The Planning Amendment Act & *City of Winnipeg Charter Amendment Act*

FREQUENTLY ASKED QUESTIONS

For a detailed summary and description of the changes made to planning legislation in Manitoba under the Planning Amendment and City of Winnipeg Charter Amendment Act, formerly known as Bill 37, please visit our website at https://www.gov.mb.ca/mr/land_use_dev/about_planning.html.

GENERAL

1. **Q. Why did the Government of Manitoba make changes to *The Planning Act* and *The City of Winnipeg Charter*?**

   A. The new legislation addresses key planning recommendations in the Treasury Board Secretariat (TBS) report "*Planning Zoning and Permitting in Manitoba*" (June 2019) to create a transparent, consistent and efficient planning framework by reducing unnecessary planning delays, while ensuring due diligence, environmental and safety requirements are met. This legislation brings Manitoba in line with most other jurisdictions in Canada. The new legislation will enhance opportunities for economic growth and ensure Manitoba remains competitive and attractive for business and job growth.

2. **Q. How will these changes attract investment and create jobs in our communities?**

   A. The new legislation is expected to make Manitoba's development climate more competitive, predictable and attractive to investors. More investment means more jobs for Manitobans. The changes address the significant economic costs related to unnecessary permitting delays (up to $17M negative impact on Gross Domestic Product and over $2M negative impact on provincial and municipal revenue per day) as cited in The Treasury Board Report.

3. **Q. Who has the Province consulted with?**

   A. Since January 2020, the Department has held extensive meetings and technical briefings with key stakeholders to receive input and answer questions about the new legislation, including with the City of Winnipeg, The Association of Manitoba Municipalities, planning districts, rural municipalities, the Winnipeg Metropolitan Region, professional associations and industry.

   The new legislation is the product of a detailed analysis and consultation undertaken by Treasury Board Secretariat that culminated in its final report, "*Planning Zoning and Permitting in Manitoba*" (June 2019). In addition to analysis of cross jurisdictional best practices, provincial legislation, municipal by-laws and policies, planning districts and economic development organizations, service delivery standards and development of economic models, Treasury Board Secretariat staff interviewed approximately 50 individuals including developers, professional organizations, the City of Winnipeg, rural municipalities and planning districts. The recommendations were posted on line proactively and additional comments solicited from all Manitobans.

   Municipal Relations is committed to on-going dialogue and working with stakeholders to achieve consistent outcomes and approaches to implementing the new legislation. In addition to meeting with numerous organizations and stakeholder groups, the Minister created a multi-stakeholder Working Group, with representation from the City of Winnipeg, Association of Manitoba Municipalities, Urban Development Institute, Manitoba Professional Planners Institute and Winnipeg Metropolitan Region has been meeting regularly since January 2021. This is an important opportunity to receive advice and collaborate on the successful implementation.

4. **Q. How does the Province contribute to the cost of planning?**

   A. Land use planning in Manitoba is a partnership between the provincial and local governments and their citizens. The Department of Municipal Relations provides professional and technical planning and mapping services to municipalities and planning districts through its regional field offices.

   The Department also is a significant funding partner, providing planning grants of up to $75,000 to municipalities and planning districts in support of planning by-law reviews. The Province is also the primary funding partner to the Winnipeg Metropolitan Region to support its operations and studies.

5. **Q. When does the new legislation (Bill 37) take effect?**

   A. The new legislation received Third Reading and Royal Assent on May 20, 2021. Key parts of the bill (including appeals and timelines) were proclaimed on Oct 29, 2021 - so they are in full force and effect. This means a development application received after Oct 29 falls under the new system.

   The portions of the legislation relating to the Capital Planning Region and attaching development agreements to permits have not yet been proclaimed and therefore are not in effect at this time. Consultation, including engagement on the draft regulations, will be launched soon.

   The Department of Municipal Relations will continue to work with all municipalities, planning districts and other key stakeholders to ensure they understand the requirements of the new legislation and will offer advice in implementing changes. The department is also in the process of updating the Planning Handbook which will provide detailed guidance to local planning authorities in interpreting and implementing the new changes.

6. **Q. When do municipalities and planning districts start applying the new provisions to development applications?**

   A. Development applications that were received as of Oct 30, 2021 are to be processed in accordance with the provisions of the new legislation. Applications that were applied for or were in process prior to that date, are to be proceeded with under the previous system.

7. **Q Are conditional use or variance applications and decisions subject to the timelines and appeal provisions of the new legislation?**

   A. No. Conditional uses and variances are not subject to the new legislation.

   However, Conditional Uses for large-scale livestock operations as well as aggregate quarry operations are still subject to the appeals and timelines that were established in The Planning Act in 2018.

   The new legislation allows conditional use approvals to be extended for up to a maximum of three years to align with subdivision approvals (prior to this legislation, it was only two years maximum) before they expire if not acted upon.

8. **Q. What is being done to ensure that the legislation is effective?**

   A. A stakeholder working group has been formed to provide input on drafting the regulations that are required by the new legislation. In addition, a new provision has been included that requires a three year review period which culminates with a report being tabled in the Legislature within a year.

   Municipalities and planning districts will continue to exercise their authority in establishing local by-laws, standards and requirements. It is more important than ever to ensure local planning by-laws, application forms, and guides are current to, to avoid unnecessary appeals and delays in decision making. Providing written reasons for rejections or denials

of development proposals will also support a consistent, transparent and effective decision-making process.

PLANNING APPEALS - GENERAL

9. Q. What are the main changes to planning appeals?

A. The new legislation introduces more fairness into the planning system by allowing applicants to appeal decisions to the Municipal Board on secondary plan amendments, zoning by-laws and subdivisions, including conditions on approvals of zoning bylaws, secondary plans, subdivisions and development agreements, and missed timelines.

The Bill also aligns with existing provisions in The Planning Act to allow City of Winnipeg residents to appeal re-zonings (and secondary plan by-law amendments). To appeal, there must be second objections from 25 eligible voters (or 50% of the registered owners within 100m).

10. Q. Why do councils have to provide written reasons for rejections of development proposals? Does the new legislation remove decision-making authority from councils?

A. The new legislation requires that planning authorities provide written reasons for rejections or denials of development proposals to support a consistent, transparent and accountable decision-making process. Reasons for rejection should be based on non-conformance or non-compliance with planning by-law policies, standards and criteria in local by-laws and supported by sound technical information. The Province of Manitoba is available to work with municipalities and planning districts to provide training and support around standards for documenting written reasons for decisions. Please contact your local Community Planning office for assistance.

11. Q. How does the new appeal system compare to other jurisdictions?

A. The new legislation brings Manitoba in line with other jurisdictions across Canada that have adopted provincially mandated independent appeal tribunals at the local, regional and province wide level. The Manitoba approach is tailored to what is needed to grow our economy and we will continue to ensure that good practices are followed and updated.

12. Q. Shouldn't an appellant be required to state their reasons for appealing a decision of council? And, how can frivolous or unnecessary appeals be prevented?

A. The Province recognizes that requiring the appellant to give stated grounds for appeal may help narrow and limit the scope and extent of appeals brought to the Municipal Board. The requirement that a Notice of Appeal specify grounds is currently being considered as part of the Board review process.

In addition to administrative screening, the Province is also carefully reviewing the power of the Board to dismiss a matter by adjudicative order without a hearing if the appeal is out of time, frivolous, vexatious, commenced in bad faith, or where an appeal deals with matters that are outside the Board's jurisdiction.

13. Q. Won't the new appeal provisions under the new legislation result in increased costs and burden to municipalities and planning districts?

A. The intent of the new legislation is to enhance the transparency of planning processes. The new legislation emphasizes the need for local planning decisions to be based on clear and published standards and requirements; and includes a new requirement for municipalities and planning districts to provide documented rationale (reasons) for when a planning application is rejected.

Municipalities and planning districts will continue to exercise their authority in establishing local by-laws, standards and requirements. All planning appeals will be evidence based, which benefits all parties, including municipalities.

The Province anticipates that planning appeals would only be required because the matter could not be resolved within the processes established by municipalities and planning districts (i.e., there is no clear local standard or requirement that exists to justify local decision or decision is inconsistent with local by-laws and standards).

The result of this new system will be that planning processes are more clear to support development related economic growth and municipal revenue.

14. Q. Who will have to pay the cost of appeal hearings? Will appeals increase municipal staff and administration time as well as legal fees and other expenses?

A. The Province does not anticipate a sustained increase in appeals where planning authorities adhere to mandated timelines and make decisions consistent with their approved by-laws.

If a matter went to appeal, The Municipal Board Act currently gives the Municipal Board the discretion by whom and to whom it orders payment of the costs of any proceeding before the Board. The new legislation extends this authority by giving the Board discretion to assign applicant costs against the planning district or municipality where there have been unreasonable delays in dealing with planning applications.

15. Q. How will the new appeals impact public participation?

A. The Planning Act and The City of Winnipeg Charter already have in place a number of opportunities for public participation in planning decisions. Municipal Board hearings are open to the public, which allows for the opportunity for representation at these hearings.

The new legislation also aligns with existing provisions in The Planning Act to allow City of Winnipeg residents to appeal re-zonings (and secondary plan by-law amendments). To appeal, there must be second objections from 25 eligible voters (or 50% of the registered owners within 100m).

16. Q. Will the new appeal provisions under Bill 37 result in municipalities and planning districts being overburdened by planning appeals?

A. Planning appeals are intended to be a last resort where parties cannot come to a reasonable solution. Municipalities and planning districts will continue to exercise their authority in establishing local by-laws, standards and requirements. All planning appeals will be evidence based, which benefits all parties, including municipalities.

As discussed with stakeholders, a number of matters will be addressed in operational procedures, policy, regulation and training materials. Information related to appeal parameters to ensure the scope of an appeal aligns with the development plan or provincial land use policy will be developed. As well as, mechanisms will be put in place to mitigate frivolous appeals, including municipal best practices for resolving disputes before they reach the appeal stage.

PLANNING APPEALS – MUNICIPAL BOARD

17. Q. Does the Municipal Board have the expertise to hold hearings on planning issues? Who will be on the Board?

A. The Municipal Board was established in 1926 and has many years of experience on a wide variety of municipal matters, including hearing zoning and subdivision appeals.

What is changing is that the Board will be mandated to hear appeals from planning applicants whether they are located inside or outside the City of Winnipeg.

The Board is an independent body appointed by Provincial Order-in-Council. Municipal Board Members are from various regions of the Province (urban and rural) and generally have experience in one or more areas of the Board's jurisdiction. The Province will ensure that the Municipal Board continues to have members appointed with knowledge of planning and development.

The appellant and the planning authority may bring their own experts to the hearing, as they deem necessary. These experts may make presentations at the hearing and can cross-examine witnesses. All presentations and questions are made under oath or affirmation. The Board then considers the case as presented and renders its written decision.

18. Q. Does the Municipal Board have the capacity to take on this expanded role?

A. The Province is working with the Municipal Board to ensure it has the processes and ability to manage an increase in its caseload. This includes increasing the number of board members, additional staff and a review of the current Municipal Board operations and structure with an objective of ensuring efficient consideration of all matters as well as training for Municipal Board members and comprehensive information for municipalities, landowners and the public. The Province and the Board are also currently investigating forms of case management and/or mediation to assist in more efficiently dealing with appeals.

19. Q. What criteria will the Municipal Board use to overturn local planning decisions?

A The Municipal Board is bound by legislated requirements for planning approvals. The Board must ensure that a proposal is consistent with the applicable development plan, secondary plan and zoning by-law, and related matters. The Board renders a planning decision in accordance with the legislation and after considering all of the evidence it has been presented. Board decisions have to respect the local development plan and zoning by-laws which were based on local input.

The current Municipal Board review process will establish clear policies and rules related to the scoping of planning appeals. This framework will support the timely management of planning appeals by the Board.

20. Q. Can someone appear at a Municipal Board hearing and object, even though they had not initially objected or been a part of the initial local process or hearing?

A. Usually, appeals brought by an appellant are those persons or parties who have already been engaged in the process. That said, the Board has no objection in requiring the appellant/applicant/referrer to state how and when they participated in the process before the local authority.

The Province has engaged professional consultants to review Municipal Board policies and procedures. The matter of determining “appellant” status and requirements to participate in planning appeals will be addressed in this review.

21. Q. How will the Municipal Board ensure consistent interpretation and decision making?

A. The Municipal Board continuously reviews its decisions, but its decisions are on a case-by-case basis based on the evidence presented. The new legislation also requires that a rationale for decisions be documented. This will improve the record of decisions and increase transparency upon which consistency can be maintained and improved.

22. Q. How is the Municipal Board funded? And, what resources will be available to the board?

A. The Municipal Board is funded by the Province, but it also charges appeal application fees (which are under review). The new legislation allows the Board to assign costs on certain

matters. The Province is in discussion with the Board to ensure the Board is capable of responding to any increase in planning-related appeals. The Province is also increasing the resources provided to the Municipal Board by 42% to enhance the Board's capacity in processing the appeals and providing timely hearings.

SERVICE STANDARDS (PLANNING PROCESS TIMELINES)

23. Q. What are the new planning service standards or timelines under The Planning Act and The City of Winnipeg Charter?

A. Most planning applications are decided by local councils, designated committees, or planning district boards within the timelines outlined in the new legislation. If the applicant and the planning authority are working collaboratively there should be no need to appeal to the Municipal Board if a timeline is not met.

The timelines prescribed in Bill 37 vary based on the type of application, ranging from 20 days for the acceptance of an application to 150 days as listed below:

- 20 days (acceptance of completed development permit)
- 60 days (minor subdivision, Municipal Board report/decision)
- 90 days (development agreement)
- 120 days (Municipal Board to schedule hearing)
- 150 days (secondary plan, zoning, subdivisions)

Note: Timelines are calendar days, not working days.

For more detail on timelines, see the *Bill 37 Guide* on our Website)

24. Q. What is the purpose of introducing new mandatory timelines on planning processes and decisions?

A. Timelines on planning processes are not new in Manitoba. The Planning Act and The City of Winnipeg Charter already require municipalities and planning districts to meet certain timelines (i.e., public hearing notice). Timelines ensure timely decision making. For example, in the rare circumstances where an applicant and the municipality or planning district board have reached an impasse, the applicant can request that the matter be resolved by an impartial third party – the Municipal Board. This change will enhance client services and prevent planning processes from becoming bogged down in bureaucracy and red tape.

Timely processing of applications is good for the economy and provides the certainty needed for development and investment.

25. Q. When does the 'clock' start and stop for the timelines on a development application?

A. The timeline ('clock') starts when a development application is accepted as complete by the local planning authority. The timeline for a subdivision application outside of the cities of Winnipeg and Brandon starts when the municipality receives the planning report from the approving authority. Generally speaking, timelines end at the date of council's decision on the matter or the date of sending its decision in writing to the applicant.

26. Q. How will timelines be enforced?

A. The new legislation allows an applicant to access an independent third-party in the rare case where conflicting viewpoints can not be resolved by both parties. An applicant can appeal a missed timeline to the Municipal Board. The Board has the power to assign costs to the planning authority if there were unreasonable delays in processing the application.

27. Q. What happens if the developer and municipality are unable to come to terms on a development agreement within the mandated timeline?

A. Municipalities should publish clear requirements and guidelines so that developers know in advance what may be required of them. Both parties have positive reasons to reach an agreement. However, if the applicant believes the municipality is making demands that are not consistent with published guidelines, standards or criteria, or is unnecessarily delaying the process for reaching an agreement, they may appeal to the Municipal Board.

28. Q. Why will the new legislation enable development agreements to be attached to development permits? (NOTE: this part of the legislation has not yet been proclaimed).

A. Municipalities, including the City of Winnipeg and City of Brandon formally requested that the Province address their concerns. Enabling development agreements as part of the development permit process may streamline subdivision or rezoning processes by allowing municipalities to defer certain engineering or site design considerations to the development permit stage. It is expected that this provision will be used mostly in older, already developed areas.

The Department has further consulted on what limits and parameters might be placed around the use of development agreements attached to permits. The Province expects to adopt a new regulation to establish limits on when this provision can be used

29. Q. Are the appeals and service standards prescribed in the new legislation applicable to all municipalities and planning districts across the province?

A. Yes. One of the key objectives of the new legislation is to create a more consistent planning framework across the province.