



STAFF REPORT ACTION REQUIRED

Municipal Code Chapter 363, Construction and Demolition By-law: Technical and Administrative Fee Schedule Amendments

Date:	July 30, 2010
To:	Planning and Growth Management Committee
From:	Chief Building Official and Executive Director, Toronto Building
Wards:	All
Reference Number:	P:\2010\ClusterB\BLD\CBO Office\PG10009

SUMMARY

This report proposes several Municipal Code amendments that are necessary due to changes to the *Building Code Act* introduced in the *Good Government Act, 2009*, scheduled to take effect on January 1, 2011. The report recommends Council approval of amendments and additions to Toronto Municipal Code Chapter 363 that would:

- Introduce necessary technical and administrative amendments resulting from changes made in the *Building Code Act* and 2006 Ontario Building Code related to complete building permit applications.
- Require applicants for building permits to obtain a Zoning Certificate prior to submitting a building permit application in order for them to be considered a 'complete' application and discontinue the current Pre-Application Applicable Law review program (PAL).

Overall the proposed changes will improve service delivery for complete building permit applications by reducing unforeseen delays and expenses for applicants. In order for these amendments to be in place by the legislated timeframe, it is important that Council consider this matter at its August 25, 26, 2010 meeting.

RECOMMENDATIONS

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

1. City Council adopt the amendments to Chapter 363 of the Toronto Municipal Code in general accordance with the draft by-law attached as (Appendix A) to implement necessary technical and administrative changes to requirements for a complete building permit application, in response to changes in the *Building Code Act* and 2006 Ontario Building Code coming into effect in January, 2011 to:
 - a) introduce a new requirement to obtain a zoning certificate prior to submission of a complete building permit application;
 - b) remove provisions related to the Preliminary Applicable Law (PAL) review; and
 - c) amend the fee structure Toronto Municipal Code Chapter 363-6 and 10.1 to reflect these changes.

Implementation Points

The recommended technical and administrative changes along with the proposed amendment to the fee schedule to establish a fee for Zoning Certificates would take effect on January 1, 2011. To ensure a smooth transition, PAL applications, pending on January 1, 2011 will be automatically considered under the Zoning Certificate Program without the need for further application.

Financial Impact

There are no financial impacts associated with the introduction of necessary technical and administrative amendments implementing the complete application requirements. The fee level for the proposed Zoning Certificate applications will be 25% of the building permit fees prescribed in Chapter 363, consistent with the fees currently charged under the discontinued PAL program. As both are credited against the fees applicable at the building permit stage there will be no change in overall fees charged.

A new re-examination fee charged at a rate of 10% of the Zoning Certificate fee for each set of plans submitted as part of a Zoning Certificate application will offset the cost of re-examination, where applicable, while the current re-examination fee applicable to permit applications, where the application is declared to be complete after the initial review, will be eliminated. It is expected that the overall result of these changes will be revenue neutral with respect to the revenue achieved by the Division.

DECISION HISTORY

Planning and Transportation Committee Report 5: Implementation of the Building Code Statute Law Amendment Act (Bill 124) Prior to the July 1, 2005 Effective Date (May 18, 2005)

<http://www.toronto.ca/legdocs/2005/agendas/committees/plt/plt050525/it017.pdf>

Implementation of the Building Code Statute Law Amendment Act (Bill 124) Prior to the July 1, 2005 Effective Date (June 14, 2005)

<http://www.toronto.ca/legdocs/2005/agendas/council/cc050614/plt5rpt/cl014.pdf>

ISSUE BACKGROUND

On December 15, 2009, Bill 212, *The Good Government Act* received royal assent. The Act made changes to several pieces of provincial legislation including the *Building Code Act* (BCA). Regulation 503/09 was filed under the *Building Code Act* on December 21, 2009 amending the Ontario Building Code (OBC). These legislative and regulatory changes affect:

- Requirements for complete building permit Applications (effective January 1, 2011), and
- Mandatory requirements for occupancy permits for certain residential occupancies (to take effect on January 1, 2012).

This report addresses the new requirements with respect to complete applications while Toronto Building will be reporting to Council on the impact of the mandatory occupancy permits for certain residential occupancies in 2011.

COMMENTS

Administrative and Technical Changes to Municipal Code Chapter 363

Building Code Act and 2006 Ontario Building Code

The first major change, coming into effect on January 1, 2011, is clarification of the rules on what constitutes a complete building permit application and the requirement for the Chief Building Official to make the determination if a building permit application is 'complete' or 'incomplete' within 2 days of the application being submitted to the municipality.

Complete Building Permit Application

Under the current provisions of the BCA, a building permit application is considered complete under Sentence 1.3.1.3. (5) of Division C, Part 1 of the Ontario Building Code,

when the applicant has submitted a complete building permit application form, as prescribed by the Province, along with the required drawings specified by Toronto Municipal Code Chapter 363, and declared it to be complete.

As of January 1, 2011, the requirements for when a building permit application will be considered complete will change to require that the applicant also provide proof to enable the chief building official to determine whether the proposed work will contravene any applicable law.

Applicable Law

Under the *Building Code Act*, the Chief Building Official has a positive obligation to issue a building permit when all “applicable laws” have been met. The Building Code prescribes those by-laws and statutes that are applicable laws for the purposes of issuing a building permit. These include site plan approval, zoning bylaws, Toronto and Region Conservation Authority approval and development charges, among others.

Current System

Under the current regulations in the Building Code the applicant is entitled to a full review of the application after declaring it to be complete, within the timeframes specified in the legislation ranging from 10 to 30 days. The Chief Building Official is then obligated to conduct a review of all permit applications declared to be complete and either issue the permit or advise the applicant in writing of all of the reasons why the permit will not be issued, within the prescribed timeframe. Since the Chief Building Official has no discretion in the level of review that can be undertaken once a complete application is submitted, Chapter 363 now includes a requirement for the applicant to sign a declaration that their application is complete. If Toronto Building staff find, after a complete review, that the application is not in compliance with any applicable law, the application is currently subject to a re-examination fee equal to 25% of the overall permit fee, to offset the cost of multiple reviews.

In order to assist applicants in making a complete application, Toronto Building implemented a Pre-Application Applicable Law (PAL) program in 2005, in addition to the Preliminary Project Review program that was already in place. This PAL program is currently voluntary and provides applicants the option of submitting their project for a review to determine compliance with all applicable law requirements prior to submission of the complete building permit application. This avoids the risk of finding out after the complete application has been fully reviewed that there is an area of non-compliance with any applicable law, and the requirement to pay a re-examination fee of 25% of the full permit value upon re-submission.

In the alternative, applicants have the opportunity to submit “incomplete” applications, where applicable law approvals may still be outstanding, such as Site Plan Approval. Most larger developments submit “incomplete” applications and seek applicable law

approval in parallel with the building permit process. These applications are project managed to meet time frames discussed with owners/developers.

Proposed System

New rules, coming into effect on January 1, 2011 under *The Good Government Act*, provide the Chief Building Official with the obligation to determine whether a building permit application is either 'complete' or 'incomplete' within 2 business days of the permit application being submitted. *The Good Government Act* provides more detail and clarity around what constitutes a complete building permit application. *The Good Government Act* provides the City with an opportunity to specify what proof of compliance with applicable law is required to constitute a complete application. In order to implement this, Toronto Building is proposing to introduce a new Zoning Certificate program that would be required where applicants choose to submit a complete building permit application.

Zoning Certificate Program

Under the proposed program, Toronto Building would issue a Zoning Certificate along with an approved set of drawings, once staff have conducted a full review of the proposed project against the applicable Zoning By-law provisions and determined compliance. Along with confirming compliance with the Zoning By-law provisions, this program would also identify any other applicable law approvals that a project would be subject to. The Zoning Certificate would convey this information to the applicant.

The fees charged for this proposed review would be the same as those fees currently charged for the voluntary Pre-Application Applicable Law (PAL) program. This fee (25% of the full permit fee) would be credited to the building permit fee when a building permit application is submitted. This fee structure is identical to the current PAL program fees. Overall, permit fees would not change for those projects in which the applicant seeks a Zoning Certificate.

The approval process for the Zoning Certificate will be an iterative process. Applicants may need to make revisions to their proposal once the initial review is complete and Toronto Building staff identify non-compliance with applicable Zoning By-law provisions. Where an applicant submits revised plans, a re-examination fee of 10% of the applicable Zoning Certificate fee would apply. The current re-examination fee of 25% of total permit fees on complete applications found not in compliance with any applicable laws would no longer be necessary.

There are a number of benefits to both the City and building permit applicants by adopting the new enhanced program recommended in this report. For example;

- i. The program would ensure that applications submitted are in full compliance with the applicable Zoning By-law provisions. This would help expedite the permit

review process as the zoning review that currently occurs as part of the building permit review process would be largely complete, apart from the review of the required documentation. This would streamline the building permit review process.

- ii. As part of the Zoning Certificate program, Toronto Building staff would advise the applicant of any other required applicable law approvals, thereby providing the applicant with clear information on the requirements prior to submitting their building permit application.
- iii. The applicant will have certainty that their proposed project is in complete compliance with the applicable Zoning By-law applicable law provisions.
- iv. The applicant will know immediately upon submission of their building permit application whether or not Toronto Building staff have determined that their application is complete or incomplete as it is expected that the Zoning Certificate will assist Toronto Building staff make that determination at the counter. Applicants will not have to wait the two business days provided by legislation to make this determination.

With the introduction of a Zoning Certificate for complete applications the pressure to conduct a review of building permit applications within two business days of submission in order to determine conformity with zoning and applicable law and thus determining if the application is complete will be eliminated. This will eliminate the potential need for more staff to meet the new requirement of the legislation.

Two permit streams: “Project Managed and “Complete Application”

Since the implementation of the PAL program in 2005, Toronto Building has offered a two permit stream program for applicants: a project managed stream for incomplete applications and Complete Application stream. Toronto Building plans to continue to offer these two permit stream programs. There would be no change to the incomplete “project managed” stream, including the Residential Fast Track program.

Incomplete project managed applications primarily involve applications in which the applicant is seeking partial permits and where projects are seeking applicable law approvals in parallel with the building permit process.

Since the implementation of the two permit stream system by Toronto Building approximately 50% of all permit applications submitted have been “complete” applications with the remainder being “incomplete” project managed applications. It is anticipated that these percentages will not change with the introduction of the Zoning Certificate program.

CONTACTS

Mario Angelucci
Director, Toronto and East York District (A)
Toronto Building
mangeluc@toronto.ca
416-392-7523

Mark Sraga
Director, Etobicoke York District
Toronto Building
msraga@toronto.ca
416-394-8006

SIGNATURE

Ann Borooh
Chief Building Official and Executive Director
Toronto Building

ATTACHMENTS

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