

Municipal Code Chapter 363, Construction and Demolition Bylaw: Technical and Fee Schedule Amendments

Date:	October 30, 2008
To:	Planning and Growth Management Committee
From:	Chief Building Official and Executive Director, Toronto Building
Wards:	All
Reference Number:	BLD2008PGM008

SUMMARY

The purpose of this report is to recommend Council approval of amendments and additions to Municipal Code Chapter 363 that would:

- Introduce necessary technical and administrative amendments resulting from changes made in the 2006 Ontario Building Code, including a cost recovery fee to facilitate approval of “alternative solutions” under the objective based code format.
- Provide Toronto Building with the ability to recover the cost of administering remedial work to former marijuana grow operation properties.
- Enable Toronto Building to improve the efficiency and timeliness to public requests for the disclosure of plans and records, and provide the authority to recover costs.

Municipal Code Chapter 363 has not been significantly revised since the Building Code Statute Law Amendment Act (Bill 124) came into force at the end of 2005. Following these amendments to Municipal Code Chapter 363, the revised Ontario Building Code came into force.

It is necessary to make a number of administrative and technical changes to the Municipal Code to ensure consistency with the provincial regulations. The other changes pertaining to fees are consistent with the requirements of the Building Code Act. The Act requires that building permit fees be used for the purpose of administering and enforcing the Act and Code. The level of service associated with the marijuana grow operations

and routine disclosure will support increased staffing levels required to deliver on the new service levels.

RECOMMENDATIONS

The Chief Building Official and Executive Director, Toronto Building recommends that:

1. City Council adopt the amendments to Chapter 363 of the Municipal Code, largely itemized in the form attached (Appendix A) to implement necessary technical and administrative changes required as a result of the 2006 Ontario Building Code as outlined in this report including fees to recover the costs of:
 - a) the review and approval of alternative solutions and building materials under the objective based code format (effective January 1, 2009);
 - b) administrative work related to remediating former marijuana grow operation properties (effective January 1, 2009);
 - c) public requests for the disclosure of plans and records (effective April 1, 2009).
2. The funding outlined in this report, in the amount of \$779.0 thousand gross, \$0 net, be referred to the Budget Committee for consideration with the 2009 Operating Budget process to permit Toronto Building:
 - a) to conduct inspections of former marijuana grow operations, as required by the City of Toronto Act, 2006, and
 - b) to provide expanded routine disclosure of building permit records and plans.

Implementation Points

The recommended fee amendments to review and approve alternative solutions and building materials and administrative work related to the remediation of former marijuana grow operation properties are proposed to take effect January 1, 2009. It is proposed that the fees for routine disclosure of plans and records and additional inspection staffing levels associated with remediating former marijuana grow operations take effect April 1, 2009 following City Council's consideration of the Toronto Building Operating Budget.

Financial Impact

There are no financial implications associated with the introduction of necessary technical and administrative amendments resulting from changes made in the 2006 Ontario Building Code. The new fee that would apply to the review of alternative solutions is not expected to affect overall revenue projected to be collected from permit applications.

The 2009 Operating Budget request includes proposals for 100% fee-recovered, new and enhanced services of \$779.0 thousand gross, \$0 net, based on nine months funding of:

- a) \$525.0 thousand gross, \$0 net for the inspection of marijuana grow operations (includes one-time cost component of \$95.0 thousand for equipment and vehicles), with an estimated 2010 full year impact of \$570.0 thousand gross, \$0 net, and
- b) \$254.0 thousand gross, \$0 net for an enhanced records disclosure program (includes one-time cost component of \$25.0 thousand for equipment) with an estimated 2010 full year impact of \$315.0 thousand gross, \$0 net.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

2006 Ontario Building Code (August 21, 2006)

<http://www.toronto.ca/legdocs/2006/agendas/council/cc060925/plt6rpt/cl017.pdf>

Response to the Ontario Code Consultation (May 13, 2003)

<http://www.toronto.ca/legdocs/2003/agendas/council/cc030624/plt7rpt/cl008.pdf>

Marijuana Grow Ops – Enforcement Cost Recovery Bylaw (August 24, 2007)

<http://www.toronto.ca/legdocs/mmis/2007/ls/bgrd/backgroundfile-6407.pdf>

Routine Disclosure Plans (April 3, 2008)

<http://www.toronto.ca/legdocs/mmis/2008/gm/bgrd/backgroundfile-14405.pdf>

Renewable Energy Zoning Bylaw (January 31, 2008)

www.toronto.ca/legdocs/mmis/2008/pg/bgrd/backgroundfile-10467.pdf

Making Building Plans Available To the Public Electronically (April 19, 2007)

<http://www.toronto.ca/legdocs/mmis/2007/pg/bgrd/backgroundfile-3332.pdf>

ISSUE BACKGROUND

The last significant update to Chapter 363 of the Municipal Code took place in 2005, in preparation for the implementation of the Building Code Statute Law Amendment Act (Bill 124). This included program and process changes to meet the time frames and other performance standards of the new legislation. In 2006, the province introduced the new Ontario Building Code which has since then made some of the technical references in Chapter 363 obsolete. The objective based code format has also had an impact on the manner in which some building permit applications are reviewed.

Since 2005, the City has also moved forward with several initiatives (i.e, marijuana grow operation enforcement and routine disclosure) that require consideration of the fees associated with these activities to support service to the public that meets expectations.

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Administrative and Technical Changes to Municipal Code Chapter 363

2006 Ontario Building Code

In 2006, the province introduced the new Ontario Building Code in a modified objective based format. This means that the code now sets out the levels of protection that need to be achieved in design and construction. The format moves the code away from strictly telling what must be done to meet the code requirements to a code that includes some direction on why. While the code still contains prescriptive requirements and standards called acceptable solutions, it also allows applicants to submit an alternative solution provided that the alternative meets all of the objectives of the code.

In previous reports to standing committee, staff identified potential implications of the new objective based code format on plan review and inspections. In adopting the May 13, 2003 report “Response to the Ontario Code consultation”, Council advised the province that it should consider the impact on the costs and municipal ability to determine Code compliance before adopting the new requirements. Alternative solutions are more labour intensive to evaluate than typical applications as they require additional time to assess whether the alternative satisfies the Code requirements at both the plan review and inspection stages. There is no stand alone fee to recover the costs associated with this review despite the fact the assessment of alternatives is now part of the code review process and is subject to the normal performance time frames set by provincial regulations.

Staff have conducted an analysis to determine an appropriate fee based on an estimate of the staff cost to evaluate alternative solutions and building materials. The evaluation includes the costs associated with the development and maintenance of a system database and internal resources to evaluate proposals. Staff determined that the appropriate fee for the evaluation of an alternative solution should be \$2,000 and \$5,000 for the evaluation of a building material or system(s). The \$2000.00 fee for alternative solutions would be applied to building permit applications where the permit fee is less than \$50,000.00. The alternative solution evaluation fee would not being applied to larger projects, and their associated fee. The review of these larger projects already requires significant staff resources and detailed technical evaluation of proposed systems consistent with the evaluation of alternative solutions.

The evaluation of alternative building materials, however, is beyond the scope of work currently undertaken by Toronto Building in the review of building permit applications. Evaluation of alternative building materials, regardless of the scope of the project, would

require significant staff resources and may in some cases necessitate the need to retain resources outside of the City for testing and evaluation.

Other proposed additions to Municipal Code Chapter 363, identified in Appendix A include:

- **Electronic Submission:** The addition of requirements for electronic submission of plans and specifications for building permit applications. This addition will facilitate public access to building plans in the near future.
- **Energy Efficiency Devices and Equipment:** In keeping with Council's approval earlier this year of a renewable energy zoning bylaw, it is proposed to create a separate definition for energy efficiency devices and equipment. A new minimum building classification fee (\$92.94) would bring the fee associated with these devices and equipment in line with the review required for permit issuance. Currently, Chapter 363 only acknowledges larger solar panel installations at a fee of \$319.49.

Inspection Fee of Marijuana Grow Operations

Marijuana Grow Operations have become a major issue in the City of Toronto. The City of Toronto Act (S.388.1) requires that, where the City Clerk is notified by a police force that a building located in the municipality contained a marijuana grow operation, the municipality must conduct an inspection within a reasonable time period. Toronto Building will now conduct the inspection upon notification by Toronto Police as required by the statute.

The City has had a protocol for dealing with this type of property. However, it has now been determined that Toronto Building should assume a larger role in responding to marijuana grow operations following police operations, because of the authority under the Building Code Act (BCA) associated with the remediation of properties. The BCA authority grants the Chief Building Official the power to issue unsafe orders and prohibit occupancy of buildings found to be unsafe as defined by the BCA. Municipal Licensing and Standards (ML&S) Division previously lead this aspect of enforcement through the provisions of the Property Standards provisions of the BCA with the assistance of the Toronto Public Health through the provisions of Health Protection and Promotion Act. It was difficult, however, to effectively remediate the properties using these authorities.

It is expected that the assumption of a lead role by Toronto Building will result in a more effective approach to remediating these types of properties. This is, however, a new program area for Toronto Building with immediate staffing and equipment implications. A committee comprised of staff from a number of divisions including Toronto Fire and the Metropolitan Toronto Police has been involved in developing a strategy to efficiently and effectively deal with buildings used as marijuana grow operations..

This will require additional inspection staff and fleet vehicles to deal with these properties as remediation of properties is currently only required by Toronto Building occasionally over the course of the year. It is expected that considerably more properties will be identified by Toronto Police under this initiative. The Toronto Building 2009 budget submission includes the creation of five inspector positions with responsibility for enforcing the provisions of the BCA and, due to the sensitive nature of the work involved and to minimize the risk to staff, a fleet of five vehicles to be employed for inspections of Marijuana Grow Operations. Currently the division has three vehicles which will be deployed to this activity and via the proposed new fee structure, another two vehicles, at an estimated cost of \$70K, will be acquired in 2009 through Policy Planning, Finance and Administration's capital budget with reimbursement from Toronto Building.

Contingent on approval, base Fleet IDC's have been transferred to this new activity where the fee will cover ongoing vehicle maintenance and fuel costs, as well as annual contributions to the vehicle replacement reserve fund.

The direct result of this proposal will be aggressive enforcement of the BCA provisions on properties used as Marijuana Grow Operations. The City will ensure that buildings used for this purpose remain unoccupied until they are remediated and returned to a safe condition, as defined by the BCA. The City will undertake work on behalf of property owners, where required, to remediate these premises should the owners or institutions with interests in these properties fail to do so.

Records Disclosure Program Fee

In recent years Toronto Building has taken a leadership role in routine disclosure, launching the first of such policies relating to building plans. As noted in previous reports, the policy has substantially increased the efficiency and customer service of requests for plans. Toronto Building is committed to providing greater access to building plans. In order to provide this service to the public in a manner that meets expectations, however, the Toronto Building Division needs to minimize assistance from staff within the City Clerk's Office. Currently records disclosure service is undertaken in partnership with the City Clerk. Existing staff are challenged to provide timely responses to the public within legislated timeframes due to the volume of requests, other record keeping/archiving responsibilities and lack of cover-off for absences.

The desired result is to ensure appropriate staffing levels in order to provide disclosure of Toronto Building Division records to the public in the most efficient manner. The goal is to provide expanded routine disclosure of building permit records and plans directly through Toronto Building. Toronto Building Division will process routine disclosure of plans outside the City Clerk's MFIPPA (FOI) program. Future plans also include increasing the type of records that will be directly disclosed through Toronto Building Division.

Based on estimates taken from ongoing workloads, and forecasting future needs, The Chief Building official recommends that Council approve increasing support staffing

levels by one full time equivalent position (FTE) in each of the four district offices by adding one additional Support Assistant C to each district office's complement. In addition it is proposed to add one FTE, as a Support Assistant A, to be centrally located at City Hall, to handle overall administration in co-ordinating program activities, as this program takes on all related responsibilities without assistance from staff in the City Clerk's Office.

If increased staffing levels are not approved, the service provided to the public regarding disclosure of Toronto Building Division records, will be less efficient and timely

Public Notice

In accordance with the requirements of under Section 7(6) of the Building Code Act and as prescribed in Section 2.23.1.2 of the Building Code, the City Clerk has provided 21 (twenty-one) days public notice of the intent to change fees for applications for a building permit or for the issuance of a building permit.

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SIGNATURE

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ATTACHMENTS

Appendix A: Proposed Amendments and Additions to the Municipal Code Chapter 363,
Building Construction and Demolition