

**Amendments to Toronto Municipal Code Chapter 629, Property Standards- Washrooms within Mercantile Occupancies**

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| <b>Date:</b>             | April 27, 2009   |
| <b>To:</b>               | Licensing & Standards Committee  |
| <b>From:</b>             | Jim Hart, Executive Director,<br>Municipal Licensing & Standards Division                  |
| <b>Wards:</b>            | All  |
| <b>Reference Number:</b> | p:\2009\cluster b\mls\l&s committee\may\amendments to ch 629 washrooms- final april 27.doc |

**SUMMARY**

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This report recommends the adoption of amendments to the Property Standards By-law (Municipal Code Chapter 629) in order to ensure that washroom facilities in all mercantile occupancies are maintained as provided at the time of construction in accordance with the approved building permit.

The Ontario Building Code (Building Code) regulates certain aspects related to washroom facilities dependant on use and occupant load. Generally, the Building Code does not contain signage provisions for washrooms in mercantile occupancies, and does not regulate the availability of such facilities for the customers or other patrons of such establishments.

Toronto Public Health, under the authority of the *Health Protection and Promotion Act* and associated regulations, do impose requirements related to washroom facilities and also deal with issues raised over time, but only as it pertains to food premises and not within other mercantile occupancies (retail establishments).

For these reasons, the City's Property Standards by-law, which is applicable to all property and intended to provide the standards for maintenance and occupancy, can be applied to pre-existing buildings in setting standards for washroom facilities within this type of occupancy not already covered by Toronto Public Health.

This report and draft by-law that was originally considered by Licensing and Standards Committee at its meeting of October 15, 2008 as item LS16.6 is being resubmitted. City Council, at its October 29 and 30, 2008 meeting, referred the original report to the

General Manager of Economic Development, Culture and Tourism for a report on the economic impacts on businesses. The General Manager has submitted his report to the Committee under separate cover.

The Chief Building Official, the Medical Officer of Health and the City Solicitor were consulted in the preparation of this report.

## **RECOMMENDATIONS**

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It is recommended that:

- (1) Council adopt the proposed by-law amendments to Toronto Municipal Code Chapter 629, Property Standards, substantially as 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**

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

## **DECISION HISTORY**

At its meeting of July 2, 2008 the Licensing & Standards Committee requested the Executive Director, Municipal Licensing and Standards to:

1. Draft an amendment to the City of Toronto Property Standards By-law that:
  - (a) will enable Municipal Licensing and Standards officers to enforce the Building Code requirements for mercantile occupancies to provide washrooms to which customers have access;
  - (b) include requirements for open customer access and appropriate signage; and
  - (c) allow for no more than six months for compliance.
2. Table the matter for a statutory public hearing at the October 15, 2008 Licensing and Standards Committee meeting; and
3. Consult with the Chief Building Official and the Medical Officer of Health.

City Council, at its October 29 and 30, 2008 meeting, referred the original report to the General Manager of Economic Development, Culture and Tourism for a report on the economic impacts on businesses. The report and draft by-law that was originally considered by Licensing and Standards Committee on October 15, 2008 as item LS16.6 is being resubmitted.

## ISSUE BACKGROUND

The Building Code regulates certain matters related to washrooms, such as the number of water closets, based on occupancy type and load. The Building Code does not regulate the maintenance of these facilities upon completion of construction and occupancy. Retail stores may not always provide access to washroom facilities to the public. Additionally, customers of such businesses may not be aware of these requirements. Both residents and visitors within Toronto may be better served as the right of access to such facilities serves a basic human need which is amplified within an aging population and families with young children.

## COMMENTS

### The Building Code

The Building Code defines “*mercantile occupancy*” as “*the occupancy or use of a building or part of a building for the displaying or selling of retail goods, wares or merchandise*”. This category captures most retail establishments including any restaurant that accommodates not more than 30 persons consuming food or drink (larger restaurants are categorized as assembly occupancies and not mercantile). Nonetheless, washroom facilities are required to be provided ancillary to and in support of an intended, pre-defined and established use.

The specific requirements for washroom fixtures, such as water closets (toilets), are calculated based on size (square footage) and/or occupancy load specific to the type of occupancy. Such facilities are intended for the use of all the occupants of a building, which includes employees as well as the public. Although there are separate requirements for employee versus public facilities, employee washrooms are permitted to be counted as part of those required for the public when they are made accessible to the public in other than “*food premises*” as defined within the Building Code.

The only signage provisions in the Building Code relate to washrooms required to accommodate disabled persons. The Building Code specifies that this type of signage shall consist of “the international symbol of accessibility for disabled persons and such other graphic, tactile or written directions as are needed to indicate clearly the type of facility available”.

The Building Code requires that washrooms be provided in mercantile (retail) occupancies. At the plan review stage of a building permit application, approval is granted if the correct number of fixtures for employee and public use is indicated on the plans. It is not a condition of permit issuance that an applicant identify that a given washroom is provided for public use. Therefore, the Building Code cannot be used to require certain washrooms be provided for public use.

## **The Health Protection and Promotion Act**

The *Health Protection and Promotion Act* (HPPA) prescribes washroom facility standards and requirements in relation to “food premises”. It uses the term “*sanitary facilities*” and defines it as “*a room or rooms containing one or more toilets and one or more washbasins*”. These requirements are contained within *Regulation 562- Food Premises*. A “*food premise*” is defined as “*a premises where food or milk is manufactured, processed, prepared, stored, handled, displayed, distributed, transported, sold or offered for sale, but does not include a private residence*”. Retail establishments such as restaurants, grocery and food stores, convenience stores, or anywhere else food is offered and sold to the public, are captured under this definition and regulation. Other mercantile (retail) establishments are not regulated under this Act in relation to sanitary or washroom facility requirements or standards.

The HPPA regulation goes on to provide standards and requirements in relation to the availability of sanitary facilities within food premises, but makes no distinction between employee and public use. The only proviso is that, like the Building Code, if the employee bathroom is only accessible from the food preparation area it cannot serve to fulfil the public access requirement. In addition, the HPPA contains no specific reference to the number of required fixtures in relation to establishment size or occupant load, only that at least one sanitary facility for each sex be provided within these premises (for this requirement HPPA regulation defaults to the Building Code). However, it does contain specific standards for other provisions such as supply of toiletries, water supply, as well as cleanliness and maintenance. It also contains a requirement for signage but only states that the “sign” must clearly indicate the sex for which the sanitary facility is intended.

For “food premises” as described, Toronto Public Health (TPH) has a mandated requirement under the *Health Protection and Promotion Act* to inspect these establishments at least once a year, or as much as three times a year in the case of restaurants. In addition, TPH also responds to complaints from the public associated with the availability, cleanliness, maintenance and signage provisions for washrooms (sanitary facilities) within food premises.

## **Toronto Municipal Code Chapter 629, Property Standards**

The principal purpose and intent of the City’s Property Standards By-law is to provide the minimum standard in regard to property maintenance and occupancy. The By-law applies to all “property”, which is defined in subsection 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”.

In addition, 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*.

The current provisions within the Property Standards by-law (Municipal Code Chapter 629) provide for some remedy in dealing with this issue. Upon receipt of any complaint from the public involving maintenance or cleanliness of a washroom facility (within mercantile occupancies and other occupancies) Municipal Licensing and Standards can investigate and issue an order requiring repairs be carried out in accordance with the standards. However, complaints from an employee of these occupancies would be referred to the Ministry of Labour and those involving a food premise would be forwarded to Toronto Public Health.

The Property Standards by-law does not contain specific requirements to provide washroom facilities for mercantile occupancies, nor are there any requirements that ensure they are actually made available to the users or occupants of the property. Some of the existing requirements deal specifically with dwelling units which are more commonly dealt with in conjunction with complaints received from tenants of residential property. As well, the by-law does not contain any related signage provisions.

The by-law does however contain a section that sets out the “general duties and obligations” for owners and occupiers of property. This is the section relied upon to tie occupants and owners to their responsibility as it relates to a “supplied facility” such as a washroom. However, the term supplied facility is not defined within the by-law. Therefore, in order to make the by-law more effective in dealing with this issue, a definition of supplied facility should be provided in order to tie the facilities existence and availability on the property to the regulations or agreement that was responsible for putting it there in the first place. For washroom facilities, it would be appropriate to reference the regulations contained in the *Building Code*, the *Health Protection and Promotions Act* or both.

Supplied facility can be defined as follows:

*An appliance, fixture or piece of equipment, including any related system, provided or established in conjunction with the use of property that is ancillary or incidental to the occupancy as may be specified within a lease agreement or required to be provided in accordance with the provisions of the Building Code, the Health Protection & Promotion Act, the Municipal Code or other applicable by-law or regulation.*

Signage provisions can be adopted into the by-law that standardize and make it easier for the occupants of property to discern the location and availability of washroom facilities within mercantile occupancies.

## **CONTACT**

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## **SIGNATURE**

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Jim Hart, Executive Director,  
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## **ATTACHMENTS**

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

## Appendix A

Proposed Amendments to Municipal Code, Chapter 629, Property Standards.

### **Washroom Facilities in Mercantile Occupancies**

Add the following definitions to § 629-1.

**MERCANTILE OCCUPANCY** —The occupancy or use of a building or part of a building for the displaying or selling of retail goods, wares or merchandise.

**SANITARY FACILITIES** —A room or rooms containing one or more toilets, washbasins, bathtubs or showers or any combination thereof and includes a toilet room.

**SUPPLIED FACILITY** —An appliance, fixture or piece of equipment, including any related system, provided or established in conjunction with the use of property that is ancillary or incidental to the occupancy as may be specified within a lease agreement or required to be provided in accordance with the provisions of the Building Code, the *Health Protection & Promotion Act*, the Municipal Code or other applicable by-law or regulation.

Amend § 629-5. **Owner’s duties**, so that subsection **B.** reads as follows:

- B. Ensure that every supplied facility in or on the property is:
- (1) Constructed, installed and maintained so that it will function safely and effectively; and
  - (2) Kept in a satisfactory working condition; and
  - (3) Available for use by the occupants of the property in accordance with the standards.

Amend § 629-6. **Occupants duties**, so that subsection **C.** reads as follows:

Every person who occupies property shall:

- C. Maintain all sanitary facilities and every fixture in a sanitary facility in a clean and sanitary condition;

Amend § 629-37. By deleting the title “**Plumbing.**” and substituting “**Plumbing; water and sanitary facilities.**”

Amend § 629-37D. as follows:

By deleting “water closet” and substituting “toilet” and also deleting the phrase “one kitchen sink”.



Amend § **629-37F.** as follows:

By deleting “water closet” and substituting “toilet”.

Amend § **629-37G.** as follows:

By deleting “water closet” and substituting “toilet”.

Amend § **629-37J.** as follows:

By deleting “toilet facilities and toilet rooms” and substituting “sanitary facilities”.

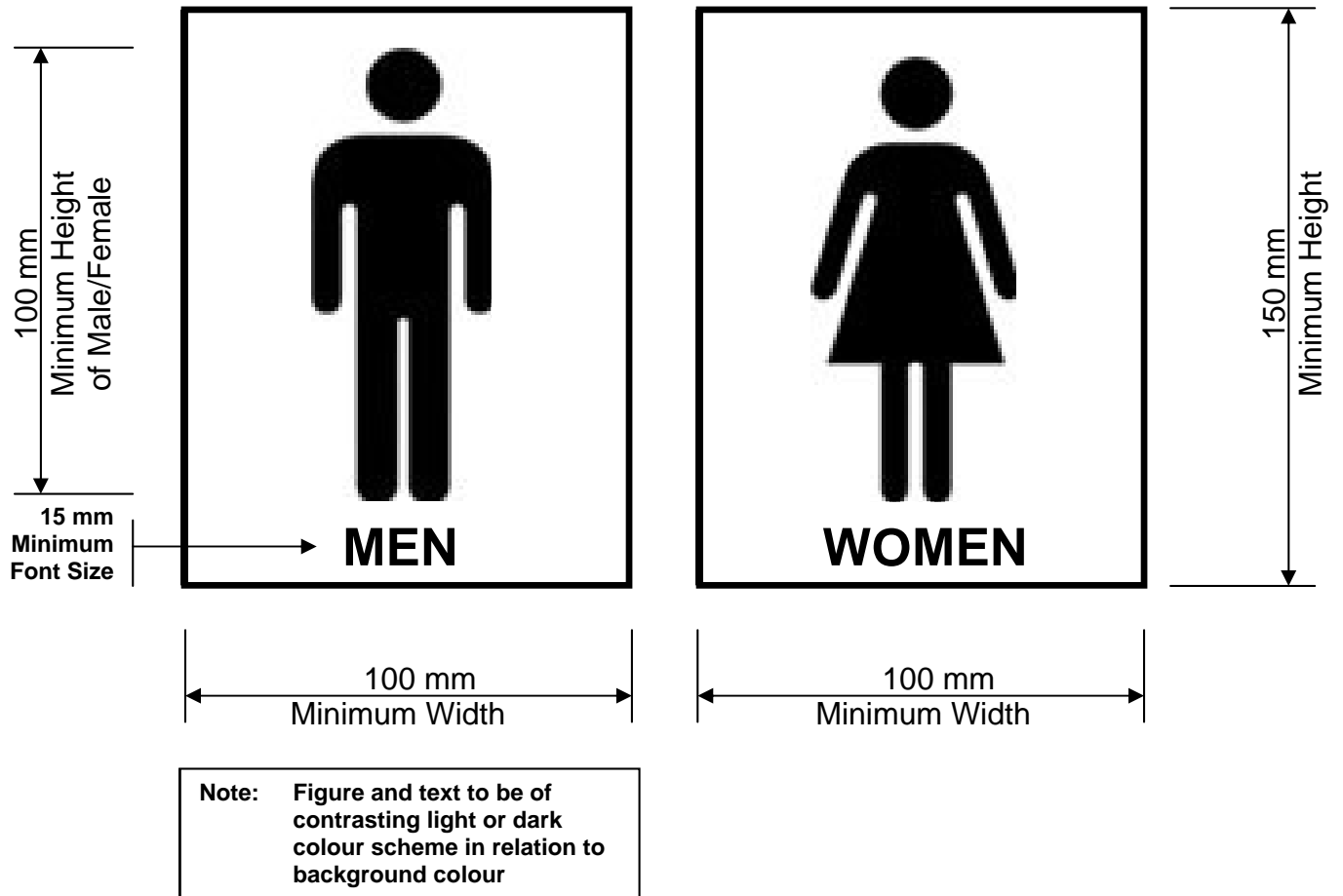
Amend § **629-37.** by adding the following subsection:

- K. Any separate male or female sanitary facility in a building with a mercantile use, that is provided or required for public use under the Building Code, predecessor legislation or another Act, shall have the following signs:
- (1) A sign posted on the door or entrance to the sanitary facility in a conspicuous manner, that clearly indicates if it is a male or female sanitary facility and incorporates the universal symbol for male or female washrooms as described in Schedule A-4, at the end of this chapter; and
  - (2) One or more directional signs at the customer service counter, attendant station or cash register area that convey the location of the sanitary facilities within the building or the part of the building with a mercantile occupancy, as described in Schedule A-5, at the end of this chapter.

Amend Municipal Code, Chapter 629, Property Standards by adding the following schedules:

TORONTO MUNICIPAL CODE  
PROPERTY STANDARDS

SCHEDULE A-4 TO CH. 629  
UNIVERSAL WASHROOM SYMBOLS



TORONTO MUNICIPAL CODE  
PROPERTY STANDARDS

SCHEDULE A-5 TO CH. 629  
DIRECTIONAL WASHROOM SIGN

