Minutes – Executive Policy Committee – May 22, 2020

REPORTS

Item No. 8 Bill 48 – The Planning Amendment and City of Winnipeg Charter Amendment Act

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

The Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service, as amended, and recommended to Council:

1. That the Public Service be directed to attend the Provincial Standing Committee Hearing for Bill 48 to present City of Winnipeg concerns and seek clarification on the content of the Bill and anticipated Regulations.

2. That the Chief Administrative Officer request the Province of Manitoba include the City of Winnipeg in active collaboration to ensure appropriate amendments to Bill 48 are considered in order to minimize increased costs and disruption to operations and customers.

3. That City Council formally request the Province of Manitoba consider amendments to Bill 48 in order to:

    A. Provide local residents impacted by a decision, in addition to property owners, with the right of appeal to the Municipal Board on municipal land use decisions;

    B. Provide criteria for the Municipal Board to consider in adjudicating appeals, including whether an application is in compliance or non-compliance with local plans, policies and by-laws;

    C. Ensure that the required timeframes for decisions on the applications covered in the Bill are fair and reasonable for all stakeholders, and;

    D. Maintain the role and autonomy of local governments by providing them with an opportunity to re-visit and make new decisions on land use applications, based on the findings of the Municipal Board made following an appeal.

    E. To provide further detail related to the sharing of costs, revenues and other benefits associated with, but not limited to, land use planning, infrastructure investment, service sharing and economic development by municipalities and First Nations governments within the Capital Planning Region.

4. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

DECISION MAKING HISTORY:

Moved by Councillor Rollins,

That Rule 10(3) of The Procedure By-law No. 50/2007 be suspended in order that the following item, which was received less than four business days preceding the committee meeting, be considered by Committee.

Carried

The Chairperson called Councillor Mayes to the Chair in order to move the following motion:

Moved by His Worship Mayor Bowman,

WHEREAS on March 19, 2020 the Manitoba Legislative Assembly gave first reading to Bill 48- The Planning Amendment and City of Winnipeg Charter Amendment Act (The Bill);

AND WHEREAS The Bill could significantly reduce the autonomy of democratically elected local governments by providing owners of property with an automatic right to appeal certain municipal land use planning decisions to the Municipal Board;

AND WHEREAS The Bill does not currently provide local residents with the same right of appeal to the Municipal Board as it currently does for property owners;

AND WHEREAS The Bill would provide the Municipal Board, whose members are appointed by the Province of Manitoba, with broad jurisdiction to make binding decisions on appeals of municipal land use applications;

AND WHEREAS The Bill currently does not identify specific criteria that the Municipal Board must consider when determining the merits of an appeal;

AND WHEREAS there is an opportunity to strengthen The Bill by providing all residents with an opportunity to participate in the appeal process, providing clear criteria for the Municipal Board to consider when adjudicating appeals and maintaining the role and autonomy of local governments in making local land use planning decisions;

AND WHEREAS a capital region plan will have costs and revenue implications for each municipality within the Capital Planning Region.

THEREFORE BE IT RESOLVED that the recommendation of the Winnipeg Public Service be concurred in with the following amendment:

- That the following new recommendation be added and the remaining recommendation be renumbered accordingly:

DECISION MAKING HISTORY (continued):

EXECUTIVE POLICY COMMITTEE RECOMMENDATION (continued):

"3. That City Council formally request the Province of Manitoba consider amendments to Bill 48 in order to:

A. Provide local residents impacted by a decision, in addition to property owners, with the right of appeal to the Municipal Board on municipal land use decisions;

B. Provide criteria for the Municipal Board to consider in adjudicating appeals, including whether an application is in compliance or non-compliance with local plans, policies and by-laws;

C. Ensure that the required timeframes for decisions on the applications covered in the Bill are fair and reasonable for all stakeholders, and;

D. Maintain the role and autonomy of local governments by providing them with an opportunity to re-visit and make new decisions on land use applications, based on the findings of the Municipal Board made following an appeal.

E. To provide further detail related to the sharing of costs, revenues and other benefits associated with, but not limited to, land use planning, infrastructure investment, service sharing and economic development by municipalities and First Nations governments within the Capital Planning Region."

Carried

His Worship Mayor Bowman resumed the Chair.

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On April 28, 2020, the Executive Policy Committee passed the following motion:

WHEREAS on March 19, 2020 the Manitoba Legislative Assembly gave first reading to three bills including Bill 44-The Public Utilities Ratepayer Protection and Regulatory Reform Act, Bill 48- The Planning Amendment and City of Winnipeg Charter Amendment Act, and Bill 49 – The Building and Electrical Permitting Improvement Act (Various Acts Amended and Permit Dispute Resolution Act Enacted) ("The Bills");

DECISION MAKING HISTORY (continued):

EXECUTIVE POLICY COMMITTEE RECOMMENDATION (continued):

AND WHEREAS Bill 44 establishes a new regulatory framework that would replace Winnipeg City Council's ability to determine water and sewer rates in favour of these rates being determined by the Public Utilities Board;

AND WHEREAS Bill 48 would provide the Municipal Board with jurisdiction to make binding decisions on appeals of municipal land use decisions in the City of Winnipeg;

AND WHEREAS Bill 49 would enact new legislation to resolve disputes related to building and electrical permits by having provincially appointed adjudicators issue binding orders on these matters;

AND WHEREAS the Bills may contain financial implications for residents of the City of Winnipeg and implications for the City's decision making framework;

AND WHEREAS on April 20, 2020 the Standing Committee on Property and Development, Heritage and Downtown Development requested the Winnipeg Public Service provide a verbal update of Bills 48 and 49 at its May 21, 2020 meeting.

THEREFORE BE IT RESOLVED that the Winnipeg Public Service be directed to report back within 30 days to the Executive Policy Committee with individual written reports on the financial, organizational, policy and any other relevant implications to the City of Winnipeg with respect to Bills 44, 48 and 49, as tabled in the Manitoba Legislature in March, 2020.

ADMINISTRATIVE REPORT

Title: Bill 48 – The Planning Amendment and City of Winnipeg Charter Amendment Act

Critical Path: Executive Policy Committee

AUTHORIZATION

Author	Department Head	CFO	CAO
M. Pittet	J. Kiernan	N/A	M. Ruta, Interim CAO

EXECUTIVE SUMMARY

On March 19, 2020, the Legislative Assembly of Manitoba gave first reading to Bill 48 - *The Planning Amendment and City of Winnipeg Charter Amendment Act*.

Bill 48 will amend *The Planning Act* to establish a new Capital Planning Region which includes the City of Winnipeg and surrounding capital region municipalities. The Capital Planning Region will be required to adopt a regional plan within two years; member municipalities will then have three years to ensure local development plans are consistent with the regional plan. Details regarding the structure, governance, operation and decision-making processes of the Capital Planning Region are unknown at this time as they will be established by Regulation. The City of Winnipeg will be responsible for its share of the costs of the Capital Planning Region.

Bill 48 introduces substantial changes to Part 6 (Planning and Development) of *The City of Winnipeg Charter Act*, and as well, grants new authority to the City of Winnipeg to require Development Agreements for Permits, Conditional Uses and Variances.

For the first time, owners will have the option to appeal Council rejections of secondary plans, rezonings, subdivisions and development agreements as well as conditions of approval for these applications to the Municipal Board. Owners will also be able to appeal a permit application deemed “not conforming” (previously appealable to the Executive Policy Committee) as well as a decision from a designated employee that an application is incomplete. This change results in a loss of autonomy for the City of Winnipeg inasmuch as final decision making authority is taken away from elected officials and conferred to a board appointed by the Province.

Another significant amendment establishes new timelines for approvals of development applications. Applicants may now consider their applications to have been rejected if they are not decided on within the period specified and may appeal the rejection to the Municipal Board who, in turn, can dismiss the appeal or make any decision that council, the committee of council, or the employee designated to deal with the matter could have made. The Municipal Board may also require the City to pay the costs incurred by the Board in hearing an appeal and the applicants costs related to the appeal.

To meet prescribed timelines, Council may need to amend by-laws to restructure its approval processes and more staff may need to be hired to accelerate the processing of applications and to attend Municipal Board hearings. Unintended consequences of the new timelines may adversely impact Developers as the City may be required to bolster submission requirements for development applications and eliminate the concurrent processing of permits and development applications.

The Public Service is supportive of ensuring that regulatory processes are predictable, consistent, timely and transparent but it is evident that the Province may not be fully comprehend the development process in the City of Winnipeg. This has been evidenced in recent meetings between the Public Service and Provincial Staff and in meetings with major Developers who have shared similar concerns. In addition, it has been noted by the Association of Manitoba Municipalities that the Act, as presented, clearly outlines to their members that the appeals process is one-sided and puts increased power within the Municipal Board rather than locally elected Councils (see Schedule "C"). It is important to note that the Public Service was not consulted in advance of the Province giving first reading to Bill 48.

In order to ensure that the impacts on the City of Winnipeg are identified, the Public Service is recommending that they attend the Provincial Standing Committee Hearing and request involvement in the creation of the regulations.

The Public Service will continue to review the Bill to identify further impacts on existing processes, operating procedures and by-laws.

RECOMMENDATIONS

1. That the Public Service be directed to attend the Provincial Standing Committee Hearing for Bill 48 to present City of Winnipeg concerns and seek clarification on the content of the Bill and anticipated Regulations.

2. That the Chief Administrative Officer request the Province of Manitoba include the City of Winnipeg in active collaboration to ensure appropriate amendments to Bill 48 are considered in order to minimize increased costs and disruption to operations and customers.

3. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

REASON FOR THE REPORT

On April 28, the Executive Policy Committee directed the Public Service to report back within 30 days to the Executive Policy Committee with individual written reports on the financial, organizational, policy and any other relevant implications to the City of Winnipeg with respect to Bills 44, 48 and 49, as tabled in the Manitoba Legislature in March, 2020.

Pursuant to Section 4 of the City Organization By-law No 7100/97, the Executive Policy Committee has jurisdiction over Inter-Governmental Affairs and acts as the Inter-Governmental affairs Committee to conduct all necessary formal relationships with the Government of Manitoba.

IMPLICATIONS OF THE RECOMMENDATIONS

Should the Recommendations be concurred, in, the Public Service will attend the Provincial Standing Committee Hearing for Bill 48 to raise City of Winnipeg concerns and request clarification on content of the Bill and Regulations that have yet to be released. The Public Service will specifically address the loss of autonomy for the City of Winnipeg with new appeal provisions, prescribed timelines for approvals that may not be achievable and cost/other implications for the City of Winnipeg.

The Public Service will also undertake a more fulsome review of Bill 48 to identify impacts on existing approval processes, standard operating procedures and By-laws.

The Public Service will continue to meet with staff from the Province of Manitoba.

HISTORY/DISCUSSION

On May 8, 2019, by way of Manitoba Order in Council 157/2019, the Treasury Board was assigned to carry out a review of policies and processes for land use and development under the authority of Manitoba statutes and municipal by-laws, including zoning decisions and the issuance and administration of permits.

On May 28, 2019, The Treasury Board Secretariat (TBS) released the "Planning, Zoning and Permitting in Manitoba – Findings Report" (the "PZP Report"). The report, with few specific details or references, included an analysis of current systems in Manitoba, cross jurisdictional best practices, and an assessment of how permitting timeframes impact economic investment within the province. The report outlined the Province's interest in further consultation and provincial involvement in helping to improve planning, zoning and permitting processes in Manitoba.

The PZP Report contained 12 specific recommendations to Cabinet. Of the 12 PZP Report recommendations, the following were specifically addressed in Bill 48, namely:

- Recommendation 1 – Accelerate the pace at which the Winnipeg Metropolitan Region (WMR) is moving towards adopting a coordinated approach to development. Establish a Working Group comprised of representatives from municipalities, metropolitan region, province and the private sector. Appoint a collaborative facilitator to chair the Working Group.
- Recommendation 2 - Create a new quasi-judicial tribunal, or broaden and enhance the mandate of the existing municipal board, to allow it to hear a wide range of planning, zoning and permitting appeals across the entire province.
- Recommendation 3 - Enact legislation that establishes "service standards" (including specified and enforceable timelines) for all levels of permitting and zoning applications across the entire province
- Recommendation 12 – The Province should work collaborative with the City of Winnipeg to achieve rapid progress on specific, known projects or objectives of shared interest.

On March 19, 2020, the Legislative Assembly of Manitoba gave first reading to Bill 48 *The Planning Amendment and City of Winnipeg Charter Amendment Act.*

It is anticipated that the Province will schedule a Committee Hearing to hear representations on Bill 48 *The Planning Amendment and City of Winnipeg Charter Amendment Act* as soon as it is practical; prior to the COVID-19 pandemic, hearings were anticipated to be held in April or May, 2020.

KEY ISSUES

Amendments to *The Planning Act*

Bill 48 establishes the Capital Planning Region which will be comprised of the municipalities that make up the Winnipeg Metro Region.

The mandate of the Capital Planning Region is to enhance economic and social development by improving and coordinating sustainable land use and development in the region through:

(a) adopting a regional plan;
(b) facilitating and promoting regional considerations in providing infrastructure and services;
(c) leading the development of regional responses to the planning issues of its regional member municipalities; and
(d) identifying and promoting opportunities for the regional member municipalities to cooperate in the cost-effective development of infrastructure and the provision of services on a regional basis.

The Capital Planning Region must prepare and adopt a regional plan within two years after the date Bill 48 is given third reading. Within three years after the Capital Planning Region has adopted its regional planning by-law, each member municipality must review its by-laws to ensure they are not inconsistent.

The Capital Planning Region will have the power to purchase, sell or lease land, borrow or loan money, expropriate land and enter into agreements.

On or before February 28 of each year, the Capital Planning Regional Board must determine the total amount that it requires for the operations of the region, determine the portion of that total to be raised by each regional member municipality and send a statement to each member specifying the portioned amount that the municipality is to raise.

Implications/Risk

- The City of Winnipeg could be forced to share infrastructure and/or services with adjacent municipalities within the Capital Planning Region.
- The Capital Planning Region could expropriate land from the City of Winnipeg.
- The City of Winnipeg's development plan (OurWinnipeg) must be consistent with the Capital Planning Region Plan.
- The City of Winnipeg will be responsible for its share of the costs of the Capital Planning Region and must include this amount in its operating budget; these costs are unknown.
- Also unknown is the composition of the Capital Planning Region Board, its Chair and mandate as they will be determined by Regulation.

Amendments to *The City of Winnipeg Charter Act*

Bill 48 introduces substantial changes to Part 6 (Planning and Development) of *The City of Winnipeg Charter Act*. The major changes and corresponding implications/risk are summarized under three different headings; Development Agreements, Appeals and Service Standards/Timelines.

1. Development Agreements

The City of Winnipeg will now have the authority to require a person to enter into a Development Agreement with the City as a condition of approval for a conditional use, variance or permit.

Implications/Risk

- This is a positive change that the City of Winnipeg had previously requested of the Province.
- A development agreement may only be attached to a permit for a "prescribed major occupancy" but major occupancy is not defined in *The City of Winnipeg Charter Act* - the Public Service has requested clarification from the Province but this will likely be determined by Regulation.

2. Service Standards/Timelines

The City of Winnipeg will now be required to meet a number of newly established timelines as follows:

- 20 days to determine if a permit application is complete;
- 60 days to approve a short form subdivision;
- 90 days to approve a conditional use, consent application, development agreement or an application to amend a development agreement;
- 150 days to approve a secondary plan, rezoning, subdivision.

Implications/Risk

- Should the City of Winnipeg fail to meet any of the timelines above, an applicant may consider their application to have been rejected and may appeal the rejection to the Municipal Board.
- Adjournments, Council prorogues, floods or pandemics and their implications on timelines have not been considered.
- It has become evident in meetings with planning staff from the Province that they do not fully comprehend development application processes as evidenced in the flow charts that accompany Bill 48 (see Schedule "A") and those compiled by the Public Service (See Schedule "B"). The Public Service continues to meet with provincial planning staff in an effort to ensure they fully understand how development works in the City of Winnipeg.
- Council may need to amend the Development Procedures By-law No. 160/2011 and the City Organization By-law 7100/97 to restructure approval processes to meet new timelines.
- The Public Service will be required to improve internal development application processes which may require the hiring of more staff.
- The Public Service will have to bolster submission requirements for development applications which would increase costs for the developers at the beginning of the development application process.

- The concurrent review process of development applications and building permits will likely need to change to a sequential process to ensure timelines are met. Though done in cities like Calgary and Edmonton, the by-product of this change will result in longer timelines for applicants.
- If a permit is withheld for longer than 60 days, the owner of the land would now be entitled to compensation for damages resulting from the withholding of the permit (with some noted exceptions).
- If satisfied that there was an unreasonable delay by the City in dealing with an appellants application, the Municipal Board may make an order requiring the City of Winnipeg to pay some or all of the costs incurred by the Board in hearing the appeal and the appellants costs related to the appeal. The Municipal Board retains sole discretion as to these costs.

3. Appeals

The owner of real property to which an application relates may now appeal the following decisions to the Municipal Board:

(a) the refusal of an application to amend a secondary plan by-law or a zoning by-law;
(b) the refusal of an application to approve a plan of subdivision;
(c) the refusal of an application for a conditional use;
(d) the refusal of an application to amend a development agreement;
(e) the refusal to consent to registration or filing of a conveyance;
(f) a decision to impose conditions on the approval of an application referred to in clauses (a) to (d);
(g) a decision to reject an application for a permit for a proposed development as not conforming to the regional planning by-law of the Capital Planning Region, a Plan Winnipeg by-law or a secondary plan by-law;
(h) a decision of a designated employee that an application is incomplete.

The Municipal Board must, by order, either dismiss the appeal or make any decision that council, the committee of council, the planning commission or the employee designated to deal with the matter could have made. The decision of the Municipal Board is final and not subject to further appeal. The process for Variance Appeals remains unchanged.

Implications/Risk:

- Development applications that were not subject to appeal previously (Subdivisions, Subdivision/Rezonings, Rezonings, Zoning Agreement Amendments, Development Agreement Amendments and Consents) can now be appealed if they are rejected. Only owners can appeal these decisions and these appeals would be heard by the Municipal Board.
- Owners can also appeal conditions of approval attached to (a) to (d) above. The Public Service has raised this as a serious concern and awaits clarification from the Province on this matter.
- A decision to reject an application for a permit as “not conforming” (per (g) above) can now be appealed to the Municipal Board (Executive Policy Committee is the body that currently hears these appeals).
- The new appeal provisions result in a loss of autonomy for the City of Winnipeg as final decision making authority is taken away from elected officials and conferred to a board appointed by the Province.

- Public Service participation at Municipal Board hearings may have significant human resource and commensurate financial implications for the City of Winnipeg.
- The influx of appeals generated Province-wide may have a significant impact on the effectiveness of the Municipal Board which, historically, has not been properly resourced.

4. Consultation:

The Province of Manitoba engaged in limited consultation with the Public Service during the development of Bill 48. More fulsome engagement should occur in advance of further consideration of Bill 48 and the drafting of the accompanying Regulations to minimize increased costs and disruption to operations and customers. The Public Service has posed many questions to the Province that remain unanswered.

FINANCIAL IMPACT

Financial Impact Statement

Date: May 7, 2020

Project Name:

Bill 48 – The Planning Amendment and City of Winnipeg Charter Amendment Act

COMMENTS:

There are no direct financial implications associated with the recommendations contained in this report. There will be direct and potentially significant financial implications to the City with the passage of Bill 48. The amount and timing of these financial implications is not reasonably determinable at this time.

Mike McGinn May 7, 2020

Mike McGinn, CPA, CA
Manager of Finance

CONSULTATION

N/A

OURWINNIPEG POLICY ALIGNMENT

01-3 Prosperity – Direction 1:
Provide Efficient and focused Civic Administration and Governance

01-3 Prosperity – Direction 2:
Provide a Predictable and Cost-Effective Business Environment that Promotes Investment and Growth

01-3 Prosperity – Direction 3
Maintain Strong Intergovernmental Cooperation

WINNIPEG CLIMATE ACTION PLAN ALIGNMENT

N/A

SUBMITTED BY

Department: Planning, Property and Development
Division: Real Estate and Land Development
Prepared by: Marc Pittet
Date: May 12, 2020

Attachments:

Schedule “A” – Proposed City of Winnipeg Approval Process Charts provided by the Province

Schedule “B” – City of Winnipeg “Actual” Approval Process Chart

Schedule “C” – AMM Informational Summary on Bill 48