



Meeting Date: September 21, 2022

Submitted by: Michael Di Lullo, CAO

Report No: CAO-27-2022

Subject: Bill 3, Strong Mayors, Building Homes Act 2022

Recommendation:

THAT Report CAO-27-2022, re: Bill 3, Strong Mayors, Building Homes Act 2022 be received as information.

Purpose:

To provide information to Council in regards the passage of Bill 3, Strong Mayors, Building Homes Act 2022.

Background:

On September 8, 2022, the Ontario government passed the Bill 3, Strong Mayors, Building Homes Act, 2022 that provides the mayors of Toronto and Ottawa with new extraordinary executive powers within their respective municipalities. The new legislation comes ahead of municipal elections set to take place across Ontario this fall as indicated in correspondence from the Minister of Municipal Affairs in Housing – see appendix A.

Analysis:

Note: John Mascarin, the municipality's integrity commissioner and Jennifer Bilas from the Aird & Berlis LLP prepared a concise summary of the shift to the strong mayor municipal governance model.

The legislation presents a very significant shift within the system of local governance in Ontario, moving from the historical “weak mayor” system, characterized by compromise and concession amongst an elected council, to a centralized executive power emanating directly from the office of the mayor.

In its recent election campaign, the Progressive Conservative Party of Ontario promised to tackle the housing crisis. It apparently has decided to do so by reallocating the authority and responsibility to the mayors of the two largest cities in the province. The mayors of these two cities will be granted strong mayor powers because, as Minister Clark noted, “over one-third of Ontario’s growth in the next decade is going to happen in Toronto and Ottawa,” and these cities are shovel-ready, committed to growth and to cutting red tape.

However, mere days after the introduction of Bill 3, Premier Ford announced that the strong mayor powers – initially earmarked expressly for only the two cities in dire need of, and ready to accommodate, affordable housing development – would likely be extended to other municipalities across Ontario.

Current System

Until this legislation was passed, the weak mayor system has been the traditional form of local governance across all jurisdictions in Canada. Similar to other provincial statutes across the country, Ontario’s *Municipal Act, 2001* and *City of Toronto Act, 2006* had operated on the same system, whereby the authority of the head of council to take action and make decisions was quite limited. Instead, council exercised their authority collectively with mayors voting powers on matters similar to any other member.

Prior to the recent amendments, the head of council was largely the figurehead of the executive branch of municipal government. Presiding over council meetings, providing leadership, information and recommendations to council, and representing their municipality at official functions are among the statutory responsibilities granted to the head of a municipal council.

In the weak mayor system, a mayor is but one member of council, and, like every other member of council, has only a single vote. To achieve their agenda, a mayor has historically had to foster and build a culture of collaboration and compromise within council. Council must work together in concert with the mayor as a consensus-builder in order to accomplish local initiatives. The mayor acted as a facilitator in this context, encouraging debate and decision making among members of council.

Strong Mayor System

Many U.S. and European cities operate on the strong mayor model of local governance, although the specific powers a mayor is given vary by city and country. A strong mayor system, in contrast to the weak mayor system, grants the head of council additional

powers over and above those given to the other members of council. The mayor is provided with executive authority to make unilateral decisions and is not required to petition the support of a majority of the members of council.

In 2005, a strong mayor model was considered, but never adopted, for the City of Toronto by the Joint Ontario-City of Toronto Task Force, constituted to make recommendations for legislation to provide greater authority, autonomy and powers for Toronto (that eventually became the *City of Toronto Act, 2006*).

Of further interest is that neither Toronto nor Ottawa asked for such powers. Toronto Mayor John Tory has indicated his support for the new powers, while outgoing Ottawa Mayor Jim Watson has taken the opposite view.

The specific changes introduced by legislation in Bill 3 are outlined as follows:

(a) General

The *Strong Mayors, Building Homes Act, 2022* adds a new Part VI.1, titled Special Powers and Duties of the Head of Council, to each of the *City of Toronto Act, 2006* and the *Municipal Act, 2001* (in Schedule 1 and 2 respectively). It also makes complementary amendments to the *Municipal Conflict of Interest Act* (in Schedule 3).

(b) Application to Other Municipalities

New section 284.2 to the *Municipal Act, 2001* provides that the Minister of Municipal Affairs and Housing may, by regulation, designate municipalities to which the strong mayor system will apply. This is how the province intends to extend the powers to other municipalities.

(c) Directions to Employees

Municipal staff may no longer be beholden to the elected council. The head of council will have the authority to direct employees to undertake research and provide advice to the mayor and the municipality, and to carry out duties to implement those decisions, including those of the mayor. The head of council may exercise this authority for the purposes of Part VI.1.

(d) Chief Administrative Officer

The heads of council of designated municipalities under the *Municipal Act, 2001* are assigned the powers of the chief administrative officer under section 229, which will extend to the exercise of general control and management of the affairs of the municipality for the purpose of ensuring its efficient and effective operation. This marks a monumental shift of responsibility. The chief administrative officer in a strong mayor system will be relegated to essentially the role of chief of staff to the head of council.

The mayor of Toronto is not assigned the powers of the chief administrative officer in the *City of Toronto Act, 2006*, but is given permissive authority to appoint the CAO.

(e) Structure of Municipal Organization

The heads of council are given the power to determine the organizational structure of the municipalities. This includes the power to hire, terminate or exercise other prescribed employment powers with respect to the heads of any division. Exceptions to this power apply – the mayor may not exercise this authority against specified statutory officers, including the clerk/deputy clerk, treasurer/deputy treasurer, Integrity Commissioner, Ombudsman, the chief building official, the chief of police, and the fire chief, among others.

(f) Local Boards and Committees

The statute authorizes the mayor to appoint the chairs and vice-chairs of local boards and committees, and to establish, dissolve and assign functions to committees.

(g) Provincial Priorities

The key to the entire exercise of the strong mayor powers is that they can only be used to advance provincial priorities. Thus, Cabinet may, by regulation, prescribe provincial priorities. The mayor's exercise of power to:

- consider matters at meetings to advance provincial priorities, despite procedural by-laws; and
- exercise veto authority,

must be used in alignment with such any prescribed provincial priorities.

(h) Powers re: Meetings

Notwithstanding what the municipal procedure by-law requires, the head of council may require their council to consider a particular matter that could advance a prescribed provincial priority.

(i) Mayor's Veto Powers

The amendments provide the mayor with certain limited veto powers which (as noted above) can only be exercised with respect to matters related to provincial priorities.

The veto powers apply to by-laws that are enacted under:

- either the *City of Toronto Act, 2006* or the *Municipal Act, 2001* or their regulations;

- the *Planning Act, 2001* or regulations made thereunder; or
- any other prescribed statutes or regulations or provisions thereof.

The mayor may exercise a veto power, in writing, within two days of council approval of the by-law, if such by-law could interfere with a provincial priority.

If the mayor exercises this power, the by-law is deemed to not have been passed by council.

(j) Council Override of Veto

A council can override a mayor's veto with a two-thirds council vote. The head of council may vote as a member of council in a vote to override a veto. If council attains the required majority to override the veto, the by-law is deemed to have passed on the day the council votes to reverse the mayor's veto.

(k) Immunity

Any decision made or power exercised granted under the new Part VI.1, cannot be quashed or judicially reviewed for unreasonableness, if made legally and in good faith.

(l) Vacancy in Office of Head of Council

The filling of a mayoral vacancy on a council can no longer be done by appointment. The amendments now require a by-election to fill the office of mayor.

(m) Delegation

Subject to any prescribed limitations, the head of council may delegate their powers and duties under Part VI.1 with respect to the chief administrative officer; organizational structure; local boards; and committees.

(n) Municipal Budgets

The municipal budget process has always been transparent. However, the new law gives authority to the head of council to prepare and present the budget to council for consideration, which council may adopt or propose amendments. The same mayoral veto and council override powers have been established vis-a-vis the budget.

(o) Regulations

While the Lieutenant Governor in Council has the authority to establish provincial priorities, the Minister of Municipal Affairs and Housing is given broad powers to prescribe various other matters by regulation under both the *City of Toronto Act, 2006* and the *Municipal Act, 2001*, including which municipalities may be designated to

have the strong mayor powers under Part VI.1. The Minister is granted the authority to make a regulation retroactive to a date not earlier than six months before the date it was made.

Alternate Resolution

The intent of this report is to inform council of the pending legislative changes to the Municipal Act affording additional powers to the Head of Council. Without proper consultation, the Bill has received passage and will become law ahead of the upcoming municipal election. Many municipalities are contesting this Bill and expressing their viewpoints in opposition.

In lieu of the staff recommendation to receive the report as information, staff have also drafted an additional resolution should council deem appropriate to forward to the Premier, Minister of Municipal Affairs and AMO in opposition to the new legislation.

Conclusion

Upon re-election, Ontario's provincial government set a target to build 1.5-million homes over the next 10 years. The government cites development restrictions, development costs, and permit delays as a culprit for lack of affordability and supply of housing. The *Strong Mayors, Building Homes Act, 2022* was presented as a means of providing "additional governance tools and increased powers to align municipal decision-making with provincial priorities."

Although the strong mayor system of governance can be seen as a threat to municipal democracy by removing power from elected councillors, proponents argue that the veto and override acts as a "system of checks and balances."

The effectiveness of the strong mayor proposal to "solve the housing crisis" or any of the other to-be-prescribed provincial priorities will largely be dependant on the mayor elected. If this fall's municipal elections see mayors sworn in who are not proponents of high-density development or expensive public transit systems, or whatever other provincial priorities may not be local priorities of choice, the new legislation may not meet the initial goals (much less any other future-envisaged objectives) it was intended to achieve.

Whether this legislation is extended beyond Ottawa and Toronto, it is imperative that there be proper dialogue with council and senior municipal administrators to deal with issues as a result of placing the head of council in the position of final determination on municipal and administrative issues. This should only be used as a "last-resort" option if the need arises.

Financial Implications:

N/A

Strategic Plan:

This matter aligns with following strategic priority:

- Responsive Municipal Government

The Provincial Government is making changes to the Municipal Act to advance the needs of municipalities. Municipalities should have opportunity to provide input as it relates to changing the system of governance at the local level.

Attachments:

Appendix A – Correspondence dated August 10, 2022 from MMAH

Appendix B – Proposed Resolution opposed to Bill 3 Strong Mayors, Building Homes Act, 2022