

The Planning Amendment and City of Winnipeg Charter Amendment Act - What's In, What's Out and What's Next?

Authors: John Stefaniuk, K.C.

published 10/20/2021

Update: Since the posting of this article most of *The Planning Amendment and City of Winnipeg Charter Amendment Act* has been proclaimed into force effective October 29, 2021. The regional planning authority and major development agreement sections of the legislation are intended to be proclaimed at a later date, following announced government consultation on associated regulations.



Manitoba Bill 37, *The Planning Amendment and City of Winnipeg Charter Amendment Act* ("Bill 37") was passed by the Legislature on May 20, 2021. Does that mean that these amendments are now (at the time of writing) law? Well, no. Although enacted, Bill 37 provides that it does not come into force until it is "proclaimed". That means that there still needs to be an order of the Lieutenant Governor in Council (i.e., Cabinet) that declares the amendments to be in effect. In fact, the proclamation (if it comes at all) can apply to all of Bill 37 or just some of the Bill.

Bill 37 was not without controversy. It was first introduced as Bill 48 in the previous session of the Legislature. Its genesis was a bit uncertain. Bill 48 included provisions that some (but not all) municipalities wanted, but were unpopular with some (but not all) developers. It included provisions that some (but not all) developers wanted, but were unpopular with some (but not all) municipalities. Some provisions granted additional authority to municipalities (such as allowing the City of Winnipeg to require development agreements on variance and conditional use approvals), some were seen as removing local authority (such as regional planning districts, and Municipal Board appeals on certain planning decisions). Some of the comments received by Government were reflected by changes made in Bill 37. Additional changes to the Bill were made at the legislative committee stage, before Third Reading, based on submissions made to the committee.

Bill 37 contemplates that there will be a number of further actions. The most significant action will be the introduction of regulations to put meat on the bones. (After all, the devil is in the details). Government has committed to a consultation process following the posting of draft regulations, as they become available. It is unlikely that Bill 37 will be proclaimed into

force until at least most of the regulations are ready to be instituted at the same time.

Bill 37 also creates a series of new duties for the Manitoba Municipal Board. These range from considering ministerial references on the formation of new regional planning bodies to the hearing of new categories of planning appeals (for example, failure on the part of a municipality or planning district board to meet service standards in the form of mandatory timelines for processing applications). It is unlikely that Bill 37 (or, at least, the parts of Bill 37 that create these new appeal rights) will be proclaimed into force until the Municipal Board has the necessary horsepower in terms of members and staff support to process appeals, and a set of rules applicable to the hearing of these appeals.

In brief, Bill 37, as passed, continued most of what was in the original Bill 48:

- The Bill creates the concept of regional planning. The Capital Planning Region is created, stretching from Dunnottar to Niverville, and from St. Francois Xavier to Taché, the same communities currently in the Winnipeg Metropolitan Region. The Minister may create other regions by regulation.
- A region must develop a regional plan and may administer municipal planning and building by-laws. Local planning by-laws must be consistent with the regional plan.
- Municipal Board hearings must be held within 120 days and report within a further 60 days.
- Municipal Board appeal rights on municipal planning decisions are greatly expanded. Where the original legislation largely limited appeal rights to developer applicants, the appeal rights were extended to other participants in the hearing process (a major issue raised by residents and resident groups).
- Conditions on approvals that go beyond legislative jurisdiction may be appealed to the Municipal Board.
- Conditional use and variance approvals may be extended for up to 3 years.
- Winnipeg may now require development agreements on conditional use and variance approvals (like other municipalities).
- Development agreements may be required for building permit applications for a “prescribed major occupancy” (to be defined by regulation). Definitions related to prescribed major occupancy were tweaked on second reading.

Key changes between Bills include:

- There must be consultation by the Minister with municipalities before creating a planning region.
- Agreement among municipalities on their financial contributions to regions is required.
- Certain Winnipeg rezoning and secondary plan decisions may be appealed by citizens to the Municipal Board.
- The Minister must review the amendments dealing with public participation within 3 years.

The draft regulations are expected to be shared on the government’s regulatory portal for “public comment”. Whether there will be other, meaningful consultation with major stakeholder groups remains to be seen.

The Municipal Board’s approach to appeals will be critical to the workings of these new amendments. The tight hearing deadlines might require multiple Board panels hearing

matters simultaneously (and increased staff support). That will require the appointment of new, qualified members by Cabinet, and a training process. The Board might choose to require new or altered processes on appeals.

Having a Bill come into force on proclamation gives the Government further time to reflect and to consider feedback (especially when a Bill proves to be unpopular). There is the option to further amend the legislation, or introduce an entirely new Bill in the next legislative session to “fix” the Bill before it comes into effect. There is also an ability to leave a Bill “unproclaimed” and later repeal and replace it. With a change in leadership in the governing party at the Legislature, that begs the question of whether there will be a legislative session before the next provincial election is called under which further amendments might be put forward.

John Stefaniuk practises municipal and planning law in the Manitoba based firm Thompson Dorfman Sweatman LLP

This article was written for Municipal Leader magazine and is reproduced with permission.

DISCLAIMER: *This article is presented for informational purposes only. The content does not constitute legal advice or solicitation and does not create a solicitor client relationship. The views expressed are solely the authors' and should not be attributed to any other party, including Thompson Dorfman Sweatman LLP (TDS), its affiliate companies or its clients. The authors make no guarantees regarding the accuracy or adequacy of the information contained herein or linked to via this article. The authors are not able to provide free legal advice. If you are seeking advice on specific matters, please contact Keith LaBossiere, CEO & Managing Partner at kdl@tdslaw.com, or 204.934.2587. Please be aware that any unsolicited information sent to the author(s) cannot be considered to be solicitor-client privileged.*

While care is taken to ensure the accuracy for the purposes stated, before relying upon these articles, you should seek and be guided by legal advice based on your specific circumstances. We would be pleased to provide you with our assistance on any of the issues raised in these articles.