

April 15, 2020

## COVID-19: April 15th Update on the Impacts to Development Applications and Hearings

This is an update to our previous bulletins ([March 23](#), [March 30](#), and [April 7, 2020](#)) detailing the impacts of COVID-19 on development applications and hearings in Ontario. An updated list reflecting the status of a number of GTA municipalities may be found at the end of this update.

### Provincial State of Emergency & Status of Emergency Orders

Since the release of our last bulletin, the Province has further extended the State of Emergency, has extended a number of existing Emergency Orders, and has issued new Emergency Orders under the [Emergency Management and Civil Protection Act](#), RSO 1990, c. E.9 (the "**EMCPA**").

Under the *EMCPA*, an emergency can be extended up to 14 days only once, after which it may be extended for additional periods of 28 days (s.7.0.7). Having already extended the State of Emergency once for a period of 14 days, on April 14, 2020 the Province further extended the emergency period for another **28 days**. Almost all Emergency Orders made to date under the *EMCPA* have been extended until **April 23, 2020** pursuant to [O. Reg. 106/20](#), as amended (see amendments [here](#), [here](#), and [here](#); see Provincial news release [here](#)). By contrast, O. Reg. 73/20 (made under s.7.1(2)) is effective for the "duration of the emergency" to a maximum of 90 days, subject to further renewals of up to 90 days (s.7.1(4) and (5)).

Of interest, on April 9, 2020, the Attorney General issued a memorandum advising that the Ontario Government has revised [O. Reg. 73/20](#) (made under the *EMCPA*) to lift the suspension of limitation periods and procedural timelines under the *Construction Act*, RSO 1990, c. C.30, effective April 16, 2020 (more details [here](#)). At this time, this is the only legislation specifically exempted from the suspensions under O. Reg. 73/20; all other statutory timelines, such as those found in the *Planning Act*, RSO 1990, c. P.13, remain suspended for the “duration of the emergency”.

### Suspension of Timelines under O. Reg. 73/20

#### (i) *Section 1 of O. Reg. 73/20*

The critical language in s.1 of O. Reg. 73/20 is that any provision in any statute (such as the *Planning Act*) establishing a “limitation period” shall be suspended for the duration of the emergency. We suggest that, had the legislature wanted to include “appeal periods” they would have used that language, but instead chose the wording “limitation period”. As such, it is our view that appeal periods are not suspended. Therefore if you have received a Notice of Decision stipulating an appeal period, you must appeal prior to the last date of appeal.

#### (ii) *Section 2 of O. Reg. 73/20*

The critical language in s.2 of O. Reg. 73/20 is that any provision in any statute (such as the *Planning Act*) establishing any period of time within which any step must be taken in any proceeding in Ontario “shall, subject to the discretion of the court, tribunal or other decision-maker responsible for the proceeding, be suspended for the duration of the emergency”. We suggest that a municipality’s Committee of Adjustment, or other equivalent body, is one such “other decision maker responsible for the proceeding” contemplated by s.2 and, therefore, may exercise its discretion to not suspend the appeal period. Such discretion could be properly exercised, for example, in a case where no oral or written submissions in objection to an application were made or filed with the Committee prior to the Committee making its decision, and thus where no party would be in a position to appeal the decision other than the Applicant. Where the

Applicant has no intention of appealing the decision and can provide confirmation in writing of this fact, we suggest that this would be an appropriate opportunity for the Committee to exercise its discretion to find that the appeal period had run and the decision is final. Alternatively, it may be that the “tribunal or other decision maker” contemplates that not only the “decision maker (such as the Committee of Adjustment)” but also the Local Planning Appeal Tribunal (“**LPAT**”) or the Toronto Local Appeal Body (“**TLAB**”) would both have to agree to exercise their discretion. Accordingly, for the right case and based on the right facts, the Committee, together with the LPAT/TLAB could be approached and requested to exercise their discretion.

### The Local Planning Appeal Tribunal

We understand that communications continue and efforts remain underway at the LPAT towards recommencing limited operations.

We have been advised that the LPAT offices at 655 Bay Street reopened with skeleton staff earlier this month, with a number of caseworkers working remotely (but still not at full capacity). The mailroom is not yet open and, as such, the LPAT cannot yet accept or acknowledge appeal records – the LPAT is working to resolve this. Additionally, the LPAT has acknowledged and is looking into concerns respecting the Rule relating to municipalities’ filings of Enhanced Municipal Records and the likely backlog that will occur as a result of municipal shutdowns.

The LPAT’s focus is still on settlement requests. As noted in our [previous bulletin](#), the LPAT is exercising its discretion under O. Reg. 73/20 to lift the suspension on a case-by-case basis to begin moving outstanding settlement hearings forward. As part of its assessment, the LPAT is requiring the submission of a settlement request form with additional supporting information. More information respecting steps to advance a settlement hearing, including the requisite forms, is available on the ELTO website [here](#), and the related news release is available [here](#).

The LPAT is also aware of concerns respecting Procedural Orders, particularly where parties are in dispute. While the LPAT will be

considering procedures to address such issues, its priority remains settlement hearings. That said, we have been advised that the LPAT will be reviewing matters scheduled for July and August and will be reaching out to parties in those matters directly to provide assistance, and may elect to exercise its discretion on case-by-case basis to lift the suspension respecting enforcement of the Procedural Orders for those matters. Nevertheless, the LPAT is hopeful parties will work together in these cases so that they will be in a position to proceed once the LPAT is ready.

Respecting Tribunal Orders, where parties are in agreement that pre-conditions have been satisfied, parties are to make requests to the caseworker and the LPAT will look at processing requests on case-by-case basis. However, the LPAT notes that it may not yet have capacity to deal with such requests at this time.

Overall, while the LPAT is hearing and responding to concerns and requests of interested parties, it still requires breathing room to set a path forward.

### Ministry Letter to Municipalities re: Planning Processes

The Ministry of Municipal Affairs and Housing recently released a letter to Heads of Council / Clerks and CAOs in response to requests for clarification from municipalities and the Association of Municipalities of Ontario. It indicates the Province's intention to introduce legislation to "allow for suspension of specified timelines associated with land use planning matters that could be applied retroactively to the date that an emergency was declared." The letter states that it would be discretionary, and would give municipalities time to focus on the COVID-19 outbreak.

"If approved, municipalities and planning boards would still be able to make decisions on land use planning matters during this time if they so desired and can consider using electronic and virtual channels as appropriate to engage and solicit feedback from the public on land use planning matters. It is vital for the economy that we move the administrative process along to the best of our collective ability in order to continue the important job of creating housing and keeping infrastructure projects moving.

Municipalities that instead wish to pause their consideration of planning applications and direct their resources and attention to more immediate priorities would be permitted to do so without the threat of appeal.”

The letter also indicates that the Province will be proposing amendments to the *Development Charges Act, 1997*, SO 1997, c. 27 to ensure the principles of “growth paying for growth”, and that the Environmental Registry of Ontario posting relating to community benefits charges has been extended to April 20, 2020.

On April 14, 2020, the provincial legislature passed this legislation in the form of *Bill 189*, being the *Coronavirus (COVID-19) Support and Protection Act*, SO 2020, c. 6. The intention of Bill 189 is to make it easier for municipalities to delay processing planning applications by making them ineligible for appeals due to a municipal council failing to make a decision within the timeframes stipulated in the *Planning Act*. The changes related to *Planning Act* can be found in Schedule 4 of Bill 189. The Regulations (*O. Reg. 149/20*) have just been released as of April 15, 2020; we will provide a further update in next week’s Bulletin regarding these new regulations.

### Electronic Participation in Meetings

On March 20, 2020, the Province passed *Bill 187*, being the *Municipal Emergency Act*. This Act amends both the *Municipal Act, 2001*, SO 2001 c. 25, and the *City of Toronto Act, 2006*, SO 2006, c. 11, Sched. A.

Bill 187 states that in the event a State of Emergency is declared under the *EMCPA*, municipalities will have the option to allow members of Councils, committees and local boards to participate electronically in open and closed meetings. Such electronic participation will count towards quorum during emergencies. Adopting such means and amending procedural by-laws as a result is at the discretion of the municipalities, as is the choice of technological platform.

It is our understanding that municipalities are exercising their new abilities granted by Bill 187, such as the *City of Brampton*, *City of Markham*, the *City of Vaughan*, and the *City of Hamilton*, who are

holding or proposing to hold such electronic Council meetings. Such exercise of this discretion will be key for parties attempting to move development and appeal applications forward as this will, for example, permit staff to obtain instructions from council. This would also go a long way to addressing concerns that we raised in our previous bulletin respecting matters that had procedural deadlines that straddled the June 30<sup>th</sup> date, such as hearings set for July with procedural filing dates pre-June 30<sup>th</sup>.

Additional information may be found in an information document issued by the Ministry of Municipal Affairs and Housing, entitled "[Providing Flexibility for Municipalities to Hold Local Meetings During Emergencies](#)".

## The Status of GTA Municipalities

The below represents a list of those municipalities in which we experience the most volume of development applications and appeals. The information has been obtained from the municipalities' websites or from direct communication from the municipalities and, as such, is subject to confirmation. Please also note that the status of the matters contained herein are evolving rapidly and may not be the most current. If you have a question relating to a specific municipality not included in the list below, please do not hesitate to contact us.

### *City of Toronto*

- [Declared a State of Emergency](#) as of March 23.
- All City buildings, including City Hall, Metro Hall and all civic centres are closed to public. All non-essential services are cancelled.
- [Meetings](#): All regular Council and Committee meetings cancelled until May 4, 2020. The Mayor can call a special meeting of City Council to discuss urgent business if required. Design Review Panel meetings have also been cancelled.
- [Planning Applications & Appeals](#): New planning applications will not be received. Limited reviews of planning applications and

heritage planning applications received on or before March 16. City is prioritizing: (1) review of applications that have cleared any Council-related approval and are proceeding through final technical clearances (e.g. site plan approval); (2) Development projects close to occupancy (e.g. draft plans of condominium clearances and registrations); (3) Working with applicants' solicitors to register agreements where the agreements can be finalized. Appeals of Committee of Adjustment decisions will be accepted electronically.

- Provincial Offences courtrooms, public counters, email and call centre services are closed. Applications and payments can be submitted by regular mail. All online services remain available to the public. Matters scheduled until May 29, 2020 will be rescheduled.
- Building Permits & Inspections: Still issuing building permits that were ready to be issued prior to March 16. Building permit inspection reports can now be conducted by a qualified professional in lieu of a progress inspection by a city inspector. 24/7 emergency building inspections services will continue.
- Suspended services include: building applications, other than as noted above, Sign Permit and Zoning intake, review and issuance; All building inspection services other than emergency inspections; All information requests, complaints and reports. Click [here](#) for more information.
- City-led infrastructure construction has been deemed essential and will proceed for important City water and transportation infrastructure, as well as City facilities including parks and recreation facilities. This construction is essential to ensure the City's infrastructure and facilities remain safe, in a state of good repair and able to meet Toronto's needs.

#### *City of Brampton*

- [Declared a State of Emergency](#) as of March 24 2020; all City facilities closed until further notice, including City Hall.

- **Meetings:** Effective March 16, all City Council meetings are occurring virtually with in-person attendance limited to Members of Council and essential City staff only. All upcoming Committee meetings are cancelled until at least April 30.
- **Planning Applications & Appeals:** Existing applications are continuing to be processed. New applications can be submitted digitally using the City's FTP Server (click [here](#) for more information). Reports are still being completed, external agencies are still providing comments, and meetings are being held via Skype as necessary. All appeals will be accepted digitally.
- **Buildings Division closed until further notice.** No applications for permits or registrations will be accepted. In addition to continuing inspections of unoccupied buildings, effective April 6, the City of Brampton Building Division will be accepting requests for remote video inspections of occupied residential buildings until the onsite operations resume. Click [here](#) for more information.
- **Provincial Offences courtrooms, public counters, email and call centre services are closed until further notice.** A drop box is available at the main entrance to the facility for the public to drop off request for early resolution and for enforcement agencies to drop off Certificate(s) of the offence. Matters scheduled until May 29, 2020 will be rescheduled. Applications to be submitted through the City drop box. Payments can be submitted by regular mail, telephone or online.

#### *City of Mississauga*

- **Declared a State of Emergency** as of March 23, 2020.
- **Meetings:** The City is holding Council meetings via online video conference. Committee meetings have been cancelled until further notice.
- **All public service counters closed until further notice, including City Hall and the Provincial Offences Courthouse.** All general inquiries can be processed via 3-1-1 Contact Centre (905-615-4311 outside city limits).

- **Planning Applications & Appeals:** Committee of Adjustment is accepting applications and general enquiries via email to [committee.adjustment@mississauga.ca](mailto:committee.adjustment@mississauga.ca). Can apply, update and complete application-related tasks via **ePLANS**. For resubmissions, new Official Plan and/or Zoning By-law applications, call 3-1-1 or email [eplans.devdes@mississauga.ca](mailto:eplans.devdes@mississauga.ca) to communicate with a member of the Planning Services Centre Team. Meetings are being conducted remotely through WebEx, emails or by phone. Planning reports are still being written. Commissioners now have delegated authority to sign agreements. Appeals (including fees) to be filed by registered mail or courier to the attention of Clerks Office, 2nd Floor, 300 City Centre Drive, Mississauga, Ontario L5B 3C1.
- **Building Permits & Inspections:** All online application functionality will continue at this time. Can apply, update and complete application-related tasks via **ePLANS**. Services at the Inspection Services counter suspended until further notice. Inspections can be scheduled online at [Building Permit Inspections](#); however, inspection requests will be prioritized and/or deferred where possible. Only online payments are currently being accepted.

#### *City of Markham*

- All City facilities are closed to the public until further notice.
- **Meetings:** The City is holding Council and Committee Meetings electronically. Other public meetings have been cancelled until further notice. The Mayor can call a special meeting of Council, if required.
- **Planning & Urban Design Department:** Closed to the public with staff working remotely to support City projects. Most planning applications (Pre-consultation, Site Plan, Official Plan, Subdivision, Zoning, Minor Variance, Consent and Condominium) can be submitted through **ePLAN** (email inquiries to [dsc@markham.ca](mailto:dsc@markham.ca) or 905.475.4861). Re-submissions related to existing (pre-ePLAN) applications must be submitted through consultant's FTP site/Dropbox, and notify the Development Services Front Counter ([dsc@markham.ca](mailto:dsc@markham.ca)) by email and copy the

project planner. Payments can be made by cheque using the drop box which is located outside the Markham Civic Centre. Additional information respecting planning submissions may be found on the City's recent adopted platform, "ePLAN".

- Building Permits & Inspections: Questions related to building permit applications and zoning inquiries can be emailed to: [buildingstandards@markham.ca](mailto:buildingstandards@markham.ca), and related to building permit inspections, email: [bins@markham.ca](mailto:bins@markham.ca).
  - Applications: Building Permit applications can be submitted [online](#). All on-line permit application functionality including payments of permit fees less than \$60K will continue to operate (contact [buildingstandards@markham.ca](mailto:buildingstandards@markham.ca) for permit status). Plan review and permit issuance will continue and plan review staff will be available by email. Conditional permit processing will be evaluated on a case-by-case basis.
  - Inspections: Make inspection requests through [ePLAN](#) or by calling 905 475-4850. Inspections will only occur for occupancy permits for new and unoccupied buildings, until further notice. Permit holders are required to book all required inspections as per the Ontario Building Code. Inspections for occupied buildings will be suspended until further notice.
- Construction Investigation Requests: Unsafe building reports will be investigated immediately.
- Engineering Department is closed to the public with staff working remotely to support City projects

#### *City of Vaughan*

- [Declared a State of Emergency](#) on March 17, 2020.
- Public closures until further notice, including: Vaughan City Hall
- **Meetings:** Council and Committee of the Whole meetings are being held electronically and can be viewed [here](#) (all other committee and task force meetings cancelled). Written

communications can be emailed to the Office of the City Clerk at [clerks@vaughan.ca](mailto:clerks@vaughan.ca).

- Building Permits & Inspections: Accepting submissions, however processes may change without notice. Contact Building Standards Department at [buildingstandards@vaughan.ca](mailto:buildingstandards@vaughan.ca). For building inspections, email [buildinginspections@vaughan.ca](mailto:buildinginspections@vaughan.ca).

#### *City of Hamilton*

- City facilities closed until at least May 25, 2020, including municipal service centres, public counters and City Hall.
- **Meetings:** City Council will take place virtually every Wednesday morning. **Other meetings** are cancelled until at least May 25, 2020.
- Provincial Offences courtrooms closed; appearances scheduled until May 29, 2020 will be adjourned and rescheduled.
- Planning Applications and Appeals: May be filed by regular mail (e.g., USB with digitals) with certified cheque. Recommend sending email to advise that application is being submitted by mail. Expect processing delays.
- Building Permit Applications & Inspections: Applications may be made [online](#); questions can be sent to [eplans@hamilton.ca](mailto:eplans@hamilton.ca); for inspections, call: 905-546-2424 ext. 7777. City is still completing the following inspections: (i) Construction without a permit (proactive/reactive) visible from the street (but not interior at this time), (ii) unsafe conditions, (iii) new houses/semis/towns, (iv) new small Part 3 and 9 buildings, (v) Interior Part 3 reno. work (case-by-case basis), (vi) sign, septic, and solar collector permits, (vii) pools – new and unsafe. City Building Inspection team has final say, and may refuse an inspection. The City is contemplating use of virtual inspections.

#### *City of Ottawa*

- **Declared State of Emergency** on March 25, 2020.

- Facilities and services closed or cancelled until further notice, including City Hall and Building Code Services Counters
- Provincial Offences Courthouse closed until May 29, 2020.
- Meetings: City Council or Committee meetings, as warranted, will be held electronically until further notice and can be viewed live on the [Ottawa City Council Youtube Channel](#). Upcoming meetings of the Committee of Adjustment and other Boards can be found [here](#).
- Building Permits & Inspections: Building Code Services (“BCS”) building permit delivery service: via courier (with cheque) to City of Ottawa – Building Code Services, 100 Constellation Drive, Ottawa, ON K2G 6J8; smaller residential applications can be submitted online email ([buildingpermits@ottawa.ca](mailto:buildingpermits@ottawa.ca)). BCS Inspections staff will not enter occupied areas of the certain building types for the purposes of carrying out their duties (personal dwellings, long-term care facilities, seniors’ residences and retirement homes, hospitals, and daycare facilities)

#### *Region of Peel*

- Development Services staff are available to participate in one-on-one phone calls, conference calls, or virtual meetings.
- Submissions via courier or mail will not be accepted as counters are currently closed to the public. Contact the Peel employee assigned to your application directly to arrange for electronic submissions. Payments cannot be processed by cheque, visa or debit at this time. Development Services is currently investigating electronic fund transfer methods, while working with the local municipalities on alternative payment options.
- Building Permit Application & Inspections: Applications are administered at the local municipality; Region provides Servicing Approval for Water and Waste/Storm Water connection approval. Servicing staff are still reviewing applications and taking them to the approval stage. Payments cannot be processed by cheque, visa or debit at this time. Region is working with accounts receivable to receive payments in the form of Electronic Fund

Transfers so that they can provide their final Site Servicing clearance to the applicant. Meanwhile, Region is working with the local municipalities on alternative payment options.

- Issuing for Construction (IFC) process is being evaluated case-by-case based on criticality of the site and availability of Water Operators (this is under review as resources are very limited, therefore field services may be temporarily delayed or deferred).

#### *Region of York*

- Declared State of Emergency on March 23, 2020
- York Region facilities are currently closed to the public.
- Building Permits: Administered at the local municipality.

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#### [a cautionary note](#)

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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