

Goodmans^{LLP} Update

Ontario Enacts Legislation Affecting Timelines in Planning Matters During the COVID-19 Emergency

On April 14, 2020, the provincial government amended the *Development Charges Act, 1997* (the “**DCA**”) and the *Planning Act* as part of omnibus legislation responding to the ongoing COVID-19 emergency.

The *DCA* amendment extended the application of expiring development charge by-laws.

The *Planning Act* amendment authorized the Minister of Municipal Affairs and Housing (the “**Minister**”) to make regulations in connection with an emergency under the *Emergency Management and Civil Protection Act* to govern periods of time for various matters. On April 15, 2020, the Minister used this authority and filed Ontario Regulation 149/20 (the “**Regulation**”), which impacts various *Planning Act* notices and suspends various time periods under the *Planning Act*.

DCA Amendment

The *DCA* amendment extends the application of development charge by-laws that would have otherwise expired during the COVID-19 emergency. The legislation adds a new section 9.2, which provides that development charge by-laws that expired on or after March 17, 2020 and before April 14, 2020 are deemed not to have expired. These by-laws remain in force until the date that is six months after the declared emergency ends, unless they are repealed earlier. Similarly, any other development charge by-laws that expire between April 15, 2020 and six months after the declared emergency ends, will remain in force until the end of that six month period, unless repealed earlier.

This amendment does not freeze existing development charge rates but simply extends development charge by-laws that would have expired.

Planning Act Amendment and the Regulation

The Regulation issued by the Minister under the *Planning Act* amendment provides that the initial and more broadly-applicable regulation made under the *Emergency Management and Civil Protection Act* (Ontario Regulation 73/20), regarding the suspension of limitation periods and other time periods, is deemed to have never applied to the *Planning Act*, and instead establishes new and more specific rules for various *Planning Act* matters. In a letter circulated before the Regulation was issued, the Minister indicated the Regulation is intended to provide a comprehensive set of rules for determining the timing implications of the COVID-19 emergency on planning matters, while also giving municipalities flexibility to continue processing applications during the emergency if they wish to do so.

First, notices sent by municipalities between February 26, 2020 and April 15, 2020 for various *Planning Act* decisions are cancelled and deemed not to have been completed. Municipalities must re-issue these notices no later than 15 days after the emergency period ends. This means that any corresponding appeal period is also cancelled and would start again once the municipality issues a new notice of decision. However, any appeal filed before the re-issued notice is given remains valid.

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Similarly, notice for any decision made between March 2, 2020 and the end of the emergency period that was not issued before April 15, 2020, must be issued by the municipality no later than 15 days after the emergency period ends.

Generally, the *Planning Act* decisions affected by these rules are:

- decisions adopting or refusing official plans and official plan amendments;
- decisions adopting or refusing zoning by-law amendments;
- decisions approving or refusing draft plans of subdivision and plans of condominium;
- decisions authorizing or refusing variances;
- decisions giving or refusing provisional consents; and
- decisions regarding community planning permits.

Nothing precludes a municipality (or Committee of Adjustment) from re-issuing any cancelled notice or issuing any new notice of decision during the emergency period. If it does so, the normal appeal period for that notice would run during the emergency period and no re-issued notice is required after the emergency period. Put another way, the Regulation does not extend appeal periods for any notices issued or re-issued during the emergency period after April 15, 2020.

Second, the Regulation suspends certain time periods under the *Planning Act* during the emergency period, including:

- the 30-day period for a municipality to declare an application as complete;
- the time period after which an applicant can appeal for a municipality's failure to make a decision;
- the 15 days for a municipal clerk to compile and forward an appeal record to the Local Planning Appeal Tribunal; and
- the deadlines for registering approved plans of subdivision, fulfilling consent conditions and completing transactions in respect of which a consent has been granted.

These suspensions have various practical impacts. As two examples:

- The Regulation does not prevent the filing of a new application with a municipality, subject to a municipality being open to accepting such an application. Similarly, the Regulation does not prevent a municipality from reviewing filed applications. However, the Regulation suspends the various timelines associated with processing applications during the emergency period.
- The Regulation does not prevent the filing of an appeal for a municipality's failure to make a decision provided that the time period for making its decision expired before March 17, 2020. However, the Regulation suspends the time period for the municipal clerk to forward the resulting appeal record to the Local Planning Appeal Tribunal, meaning the appeal could simply sit in the clerk's office during the emergency period.

Third, the Regulation extends any interim control by-law that would have expired during the emergency period.

Looking Forward

The Ministry is expected to post an explanatory note regarding the Regulation shortly. In the meantime, for more information, please contact any member of our [Municipal, Planning and Property Tax Group](#).

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