

Window Safety Devices

Date:	June 7, 2011
To:	Licensing and Standards Committee
From:	Executive Director, Municipal Licensing and Standards
Wards:	All Wards
Reference Number:	P:\2011\Cluster B\MLS\LS11012

SUMMARY

This report is a response to a request from the Licensing and Standards Committee to report back on whether any exemptions should be made to the current requirement to have window safety devices on building apartment windows.

The Ontario Building Code contains a provision addressing window protection in the construction and renovation of apartment buildings. A similar provision is contained in the City's Property Standards Bylaw and is intended to ensure the health and safety of residents, specifically young children.

Although there could arguably be very limited circumstances under which the by-law requirement to have a window device could be waived, this would not eliminate the requirements under the Building Code. Municipal Licensing and Standards staff believe that, respecting window safety, existing buildings, regulated through the Property Standards By-law, should be afforded the same level of safety as new construction, regulated through the Building Code. In addition, even if such an exemption could be implemented, staff believe that it would be highly impractical to monitor and regulate such exemptions. As a result, staff are of the opinion that the requirement should continue to be applied and enforced in its current form.

This report was prepared in consultation with the City Solicitor, Toronto Public Health, Emergency Medical Services, Toronto Building and SafeKids Canada.

Financial Impact

There is no financial impact as a result of this report.

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

DECISION HISTORY

The Licensing and Standards Committee at its meeting of May 3, 2011 requested that the Executive Director, Municipal Licensing and Standards report back on whether any exemptions should be made to the current requirement to have window safety devices on apartment windows.

(<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.LS4.6>)

ISSUE BACKGROUND

As the summer quickly approaches, many tenants in the city will be coping with heat and humidity in non-air conditioned apartments. A major source of relief for such tenants is the drafts of cooler air that can be obtained by opening their windows. Current standards in the Municipal Code, however, require that landlords install and maintain window safety devices on all apartment unit windows, thereby restricting the opening of windows to no more than 10 centimetres. Although the measure is primarily intended to ensure the safety of children, there are some residents who do not have young children living with them and who do not have young children visit them. Some of these tenants have expressed their frustration at not being able to open their windows fully in their efforts to keep their dwelling units cool on hot weather days.

Over the years, there have been a number of requests to review the pertinent regulations and either examine potential exemptions to the requirement for window devices or, conversely, undertake more pro-active enforcement and strengthen the requirements. In considering these requests, staff have always maintained that the safety of the public is the ultimate determining factor for its recommendations.

COMMENTS

The Property Standards By-law, No. 930-2000, came into effect January 1, 2001, and was included in the City of Toronto Municipal Code as Chapter 629, Property Standards. The main purpose 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 sets out the technical requirements for the construction (including renovation), demolition and change of use of existing buildings. These technical requirements do not apply to existing buildings. On site sewage systems are the only exception. The Property Standards By-law applies to all property in the city and is enacted under the authority of the Building Code Act, 1992. Section 15.1 (1) of the

Building Code Act defines “property” 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."

Window protection in apartment buildings is provided for in Ontario Building Code, Article 3.7.2.2.

- (1) In Group C *major occupancy* apartment *buildings* protection shall be provided at windows to minimize the hazards to children in accordance with Sentences (2) to (4).
- (2) Fixed windows within *dwelling units* that extend to less than 1 000 mm from the floor shall be protected by *guards* to at least 1 000 mm above the floor, or shall be designed to withstand the lateral *design loads* for balcony *guards* in Part 4.
- (3) Except as provided in Sentence (4), in *dwelling units* any window located more than 2 000 mm above *grade* that opens within 1 500 mm of the floor shall be protected,
 - I. By a *guard* conforming to Sentence 3.3.1.17.(2),
 - II. By,
 - a. A controlled sash operation to restrict, when engaged, the opening of the operable sash to not more than 100 mm, and
 - b. A heavy duty screen conforming to CAN/CSA-A440, “Windows”, or
 - III. By an alternative device that does not reduce the degree of safety provided by Clause (a) or (b).
- (4) Protection of a window need not be provided in a *dwelling unit* where an exterior balcony is constructed for the full length of a window.

Article 3.7.2.2 references Sentence 3.3.1.17.(2), that provides the requirements pertaining to openings in guards. This sentence states that the openings shall “be of a size that will prevent the passage of a sphere having a diameter more than 100mm unless it can be shown that the location and size of openings that exceed this limit do not represent a hazard.”

Staff believe that the standard established by the Province is an appropriate standard and that it serves a valid purpose. As such Toronto Municipal Code 629-21 (4) “Window protection in apartment buildings” contains provisions equal to those of the Ontario Building Code. A restriction of 100 mm (for guard openings) is intended to prevent the head of a young child from passing through the opening, potentially resulting in a fall out the window. The restriction, although potentially inconvenient to some tenants, ensures the safety of young children. Every year there are a number of serious injuries and/or deaths of children resulting from falls from balconies or windows where the required restriction was for one reason or another not in place. Over the last four decades there have been several studies showing that the requirement for window safety devices in combination with outreach education and enforcement has proven an effective means of preventing deaths and injuries.

Exemptions

The Licensing and Standards Committee requested that the Executive Director, Municipal Licensing and Standards, consider circumstances under which an exemption to the requirement for window devices could be granted. The specific issue under examination is whether people who never have children in their apartments should be required to comply with the window safety requirements of the By-law.

Lowering the current standard in the by-law or creating an exemption regime does not relieve new construction from having to meet the standards set out in the Ontario Building Code.

Even if such an exemption could be implemented, it would be highly impracticable for the City to monitor or regulate. In addition, if an exemption system existed, the City, once having provided an exemption, would also be compelled to ensure that, upon the termination of the tenancy, the unit meet the window safety requirements again. This system would not only be extremely resource-intensive and impractical, but could also materially expose the City to legal liability.

A number of alternatives to deal with heat in apartment buildings exist. The installation of window air conditioning units, where permitted, can be an effective way to deal with hot and humid conditions. Where such units are not possible, opening windows throughout the unit (to the required limit) and using fans to allow the air to circulate can be effective, as moving air evaporates perspiration, cooling the skin. Tenants can also keep units cooler by not using appliances such as ovens or clothes dryers, and by keeping shades or drapes drawn. Keeping hydrated, wearing loose clothing, and taking a cool shower are also ways of fighting the heat. In cases of extreme heat, and especially if the aforementioned alternatives are not available or are not effective, attending "cool rooms", if provided in the building, or even air-conditioned public places, such as shopping malls and libraries, may be an option. When Extreme Heat Alerts are issued cooling centres are also an option. Toronto Public Health, in consultation with Municipal Licensing and Standards and their respective Provincial partners are looking at exploring the range of options for tenants to more effectively cope with hot weather.

Although staff recognise the health issues that can be associated with excessive heat, staff also believe that the immediate safety of the public should not be compromised by removing this important requirement. The proper use of some of the aforementioned alternatives can likely deal with most situations. Therefore, legal issues aside, staff do not believe that providing exemptions from the window safety requirement should be considered favourably.

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SIGNATURE

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