
HALDIMAND COUNTY

Report CSS-02-2022 Bill 3 - Strong Mayors, Building Homes Act, 2022

For Consideration by Council in Committee on November 1, 2022



OBJECTIVE:

To advise of information related to Bill 3 – Strong Mayors, Building Homes Act 2022 to allow Council to determine if the Town of Kingsville Council resolution opposing the legislation should be supported.

RECOMMENDATIONS:

1. THAT Report CSS-02-2022 Bill 3 - Strong Mayors, Building Homes Act, 2022 be received;
2. AND THAT a resolution be passed, based on the wording of the Town of Kingsville Resolution #336-08292022, and sent to the Premier of Ontario, the Minister of Municipal Affairs and Housing, the local MPP, the Leader of the Opposition, the Association of Municipalities of Ontario, the Ontario Municipal Administrators Association, the Association of Municipal Managers, and the Clerks and Treasurers of Ontario, advising of Haldimand County's opposition to Bill 3 and specifically that it is not interested in having Bill 3 apply to the Corporation of Haldimand County.

Respectfully submitted: Cathy Case, General Manager of Corporate & Social Services

Approved: Craig Manley, MCIP, RPP, Chief Administrative Officer

EXECUTIVE SUMMARY:

At the Council Meeting of September 26, 2022, Council requested that correspondence from the Town of Kingsville regarding Bill 3 Strong Mayors, Building Homes Act be listed for consideration at the November 1, 2022 meeting, and requested staff comments relative to its consideration to supporting the Town's position on this matter. This report responds to that request.

Bill 3 Strong Mayors, Building Homes 2022 received Royal Assent in September, 2022. It presents a fundamental change in the way local government operates in Ontario. The legislation is applicable first to Toronto and Ottawa, and later to other municipalities who remain unknown at this point. Recent news articles suggest that it will likely be extended to municipalities of 100,000 population or greater, but it is uncertain if it would apply to Haldimand given its population.

The legislation limits the influence and authority of ward Councillors and places executive powers into the individual Head of Council's hands with respect to financial matters and budgets, passing of by-laws, organizational structure, and hiring/dismissing key administrative positions within the County without the consent of a Council majority. The provincial government implemented the new legislation with minimal consultation. The province has stated that the main purpose of the legislation is to help meet the provincial target of building 1.5 million more homes in Ontario over the next decade, however it is still largely unknown how the legislation facilitates this goal. Proponents of the legislation believe this is the means to advancing provincial priorities in an expeditious manner where Councils have been divided on decisions related to housing and other matters in the past. Opponents of the legislation have numerous concerns with the extensive powers being provided to an individual, including: accountability of the Head of Council; disruption in the continuity of administration and operations and associated

costs; politicization of key senior positions and boards/committees removing the non-partisan role that currently exists; public transparency; elimination of the Council collective method of decision making; and diminishing the voice of individual Councillors impacting their ability to represent their constituents.

BACKGROUND:

At the Council meeting of September 26, 2022, it was requested that the Town of Kingsville resolution of Council (Attachment #2) related to Bill 3, Strong Mayors, Building Homes Act 2022 (Attachment #1) included in that meeting's Council Information Package be placed on the November 1, 2022 Council in Committee agenda for consideration. This report provides background information and context for consideration of the Kingsville resolution, due to the significance of this matter.

The Strong Mayors, Building Homes Act 2022 (Strong Mayors Act) was introduced into the legislature on August 10, 2022 and received Royal Assent on September 8, 2022. The Bill provides the Mayors of Ottawa and Toronto with new executive powers within each respective municipality through amendments to the City of Toronto Act and the Municipal Act. "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."

Although the main purpose of Bill 3, as described by the provincial government, is to tackle the housing crisis in Ontario, it remains unclear as to why this avenue was selected to address housing rather than amendments to the Planning Act, Housing Services Act or other legislation after the detailed review of the legislation. Bill 3 itself does not mention the term 'housing' or 'development' within, but appears to provide the Head of Council authorities to make decisions in circumstances of a divided Council where it aligns with identified Provincial priorities including housing. From a non-partisan administrative perspective, the legislation creates a new model of local governance in Ontario that appears to be imposed onto selected Councils, with little or no meaningful consultation to date. Building principles of a strong mayor model into legislation means that if a Mayor of an applicable municipality chooses to use the strong mayor powers, members of Council will likely have little recourse to stop them.

The current model of local governance and the Strong Mayor model are best compared by Aird Berlis as follows:

Under the current model of local government:

"the head of council (is) 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.

Notwithstanding the statutory reference to the mayor as chief executive officer of the municipality, a head of council does not have the authority, like the chief executive officer of a corporation, to unilaterally bind a municipality – a point driven home by former Associate Chief Justice Frank N. Marrocco in *Transparency and the Public Trust – Report of the Collingwood Judicial Inquiry*.

In the (current) 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.

A strong 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 other words, a Strong Mayor model takes the control over the civil service, municipal budgets and by-law approval (through veto), out of the hands of an elected Council and puts it into the hands of the individual who is elected as Mayor. Successful Mayors demonstrate leadership and gain authority through their ability to foster collaboration with members of Council. In Haldimand, this model has largely been successful in achieving consensus on key issues and directions.

Below, the unilateral powers provided to the Mayor are outlined relative to the impact to Haldimand County if the current legislation were to be extended here.

Powers respecting meetings

If there are related provincial priorities prescribed, the Mayor will be able to require Council to consider a matter at a meeting, without the item being on the agenda, in order to advance the priority. This is despite the Procedure By-law which requires a notice of motion if the item is not listed on the agenda. The purpose of the Procedure By-law is to ensure public transparency so constituents know the topics forming the Council agenda.

Veto powers

If there are related provincial priorities prescribed, the Mayor will have veto power with respect to by-laws under any prescribed Act or regulation including the Strong Mayors Act, the Planning Act and the Municipal Act. In other words, if the Mayor feels that a by-law that has passed at Council does not align with provincial priority, the Mayor can provide notice within two days of its passing, that he/she intends to veto the by-law. If a by-law is vetoed by the Mayor, Council may override the veto within 21 days if two-thirds of the members of council vote to override the veto including the Mayors vote.

A veto made legally and in good faith will be immune to judicial review based on the grounds of unreasonableness. This means that anyone objecting to it will not have an appeal mechanism.

Duties and powers respecting budgets

The legislation provides the sole power to the Mayor to propose and adopt the municipal budget. More specifically, the Mayor is given the power to present a budget to Council. Council may amend the proposed budget, however the Mayor then has authority to veto that amendment. Then, Council may override that veto with two-thirds of Council votes, but in this case the legislation does not provide for the Mayor to be included in the override vote.

Powers respecting the Chief Administrative Officer, organizational structure of the municipality and other employment matters

The Mayor will have sole authority to hire or dismiss the CAO and to assign the CAO duties in addition to the overall management of the County’s operations.

The Mayor will have the sole authority to determine the organizational structure of the municipality. In addition, the Mayor will have sole authority to hire/fire any department head or other part of the organizational structure that he/she determines. The exceptions to the Mayor’s authority to hire/fire include statutory positions such as: Clerk and Deputy Clerk, Treasurer and Deputy Treasurer, Integrity Commissioner, Chief Building Official, Fire Chief, Medical Officer of Health.

The powers with respect to dismissing an employee may be exercised despite when that person started their employment.

Powers respecting local boards

The power to appoint the Chairs and Vice-Chairs of local boards is assigned solely to the Mayor.

Powers respecting committees

The power to establish or dissolve committees of Council is assigned solely to the Mayor along with the power to appoint chairs and vice-chairs to those committees and the power to assign functions to committees.

Other

The Mayor may direct County staff, in writing, to undertake research on policies and programs for the Mayor's purposes, and may direct staff, in writing, to carry out duties or implement decisions made by the Mayor.

The Mayor shall make any prescribed information or documents available to the public.

The Mayor may delegate their powers under the following areas: powers respecting CAO's; organizational structure; and local boards and committees. The legislation does not specify who these powers may or may not be delegated to.

The Kingsville Council, through its resolution, took an official stance opposing the new legislation after the Premier of Ontario advised municipal leaders at the Association of Municipalities of Ontario annual conference that the legislation would be extended beyond the Cities of Toronto and Ottawa. Most recently an announcement was made by the Province that approximately one year after the 2022 municipal elections, the Strong Mayor model will be rolled out to other large Ontario municipalities. Numerous other municipalities have recently publicly denounced the Strong Mayor model of local government. Kingsville Council is requesting support of its resolution opposing Bill 3.

ANALYSIS:

It is important to note that the Strong Mayor model of government exists in areas of the U.S., however the Council-Manager system currently existing in Ontario is the most prevalent. Of interest, neither Toronto or Ottawa asked for these additional powers. Ottawa in particular has indicated it does not intend to use them. The Minister of Municipal Affairs and Housing has been given delegated authority to select other municipalities to which the legislation will apply. There hasn't been any direct municipal consultation opportunity afforded to Haldimand County throughout this process to date. Various associations have provided comments to the Ministry on the proposed regulations, however, the consultation period included a 10 day window during municipal and school board elections to respond to a complex topic where vague regulations were provided. It is unknown if, as the powers are extended to other municipalities including Haldimand, if there will be prior consultation.

Staff has reviewed Bill 3 and the legislative process of debate and questions to attempt to fully understand the Strong Mayor model introduced by the Province. In addition, several legal briefs have been reviewed and participation took place at a recent workshop where an expert on local governance models and an U.S. expert on the Strong Mayor versus Council-CAO models of government presented information. It should be noted that regulations have not yet been finalized accompanying the amendments to the aforementioned Acts as a result of Bill 3, however, the intent of the Bill is quite clear as described above. The current model of government is a Council driven organization whereas the Strong Mayor model is Mayor driven. In staff's research, it is quite evident there is more opposition to the Bill than there seems to be support.

Benefits of Strong Mayor System

Proponents of the Strong Mayor model cite that because the system allows for a Mayor to make unilateral decisions without the support of Council that it expedites the decision making process. This can be particularly effective when there is a divided Council that cripples the ability for progress. By extending those powers to hire (and fire) the CAO and senior staff, the intent is that senior management

work directly for the Mayor rather than working for all of Council as a whole, and implementation of the Mayor's decisions will also be expedited.

The province has stated that the main purpose of the legislation is to help meet the provincial target of building 1.5 million more homes in Ontario over the next decade, however, it is still largely unknown how the legislation facilitates this goal. Proponents of Bill 3 cite the fact that it will move housing and other provincial priorities forward by allowing the Mayor's will to take precedence over an unwilling Council with checks and balances offered through the form of the veto process. It would appear that the province wants to address the housing crisis somewhat through changes to mayoral powers rather than through amendments to the Planning Act the Housing Services Act or other relevant pieces of legislation. However, Bill 3 itself does not make any reference to housing and it is not evidently clear how a provincial priority is defined or communicated officially through changes to mayoral powers rather than through amendments to the Planning Act, the Housing Services Act or other relevant pieces of legislation.

Risks of Strong Mayor System

Impact on Local Democracy

Critics of Bill 3 believe it threatens local democracy by diminishing the vote of elected ward councillors. The Mayor, under the new system, will have sweeping powers with respect to presenting and approving annual budgets, vetoing by-laws and other decisions that are felt not to align with provincial priorities, advancing agenda items outside of the Procedure By-law, and directing municipal staff at any level to research and implement individual priorities. The current system requires all of the above items to be decided using a Council consensus or majority system where each member of Council, including the Mayor, has one equal vote. In removing the equality of votes, it diminishes the influence and the voice of individual Councillors, thus indirectly removing the voice of the people who elected that Council member.

It is important to note that regulations associated with the legislation are expected to be finalized in the coming weeks. It is anticipated that the regulations will broadly identify the provincial priorities and as such, a large portion of Council business could be argued to align, or not align, with those priorities. This has the potential to allow the Mayor to override many key decisions historically made by Council collectively.

Politicization of Human Resources and Committees/Boards

Another risky element of the new legislation is the authority given to one individual over organizational structure, senior level management and boards and committees. The Association of Municipal Clerks and Treasurers state "A stable, continuous public service has been a hallmark of Canadian government administration. There is a significant possibility that this consistency is threatened by the changes to senior administration appointments."

There is concern that the role of the CAO as an experienced municipal professional leader who thoroughly understands municipal law, human resource law, and financial management is exchanged for a CAO who becomes a political appointee, working for the political interests of the Mayor under the new system. The traditional model of separating politics and administration through the CAO remaining politically neutral and working for all of Council is replaced with the CAO having primary allegiance to one individual. Rather than having an organizational head who focuses on meeting the goals and objectives of the collective Council, this model makes it legally acceptable for the CAO to prioritize an individual politician's agenda before the interest of the organization. If that agenda is not in the best interest of the public, it can be very damaging to a community and a municipal organization.

Currently, the CAO is sole employee of Council and is responsible for hiring/firing and assessing the performance of Department Heads. This structure ensures that the CAO provides independent and objective advice to the Council as a whole and their employment is based on having the confidence of

the Council rather than simply one individual member of it. It also ensures that Department Heads similarly provide objective information Council needs for its decision-making. The changes in Bill 3 will result in 'politicization' of the senior civil service as job security will be tied to alignment with Mayoral objectives. Experience in US jurisdictions with a strong mayor system is it leads to a weak CAO and potentially ethical challenges. The current model of Council/CAO promotes collaboration between every member of Council and the senior management team. This degree of collaboration is jeopardized under a Strong Mayor model.

From a staffing perspective, it is widely recognized in the current environment, the difficulty in recruiting experienced and qualified municipal executives and staff across Canada. The Strong Mayor model will only exacerbate that problem, impacting staff retention, with the success of municipal organizations like Haldimand County suffering in the end.

The same philosophy applies to committees and local boards. There is a risk of politicizing the committees and boards to significantly shift their purpose to a focus of advancing the Mayor's agenda only. The model provides a significant incentive to appoint individuals who will be supporters of the Mayor.

Lack of Continuity in Operations/Projects and Associated Costs

The third significant impact of the legislation is the lack of continuity it will potentially cause for the organization and the community. The potential exists for a new Mayor every four years, which under a Strong Mayors model, presumably will bring with it a new CAO and/or Senior Management Team, and new committees and mandates every four years based on an individual platform rather than the collective priorities of Council. This degree of change is very disruptive to an organization in terms of current project management, long range planning, staff retention, and the impact on re-establishing policies and processes each term of Council. Collectively these impacts can significantly interfere with the internal health of a workplace. For organizational effectiveness, a non-partisan administrative leadership and non-partisan committee representation is necessary.

This lack of continuity, on a potential four year cycle, is a pitfall of the new legislation that will undoubtedly come with additional costs to the municipality and its taxpayers. The significant administrative capacity required to reset or pivot the organization, potentially every four years will be disruptive and costly.

Transparency and Accountability

The new legislation allows the Mayor to raise an item of business at a meeting, without the item being listed on an agenda, if it will advance provincial priorities and despite the Procedure By-law. The importance of the Procedure By-law and listing items on an agenda in advance is to allow notice to the public of the items being discussed so they are aware, may attend or provide comment on matters. Removal of this requirement negatively impacts public transparency.

The Strong Mayor model of governance emulates higher levels of government in many ways where a Premier or Prime Minister exists and where there is a party system. The difference is, the head of government at these senior levels is part of a political party accountable to the party with an expectation that party ideology will always be adhered to. The provincial model also includes an official opposition to hold the party in power accountable. The Strong Mayor system of local government will see one individual given powers where a caucus or party ideology typically does not exist and is replaced with an individual's platform or objectives. The official opposition that holds any weight in forcing accountability is also non-existent and any role of accountability that individual Council members may currently play is diminished under the new system. In addition, creating politicized senior staff positions removes another layer of informal accountability that exists internal to the municipal administration. The effectiveness or ineffectiveness of the Strong Mayor model will largely rely on the individual elected as Mayor. It has the potential to significantly shift the current municipal model into one with fewer checks

and balances, eliminating non-partisan politics at the local level and potentially, in the hands of the wrong individual, result in an abuse of power.

The Town of Kingsville is requesting support of its resolution opposing the Strong Mayors legislation. If Council wishes to support this resolution, it should pass a resolution to do so directing staff to submit the opposition to the Minister of Municipal Affairs and Housing, the Premier of Ontario and relevant municipal associations. The options available to Council with respect to this report are as follows:

1. Do not oppose the legislation and receive the report as information. In essence, this is a show of support for the legislation as presented by the province.
2. Pass a motion that requires Council to debate the use of the Strong Mayors legislation in Haldimand County, setting limits on how and when it will be utilized, and clearly defining when the Mayor may exercise the executive powers laid out in the legislation. It should be noted that it is still unclear, in the early stages of this legislation, whether a resolution to set parameters for a specific Council will override the legislative effect of Bill 3. At a minimum, Council could advise the Ministry that they don't support the legislation and if extended to Haldimand County, its use should be decided through public input and a Council motion outlining the parameters in which it will be used.
3. Oppose the legislation by resolution of Council and provide notification to the Minister of MMAH that Haldimand County does not wish to have the Strong Mayor model of local government imposed onto it. The staff recommendation included in the report has been prepared to reflect this option. It should be noted that the province may still impose this model onto Haldimand and at that point it would be at the discretion of the Mayor at that time to decide how they will use the powers granted to him/her.

FINANCIAL/LEGAL IMPLICATIONS:

As noted above, whenever provincial policy is forced onto a municipal government, it is inevitable that there will be costs at the expense of the local taxpayer. Turnover in human resources inevitably causes delay and additional costs. Continuity to the overall County work program, priorities and projects included, will undoubtedly be affected, with a potential four year change in senior administration at the County. The 4 year election cycle and potential for new political leaders already has the potential to pause or pivot many work plans and projects. If the senior level administrators are also changing at the same time, it is even more difficult to maintain stability within an organization, and although costs cannot yet be quantified, they unquestionably will occur. These impacts certainly have a ripple effect to the community.

There are also some very specific changes to how the budget is developed, presented and approved that could lead to fiscal instability year to year. This would also inevitably lead to the lack of a clear long range financial plan that could impact the county financial stability.

STAKEHOLDER IMPACTS:

The Strong Mayor model of government impacts everyone in the community – citizens, County staff, Council members, in one way or another and to varying degrees, as outlined throughout the report.

REPORT IMPACTS:

Agreement: No

By-law: No

Budget Amendment: No

Policy: No

REFERENCES:

1. [Aird Berlis Article - Strong Mayors – Shifting the Municipal Governance Model](#)

ATTACHMENTS:

1. Bill 3: An Act to amend various statutes with respect to special powers and duties of heads of council.
2. Town of Kingsville Council Resolution re: Bill 3, Strong Mayors Building Homes Act, 2022.