- The Minister may by order modify or revoke an “open-for-business” planning by-law at any time before it comes into force

“Open-for-business” planning by-laws may be amended subject to requirements

A municipality may amend or revoke an “open-for-business” planning by-law in accordance with Section 34 “Zoning by-laws” of the *Planning Act*. However, any provision of the original “open-for-business” planning by-law that imposes a condition may be amended or revoked if the municipality has given notice in such manner as the municipality considers proper, to the owner of the land to which the “open-for-business” planning by-law applies.

Conflicts with the existing zoning by-law are addressed

If an “open-for-business” planning by-law and a by-law passed under Section 34 “Zoning By-laws” or Section 38 “Interim Control by-laws” are in conflict, the by-law that was passed later prevails to the extent of the conflict, but in all other respects, the other by-law would remain in effect.