

# Changes in Land Use Planning and Development in Ontario Including *Planning Act* Timelines in the Face of an Emergency

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On March 17, 2020 Ontario declared an emergency under the *Emergency Management and Civil Protection Act* in response to the COVID-19 coronavirus disease. This emergency declaration has now been extended to end on May 12, 2020.

On April 14, 2020 the provincial government enacted the *Coronavirus Support and Protection Act, 2020*. As it relates to land use planning and development, this legislation made two important changes that are now in effect.

First, the *Coronavirus Support and Protection Act, 2020* amended the *Development Charges Act, 1997* and the *Education Act* to maintain in effect those development charge by-laws and education development charge by-laws that have expired or will expire on or after March 17, 2020 until a specified date – being six months after the COVID-19 emergency declaration is terminated or disallowed, unless they are repealed earlier, meaning that these by-laws will likely remain in effect until at least November 12, 2020. These amended rules do not apply to any part of a development charge by-law which is subject to transitional matters related to community benefits charges under s.9.1 of the *Development Charges Act, 1997*. Ontario's stated intent for passing these amendments is to allow municipalities with certain expired and expiring development charge by-laws to use their existing by-laws during the current emergency and for six months following the end of the COVID-19 emergency declaration.

Second, the *Coronavirus Support and Protection Act, 2020* amended the *Planning Act* to allow the Minister of Municipal Affairs and Housing to make regulations governing various timelines within the *Planning Act* or in section 114 of the *City of Toronto Act, 2006* during the period of any emergency declaration under *Emergency Management and Civil Protection Act*. Ontario's stated intent for passing these amendments is to provide municipalities the time they need to focus on local public health priorities by making it possible to suspend certain planning decision timelines during a declared state of emergency. Ontario, however, states that if municipalities choose to process planning applications, they may still do so by holding virtual/electronic public meetings and making decisions on planning matters during the period of the COVID-19 emergency declaration.

On April 14, 2020, the Minister made Ontario Regulation 149/20 – Special Rules Related to Declared Emergency (O. Reg 149/20) pursuant to the above-referenced *Planning Act* amendment. On April 15, 2020, O. Reg 149/20 came into effect. O. Reg 149/20 provides that Ontario Regulation 73/20 regarding the suspension of limitation periods during the duration of the COVID-19 emergency declaration does not apply to the *Planning Act* or section 114 of the *City of Toronto Act, 2006*. O. Reg 149/20 also provides that any future orders made under subsection 7.1(2) of the *Emergency Management and Civil Protection Act* do not apply to the *Planning Act* or section 114 of the *City of Toronto Act, 2006*. Accordingly, O. Reg 149/20 will likely govern revisions to *Planning Act* and s.114 *City of Toronto Act, 2006* timelines during the duration of the COVID-19 emergency declaration.

O.Reg 149/20 sets out special rules for a number of timelines under the *Planning Act* and section 114 of the *City of Toronto Act*,

2006. These special rules may significantly impact the timeline for, among other things, the processing of a development application, the filing of an appeal and/or the length of time an interim control by-law is in effect. The rules are detailed and complex. This article seeks to highlight some of the significant rules. It is not intended to be comprehensive.

In summary, O. Reg 149/20 permits a municipality to continue processing development applications during the COVID-19 emergency declaration. The rules permit a notice of decision to be issued and appeals on that decision to be filed. However, where a municipality wishes to pause the processing of a development application during the COVID-19 emergency declaration, including in certain circumstances where a notice of decision has already been issued, these rules allow that to occur by requiring the reissuance of a notice of decision or extending the deadline for issuance of a notice of decision and consequently extending the deadline for filing of an appeal of that decision. The rules also permit any time during the COVID-19 emergency declaration to not count towards non-decision appeal timelines in the *Planning Act* and *City of Toronto Act, 2006*, which accordingly may pause some non-decision appeals.

In addition, certain non-decision appeals filed between March 17, 2020 and before April 15, 2020 are deemed to not have been filed. The timing requirements for municipalities to forward appeal records to the Tribunal are also paused during the COVID-19 emergency declaration. It is notable that the rules appear to permit a municipality to choose which, if any, development applications it will process during the COVID-19 emergency declaration.

O.Reg 149/20 contains revised rules regarding the timing requirement for issuance of a notice of decision for:

- i. adoption, approval, modify and approve, or refuse to approve all or part of an official plan;
- ii. refuse to approve an official plan amendment;
- iii. passing or refusing to approve a zoning by-law amendment;
- iv. approval or refusal of a draft plan of subdivision;
- v. changing the conditions to approval of a plan of subdivision;
- vi. approval or refusal of provisional consent;
- vii. changing the conditions to provisional consent; and
- viii. refusal, approval, or approval with conditions of a community planning permit.

Site plan approval is not addressed because it does not require that a notice of decision be issued. The issuance of the notice of decision is important because it triggers the right to file an appeal of the decision.

If the giving of a notice of a decision for the above was completed on or after February 26, 2020 and before April 15, 2020, the giving of the notice is deemed to not have been completed. The municipality (or planning board) has to give a new notice of decision and it is required to do so no later than 15 days after the COVID-19 emergency declaration is terminated or disallowed. Nothing in the regulation prevents the municipality (or planning board) from giving the new notice of decision earlier. Any rights to appeal the decision commence after the municipality (or planning board) gives the notice of decision.

If a decision was made for one of the above on or after March 2, 2020 and before April 15, 2020, but a notice of decision was not given, or it was given to one or more persons but not completed before April 15, 2020, the municipality (or planning board) is required to give a (new) notice of decision. This is required to happen no later than 15 days after the COVID-19 emergency declaration is

terminated or disallowed. Again, nothing in the regulation prevents the municipality (or planning board) from giving the notice of decision or new notice of decision earlier. Any rights to appeal the decision commence after the municipality (or planning board) gives the notice of decision. Notably, what it means to complete giving a notice of decision before April 15, 2020 is unclear.

If a notice of decision is given on one of the above after April 15, 2020, the ordinary timing for filing of an appeal regarding the decision applies. Notwithstanding, it appears the municipality (or planning board) could defer forwarding of the appeal record to the Tribunal.

There are special rules regarding minor variance applications for which a decision was made on or after February 26, 2020 and before April 15, 2020. In such instance, the Secretary-Treasurer of the committee of adjustment shall give notice of the decision regardless of whether the notice was previously given. This must occur no later than 10 days after the COVID-19 emergency declaration is terminated or disallowed. Again, nothing in the regulation prevents the Secretary-Treasurer from giving the (new) notice of decision earlier. Any rights to appeal the decision commences after the Secretary-Treasurer gives the (new) notice of decision. There are specific rules regarding when the giving of notice shall be deemed to be completed.

O.Reg 149/20 pauses the counting of certain time periods in the *Planning Act* and the *City of Toronto Act, 2006* for the period of the COVID-19 emergency declaration. Here are some examples of these time periods that are paused:

- i. the time period for non-decision appeals for official plan, official plan amendment, zoning by-law amendment, site plan application and plan of subdivision application;
- ii. the time period for deeming an official plan amendment application, zoning by-law amendment application or plan of subdivision application complete, and the timeline for filing motions to challenge the completeness of these applications;
- iii. the time period for filing an appeal of a demolition permit;
- iv. the time period for filing an appeal of a failure to remove an "H" hold symbol by-law;
- v. the time period for the length of an interim control by-law but only if it was in effect on March 17, 2020;
- vi. the time period for filing an application to the Tribunal for payment in protest of parkland fees; and
- vii. the time period for municipalities to forward various appeal records to the Tribunal.

If the right to file certain non-decision appeals arose in a time period on or after March 17, 2020 and before April 15, 2020, and that non-decision appeal was in fact filed, it is deemed to not have been filed. These non-decision appeals may need to be filed again after the COVID-19 emergency declaration is terminated or disallowed. However, if the right to file the non-decision appeal arose prior to March 17, 2020, but the appeal was filed during that time period, it appears those non-decision appeals will continue to be processed by the Tribunal once the appeal record is forwarded by the municipality.

If an interim control by-law was in effect on March 17, 2020 and has not been repealed before April 15, 2020, and would expire during the COVID-19 emergency declaration, that interim control by-law is deemed to remain in effect after the COVID-19 emergency declaration for a period of time equal to the number of days between March 17, 2020 and the day the interim control by-law would have expired.

Alternatively, if an interim control by-law was in effect on March 17, 2020 and has not been repealed before April 15, 2020 and that interim control by-law would not expire during the COVID-19 emergency declaration, that interim control by-law is deemed to remain

in effect after the day it would expire for a period of time equal to the length of the COVID-19 emergency declaration.

It is also worth noting that O. Reg 149/20 allows the filing of a notice of appeal in connection with certain notices of decisions where the timeline for the municipality (or planning board) has been amended by the regulation. This appears to indicate that, even if the notice of decision has not been given in accordance with O. Reg 149/20, a notice of appeal may still be filed but perhaps not effective until the (new) notice of decision is given.

As always, should you have any questions regarding this article or the application of the *Coronavirus Support and Protection Act* or O.Reg 149/20 to your specific situation, please do not hesitate to reach out to any member of the [municipal team](#) here at WeirFoulds, to assist you with your land use planning and development needs.

***The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.***

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