



## STAFF REPORT ACTION REQUIRED

### Technical Amendments to Toronto Municipal Code Chapter 629, Property Standards

<b>Date:</b>	March 25, 2008
<b>To:</b>	Licensing & Standards Committee
<b>From:</b>	Lenna Bradburn, Executive Director, Municipal Licensing and Standards
<b>Wards:</b>	All
<b>Reference Number:</b>	3016

#### SUMMARY

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This report recommends the adoption of standards for guards, handrails, lighting levels and hot water temperature consistent with those currently found in the Building Code, as part of Municipal Code Chapter 629, Property Standards (the “By-law”).

The Ontario Superior Court of Justice (SCJ) decision in *R. v. Rexlington Heights Ltd.* (9, 11, 25 & 27 Bergamot Avenue) in 2005, affects the City’s ability to enforce sections of the Property Standards By-law that make reference to the Building Code for compliance standards. The Judge determined that a general reference to the Building Code for any specific item in the By-law, as is the case for guards and handrails, does not preclude consideration of the Code in its entirety. The Judge also found that the Building Code cannot be applied to pre-existing buildings (subject to certain exceptions, such as for material alterations or repairs). The sections of the By-law that are affected by this decision relate to guards, handrails and lighting levels (within all types of occupancy). The inclusion of these standards within the By-law will affectively sever reliance on the Building Code as it relates to the technical standards and specifics for compliance in regard to these sections.

The standards in the Building Code are considered to be the minimum level for health and safety as it relates to new construction. Under section 15.1 of the *Building Code Act, 1992*, the City has clear authority to adopt standards for maintenance and occupancy that apply to property (as defined) erected before or after the standard is established. As most of the proposed provisions are health and safety-related, the adoption of the amendments will convey the intent to apply the current minimum standards (based on the Building Code standards) to pre-existing buildings. The amendments will introduce a level of consistency within the standards as they are applied to all property, from development through to on-

going maintenance. Also, these amendments will allow conditions within buildings that are identified as being sub-standard, to be brought into compliance.

The City Solicitor was consulted in the preparation of this report.

## **RECOMMENDATIONS**

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The Executive Director, Municipal Licensing and Standards Division, recommends that:

1. Council adopt the proposed by-law amendments to Toronto Municipal Code Chapter 629, Property Standards, substantially in the form set out in Appendix A;
2. The City Solicitor be directed to prepare the necessary bill to give effect to any recommendations adopted by Council; and
3. City staff be authorized and directed to take any other action necessary to implement the by-law amendments.

## **FINANCIAL IMPACT**

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There are no financial implications as a result of the adoption of the recommendations contained within this report.

## **DECISION HISTORY**

The Property Standards By-law, No. 930-2000, came into effect January 1, 2000, and was included in the City of Toronto Municipal Code as Chapter 629, Property Standards. Maintenance requirements and standards for guards and handrails were not specifically set out in the By-law. Instead, the By-law made a general reference to the Building Code standards for these structures.

Prior to amalgamation, all six former area municipalities had property standards by-laws, which specified standards for guards and handrails. These standards were generally based on what was contained within the Building Code or building by-laws of the day. Numerous challenges of property standards orders issued under these by-laws have been upheld upon appeal to the SCJ, citing the decision arising from *Sebok Real Estate Ltd. v. Woodstock (City)* (1978), 21 O.R. (2d) 761 (C.A.) at 762-763 (which confirmed a municipality's authority to apply such standards to pre-existing buildings and property). Prior to 1998, the distinction between the Building Code and property standards by-laws was clearer since the authority to pass and enforce a property standards by-law was contained within the *Planning Act*, R.S.O. 1990, and not the *Building Code Act*, 1992.

The principal purpose and intent of the City's Property Standards By-law is to provide minimum standards in regards to property maintenance and occupancy, including matters related to health and safety. The Building Code serves as minimum standards for new construction since it only applies when a building permit is required (that is, for new

buildings, building extensions and material alteration or repair). The Property Standards By-law applies to all “property,” which is defined in Section 15.1 (1) of the *Building Code Act, 1992* as, “a building or structure or part of a building or structure, and includes the lands and premises appurtenant thereto and all mobile homes, mobile buildings, mobile structures, outbuildings, fences and erections thereon whether heretofore or hereafter erected, and includes vacant property.”

Additionally, the Property Standards By-law may also require “repair” to existing buildings, structures and property, which “includes the provision of facilities, the making of additions or alterations or the taking of any other action that may be required to ensure that a property conforms with the standards established in a by-law passed under” section 15.1 of the *Building Code Act, 1992*.

## **ISSUE BACKGROUND**

The decision of the SCJ (noted above), stemmed from an appeal of a Property Standards Order issued by the City of Toronto regarding the condition of guards and handrails at the properties municipally known as 9, 11, 25, & 27 Bergamot Avenue, and resulted in the rescinding of the Order.

The specifics of the subject property and Order are as follows: the buildings were constructed in 1958; the guards and handrails in the stairwells were constructed in accordance with the applicable building standards of the day. They were not in a state of disrepair at the time the Order was issued. However, they did not comply with the current standards in the Building Code as referenced in the By-law.

The specifics of non-compliance for which the subject properties were cited, dealt with the following: a stair width that required a handrail on both sides, whereas only one was provided; the existing handrails were one and a half inches shorter than required; and the openings within the guards were between four and ten inches rather than the maximum permitted four inches. Of these deficiencies, it is the size of the openings and the provision of ornamental ironwork within the guards which facilitated climbing, that were of most concern. The position of the Municipal Licensing & Standards (ML&S) Division has always been that handrails and guards standards in the By-law should reflect the current provisions of the Building Code in order to afford the most safety for occupants and visitors of buildings.

The old building by-laws of the six former area municipalities contained inconsistent standards. For example, the allowable openings in guards ranged from four inches to six inches, and in some cases were not specified at all. Also, the issue of “climb-ability” was not addressed until the passing of some of the immediate predecessor building by-laws to the Building Code. Upon introduction of the first Ontario Building Code in 1975, the standards adopted for guards and handrails became encompassing and were consistently applied to all newly constructed buildings. The standards that were adopted relating to the size of openings in guards and the provisions to prevent climbing are substantively unchanged over

the last 30 years. As a result, it is those properties like Rexlington Heights (that pre-date the Building Code) that are of most concern.

## **COMMENTS**

Assessment data for Toronto indicates that the rental housing stock is mostly comprised of older buildings. The majority of rental apartment buildings were built prior to 1975 as indicated in the property database created for the ML&S Apartment Standards Disclosure web site. This database contains approximately 6,300 building records (listing extracted from MPAC data for buildings containing four or more self-contained rental dwelling units, not including co-operatives, condominiums, row housing or rooming houses) of which approximately 5,600 are indicated as being built prior to 1975.

Although statistical analysis indicates that addressing issues within these buildings is potentially a large task, in areas of the City like the former municipality of North York, a high-rise apartment building Audit Program was in place prior to amalgamation. This involved a detailed inspection of approximately 800 buildings over an eight-year period, where one of the primary objectives was to cite deficiencies relating to guards, handrails and lighting levels. The entire scope of the program was estimated to involve more than 1,200 buildings. The standards applied (as part of the North York Property Standards By-law) were based on the standards found in the Building Code of the day. Therefore, the potential for finding non-compliance with the proposed amendments has been mitigated by this effort.

Although the other former area municipalities had similar standards within their respective property standards by-laws, it appears that no defined programs or policies were in place that would enable us to quantify the impact related to the application of those standards. Most former by-law enforcement units relied on complaints about properties to initiate any enforcement action and/or application of the standards. However, the on-going effort by ML&S since amalgamation has resulted in property owners upgrading/ameliorating these building elements in accordance with the standards in the Building Code in response to property standards orders issued against them.

Also, given the age of these buildings, it is likely that a good portion have undergone some kind of renovation over the years without being prompted by the issuance of a property standards order, and therefore the original building elements that would be subject to the proposed amendments may have been modified as part of their replacement or repair. Unfortunately, there is no way of knowing what standards were applied in the design unless a building permit was actually sought.

As a result of the SCJ decision with respect to the applicability of the Property Standards By-law for the sections making reference to the Building Code (as it relates to the standards for maintenance), the proposed amendments will sever reliance on the Building Code by making the Property Standards By-law a more autonomous document. However, the proposed standards should be the same or consistent with those found in the Building Code if the intent is to provide the most safety for occupants of a property based on current knowledge, expertise and experience.

Proposed amendments for lighting and hot water temperature (although not subject to an appeal) are included, as they are health and safety-related and have a similar format to the guard and handrail provisions.

In the Rexlington Heights appeal, the Judge pointed out that if the By-law intended to make reference to section 3.4.6.4 or 3.4.6.5 of the Building Code specifically, rather than the entire Code, it should have done so; thereby limiting the scope of application for the Building Code in relation to the Property Standards By-law. However, this option is not recommended as it would complicate how the By-law is read and applied, further blurring the distinct nature of the By-law vs. the Building Code. As well, any revision of the Building Code that affects the section numbering may make it difficult to interpret and apply, unless amendments coincide exactly with enactment dates.

As changes in Building Code standards are reviewed for health and safety concerns, the Property Standards By-law can be further amended, if it is determined that the new minimum standards should also apply to existing buildings and structures.

## **CONTACT**

Sandro Testa  
Senior Policy and Research Officer  
Municipal Licensing and Standards  
Telephone: (416) 338-5763  
Fax: (416) 392-0797  
Email: [stesta@toronto.ca](mailto:stesta@toronto.ca)

## **SIGNATURE**

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Lenna Bradburn  
Executive Director,  
Municipal Licensing and Standards

## **ATTACHMENTS**

Appendix “A”-Proposed By-law Amendments to Toronto Municipal Code Chapter 629,  
Property Standards