

COVID-19: MARCH 30TH UPDATE ON THE IMPACTS TO DEVELOPMENT APPLICATIONS AND HEARINGS

Posted on March 30, 2020

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This is an update to our previous [bulletin of March 23, 2020](#), detailing the impacts of COVID-19 on development applications and hearings. Since our last bulletin was released, the Province declared a State Of Emergency and issued a number of Emergency Orders under the *Emergency Management and Civil Protection Act*, RSO 1990, c. E.9. As well, a number of municipalities have also declared a state of emergency, including the [City of Toronto](#) and the nation's capital, the [City of Ottawa](#). The reason given by the municipalities' Mayors is the need to temporarily enact closures and protocols beyond April 5, 2020. An updated list reflecting the status of municipalities in the GTA may be found at the end of this update.

Of these Emergency Orders, of most interest to those in the development industry is [O. Reg. 73/20](#). As noted in our previous bulletin, O. Reg. 73/20 suspends limitation periods and procedural time periods retroactive to March 16, 2020 (and for the duration of the emergency) under "any provision of any statute, regulation, rule, by-law or order of the Government", and suspends any period of time within which any step must be taken in any proceeding in Ontario. As such, the regulation impacts the *Planning Act*, the *Local Planning Appeal Tribunal Act*, and the Tribunal's *Rules of Practice and Procedure*. We note that the suspension of time periods under [O. Reg. 73/20](#) are valid for the "duration of the emergency". Today, the Province announced that it is considering extending the State of Emergency for another 14 days pursuant to the *Emergency Management and Civil Protection Act*, and this duration could then be subject to further extension for periods not to exceed 28 days (s.7.0.7).

By way of letter dated March 24, 2020, the Local Planning Appeal Tribunal (the "**Tribunal**") advised interested parties of how proceedings before it would be impacted:

- The Tribunal will not schedule any hearing events, including in-person, written, or teleconference hearings, while this Emergency Order is in effect.
- Adjournment of all hearing events scheduled in the Tribunal's hearing calendar between the effective date of the Emergency Order and June 30, 2020.
- Suspension of any period of time for a person to initiate a proceeding with the Tribunal, or take a step in the proceeding, including timelines established in the Tribunal's procedural orders, for the duration of

the order.

In addition, the Tribunal's letter emphasized in bold the suspension of **"timelines related to exchange of witness statements, meeting of experts, or similar directions."**

While we did not disagree with the Tribunal's interpretation of O. Reg. 73/20, our concern, based on very real examples of our client's ongoing matters, was that the result would be the postponement of hearings not technically adjourned (i.e., those scheduled to commence after June 30, 2020), but which have procedural filings leading up to that date. This is a particular concern for project types that the Province has determined to be essential, including the building of much needed residential units and agricultural uses, which projects cannot be left on hold for an indefinite period of time, as this will certainly create long term impacts on the economy.

It was our recommendation that the provincial government provide exemptions under O. Reg. 73/20 to Tribunal proceedings so that important matters that are currently before the Tribunal can, where possible, be dealt with in an efficient and fair manner. For example, matters on consent should be dealt with by written submissions, matters related to Motions and Case Management Conferences could be dealt with by way of teleconferencing, and with respect to contentious hearings scheduled to occur after June 30, 2020, Parties should be required to file witness statements etc. in keeping with previously issued Procedural Orders to ensure that hearings already scheduled past June 30, 2020 can proceed.

It appears that the Province has heard and addressed some of these very concerns. On March 25, 2020, the Ontario legislature passed Bill 188, known as the [*Hearings in Tribunal Proceedings \(Temporary Measures\) Act, 2020*](#), S.O. 2020 c. 5, Sched. 3 (the "**Act**"). The Act empowers specified tribunals to determine how hearings before them may be held. Specifically, ss.3(2) permits a tribunal to make any orders or give any directions that it considers appropriate in the circumstances respecting the format of a hearing and its conduct including any ancillary matters.

Pursuant to this new Act, the Tribunal can once again issue procedural directions, such as requiring Parties to follow Procedural Order filings. As a result, it is our understanding that the Tribunal is presently determining how they will deal with these new powers. However, we also understand that the Tribunal will require some time to develop its response, considering that any changes made will have lasting implications. Additionally, we understand that the Tribunal is addressing some technical limitations that it has become aware of as a result of the current circumstances, such as the limited capacity of their existing teleconference call systems.

It is our hope that the current changes in legislation will provide the Tribunal the opportunity to ease some of the pressure that will inevitably build up as a result of the necessary adjustments to the way the business of development is conducted. At times like these, it is more important than ever for parties to remain collegial,

cooperative and creative in achieving desirable resolutions.

The Status of GTA Municipalities

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, 2020
- All City buildings, including City Hall, Metro Hall and all civic centres are closed to public.
- Cancelled all non-essential services and closed many facilities including City Hall.
- City Council, committee, board and tribunal meetings cancelled; Mayor can call a special meeting if required. Design Review Panel meetings have also been cancelled.
- Planning Applications: New planning applications will not be received. Limited reviews of planning applications and heritage planning applications received on or before March 16, 2020. 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 via email to both the general email address and the Manager & Deputy Secretary-Treasurer for your district as found on the Committee of Adjustment web page. Fee payments will be collected after regular service delivery resumes.
- 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, 2020
 - 24/7 emergency building inspections services will continue.
 - Suspended services include:
 - Building, Sign Permit and Zoning intake, review and issuance
 - All building inspection services other than emergency inspections
 - All information requests, complaints and reports

- Toronto Building will not be able to accept or issue building permits. In addition, no preliminary project applications, zoning reviews, or property information letters can be applied for, processed or issued.
- 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 April 5, 2020, including City Hall.
 - All City Council, Committee and Committee of Adjustment meetings are cancelled March 16 to April 5, 2020 inclusive.
 - Existing planning applications are continuing to be processed. New development applications can be submitted digitally using the City's FTP Server (click [here](#) for more information). All appeals will be accepted digitally.
 - Reports are still being completed, external agencies are still providing comments, and meetings are being held via Skype as necessary
 - Buildings Division closed until April 5, 2020. No applications for permits or registrations will be accepted. Buildings Division will only be accepting inspection requests via email and/or fax for the period of March 17 to April 3, 2020. Inspections to be conducted of unoccupied buildings only.
 - Provincial Offences courtrooms, public counters, email and call centre services are closed through to and including April 3, 2020. Matters scheduled until May 29, 2020 will be rescheduled. Applications and filings from Enforcement Agencies 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
 - All facilities and public counters closed through to April 5, 2020 including City Hall and the Provincial Offences Courthouse; Planning Committee is suspended at this time.
 - Planning and Building Services counter suspended until further notice. All general inquiries can be processed via 3-1-1 Contact Centre (905-615-4311 outside city limits).
 - Development Applications: 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 to communicate with a member of the Planning Services Centre

Team. Only electronic payments will be accepted via existing online portal; if require another form, contact 3-1-1.

- 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.

- **[City of Markham](#)**

- All City facilities are closed to the public until further notice.
- Public meetings have been cancelled until further notice, including: Council, General Committee, Development Services Committee, Committee of Adjustment, Heritage Committee, Accessibility Committee, and all advisory committees. Mayor can call a special meeting of Council, if required.
- Planning & Urban Design department is 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 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) 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.
- Construction Investigation Requests: Unsafe building reports will be investigated immediately.
- Building Permits: Questions related to building permit applications and zoning inquiries can be emailed to: buildingstandards@markham.ca, and related to building permit inspections, email: 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 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.

- Engineering Department is closed to the public with staff working remotely to support City projects.
- Additional information respecting planning submissions may be found on the City's recent adopted platform, "[ePLAN](#)".
- **City of Vaughan**
 - Public closures until April 6, 2020 including: Vaughan City Hall.
 - Council, committee and task force meetings cancelled until April 9, 2020.
- **City of Hamilton**
 - City facilities closed until at least April 6, 2020 including municipal service centres, public counters and City Hall.
 - All Committee meetings cancelled until April 5, 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 may be made [online](#); questions can be sent to eplans@hamilton.ca; for inspections, call: 905-546-2424 ext. 7777
 - Building Inspections: 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.
 - Council & Committee Meetings: physical attendance in the Council Chambers will be limited to Members of Council and essential City staff. You can watch the live City Council meeting on the Ottawa City Council [YouTube page](#). In-person City public consultations have been cancelled. City is

working to limit the number of [Committee meetings](#).

- 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); 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 Permits:
 - 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**
 - York Region facilities are currently closed to the public.

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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.

The logo for mcmillan, featuring the word "mcmillan" in a lowercase, sans-serif font. The "m" and "c" are in a dark red color, while the "m", "i", "l", "l", "a", and "n" are in a light blue color. The logo is positioned in the upper left corner of a banner image.

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