



REPORT FOR ACTION

Toronto Municipal Code Chapter 363, Construction and Demolition By-law Update

Date: August 27, 2019
To: Planning and Housing Committee
From: Chief Building Official and Executive Director, Toronto Building
Wards: All

SUMMARY

The purpose of this report is to recommend that City Council adopt a revised Chapter 363, Building Construction and Demolition ("Toronto Municipal Code, Chapter 363") in order to:

- Revise the requirements and terminology in the By-law to align with Toronto Building's Electronic Service Delivery Program;
- Re-organize the By-law so that the content is sequenced in a manner consistent with the permit application process, making it easier for the public to understand and comply with the requirements;
- Clarify the process for applying for an Alternative Solution to the prescriptive Building Code requirements, intended to facilitate innovative building design;
- Revise the requirements for construction fences, in order to improve the effectiveness and efficiency by reducing duplication between Toronto Building and Municipal Licensing & Standards;
- Clarify the requirements of the Toronto Building Certified Plans Program to allow the use of identical plans multiple times in the City;
- Amend the current procedures for revocation of building permits, intended to strengthen the ability of the City to address dormant construction sites and open permits; and
- Make a number of editorial and technical changes so that the language and content is consistent with the current Building Code Act and Building Code.

If adopted by Council, the proposed update to Chapter 363 will create a clear and concise set of requirements for the public while allowing the City to meet its statutory obligations under the Building Code Act and strengthen service delivery.

Due to the reorganization of the sections within Chapter 363, this report recommends that the current By-law be repealed and replaced with a new by-law, Municipal Code Chapter 363, Building Construction and Demolition (the "New Chapter 363"), effective January 1, 2020.

RECOMMENDATIONS

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

1. City Council repeal Toronto Municipal Code, Chapter 363 (Construction and Demolition) on December 31, 2019 and adopt the revised Toronto Municipal Code, Chapter 363 (Construction and Demolition), as attached in Appendix 1 to this report, subject to such stylistic and technical changes to the draft by-law as may be required to come into effect on January 1, 2020.
2. City Council repeal By-law 1690-2013 on December 31, 2019 and adopt the revised Toronto Municipal Code, Chapter 363 (Construction and Demolition) that includes the provisions for the Chief Building Official to appoint building inspectors in section 363-1.4 as attached in Appendix 1 to this report, subject to such stylistic and technical changes to the draft by-law as may be required to come into effect on January 1, 2020.
3. City Council authorize the City Solicitor to prepare the necessary Bills for introduction in Council to implement the above noted amendments to the City of Toronto Municipal Code, subject to such stylistic and technical changes to the draft by-law as may be required.

FINANCIAL IMPACT

There are no financial implications associated with the introduction of necessary technical and administrative amendments associated with the New Chapter 363.

The Division previously completed a review of all Toronto Building fees and charges in 2013. City Council adopted recommendations from the Chief Building Official in 2013 to remove the fee schedules and indexing provisions contained in Chapter 363 and amend the chapter to make reference to Chapter 441, Fees and Charges for all Toronto Building rates. Recommendations were also adopted to include new fees and amend fee descriptions contained in Chapter 441.

DECISION HISTORY

At its meeting on May 22, 23 and 24, 2018, City Council adopted the report: Strategy for Minimizing the Negative Impacts of Residential Infill Construction Activity setting out the recommendations to review and update the Municipal Code, Chapter 363, to identify opportunities for efficiencies and enforcement of construction fencing
<https://www.toronto.ca/legdocs/mmis/2018/pg/bgrd/backgroundfile-114471.pdf>

At its meeting on April 1, 2 and 3, 2014, City Council adopted the Auditor General's report: Toronto Building - Improving the Quality of Building Inspections
<https://www.toronto.ca/legdocs/mmis/2014/au/bgrd/backgroundfile-67006.pdf>

At its meeting on November 13, 14, 15 and 18, 2013, City Council adopted the report: Amendments to Municipal Code, Chapter 363, Construction and Demolition, and Chapter 441, Fees and Charges
<https://www.toronto.ca/legdocs/mmis/2013/pg/bgrd/backgroundfile-62330.pdf>

At its meeting on December 1, 2 and 3, 2008, City Council adopted the amendments to Municipal Code, Chapter 363, Building Construction and Demolition; By-law 1299-2008 Amendments
<https://www.toronto.ca/legdocs/mmis/2008/pg/bgrd/backgroundfile-16863.pdf>

At its meeting on November 13, 14, 15 and 18, 2013, City Council adopted the report: Appointment of Building Inspectors: Recommendation to Delegate Authority
<https://www.toronto.ca/legdocs/mmis/2013/pg/bgrd/backgroundfile-62299.pdf>

COMMENTS

Background

Ontario's Building Code (the "Code") is a regulation made under the Building Code Act, 1992 (the "Act"). The Code sets out province-wide technical and administrative requirements for the construction, renovation, change of use and demolition of buildings in Ontario.

The Act and the Code are developed and administered by the Province, through the Ministry of Municipal Affairs and Housing. Ontario municipalities are responsible for enforcing the Code within their boundaries. Ontario municipalities, including Toronto, are not permitted by the Act to pass by-laws that conflict with the Code, such as setting standards for building construction, or exceeding the Code requirements.

Section 7 of the Act provides authority for municipal councils to pass by-laws to govern how they administer the enforcement of the Code. For example, the Act allows municipal by-laws to set the classes of construction and demolition permits, information which is required to be submitted by permit applicants, and the ability to require fees (including prescribing the amounts of the fees). The City of Toronto, Municipal Code Chapter 441, Fees and Charges contains a single fee listing for building permit fees, depending on the type of work proposed.

Revisions to Chapter 363 are required at this time to ensure consistency with the current Act and Code. Toronto Building staff have also identified the importance of making the Chapter more easily understood by the public. The New Chapter 363 is organized sequentially, based on how an application for a building permit is made and processed. Improving the transparency of the City's requirements is also intended to help expedite compliance by the applicant. The proposed New Chapter 363 is contained as Appendix 1 to this report.

The comments which follow are intended to highlight four key areas of the New Chapter 363 which may be of particular interest to City Council:

- Alternative Solutions
- Construction Fences
- Revocation of Permits
- Certified Plans.

In developing the New Chapter 363, Toronto Building staff consulted with City Divisions whose mandate intersects with Toronto Building, including City Planning, Municipal Licensing & Standards and Legal Services. With the objective of developing a more understandable by-law, Toronto Building also consulted with the Building Industry & Land Development Association (BILD) and surrounding municipalities in the Greater Toronto Area.

Alternative Solutions

In 2006, the Province introduced a new "objective-based format" to the Code. The objective-based format provides two ways to comply with the Code: The long-established prescriptive requirements, called "acceptable solutions" and a new way to comply based on an "alternative solution". The alternative solution is acceptable if, in the opinion of the Chief Building Official, the proposal meets the intent and objectives of all the appropriate Code requirements.

In 2008, City Council adopted recommendations from the Chief Building Official to implement fees associated with applications for consideration and approval of alternative solutions. At that time, there was no identified need to provide administrative provisions or requirements in Chapter 363 related to building permit applications which included alternative solutions.

As building systems and designs have become more complex, there is now a need to provide clarity to the public on how alternative solutions are processed and approved. Additionally, Chapter 363 currently contains provisions to accept applications for alternative building material evaluations. These provisions need to be removed, to reflect changes to the Act and Code which now require applicants to submit these requests to the Ministry of Municipal Affairs and Housing's Building Materials Evaluation Commission.

The New Chapter 363 contains requirements for the Alternative Solution process that are consistent with Act and Code changes. By including the application process in the New Chapter 363, it is intended to help support innovative design and building techniques, such as mid-rise wood construction. The requirements contained in the New Chapter 363 are consistent with Toronto Building's objective of having a comprehensive, user-friendly by-law that contains all of its application processes.

Construction Fences

In 2018, the Chief Building Official and Executive Director reported to City Council on the implementation of the Residential Infill Strategy, the inter-divisional initiative aimed at minimizing the negative impacts of construction in city neighbourhoods. The strategy

includes an inter-divisional Targeted Inspection and Enforcement Program focused on residential infill sites. Through this Program, staff identified that there was an opportunity for greater efficiency in the enforcement of the City's construction fencing requirements.

All construction sites are required under section 363-7.2 of the New Chapter 363 to be surrounded by fencing to prevent unauthorized access and support public safety. In considering the 2018 report, City Council directed staff to identify and recommend opportunities for efficiencies in the inspection and enforcement of construction fencing.

Under the current framework, there is overlap and duplication of enforcement by the Toronto Building and Municipal Licensing & Standards Divisions. Article 7 of the New Chapter 363 streamlines the enforcement of construction fencing requirements. Under the new provisions, Building Inspectors have the ability to address all fencing issues without the need to involve the Municipal Licensing & Standards Division. This will help to address associated safety concerns quickly and effectively.

The New Chapter 363 also sets out offences and fines to allow for further enforcement tools including the issuance of tickets and prosecutions. Toronto Building Inspectors currently have no ability to issue a ticket as an administrative penalty. Toronto Building received City Council approval at its meeting of May 22-24, 2018 to obtain necessary approvals from the Regional Senior Justice of the Ontario Court of Justice for short form wording and set fines to enforce the provisions of the Construction Fence By-law in article 7 of the New Chapter 363.

Revocation of Permits

The authority for the Chief Building Official to revoke a building permit is provided in the Act, though the grounds under which the permit may be revoked (as set out in the Act) are limited to:

- if the permit was issued on mistaken, false or incorrect information;
- if, after six months after the permit was issued, the construction or demolition in respect of which it was issued has not, in the opinion of the Chief Building Official, been seriously commenced;
- if the construction or demolition of the building is, in the opinion of the Chief Building Official, substantially suspended or discontinued for a period of more than one year;
- if the permit was issued in error;
- if the holder requests in writing that the permit be revoked; or
- if there is non-compliance with a term of a conditional building permit agreement.

Consistent with the other areas of building regulatory enforcement, the Act provides municipalities with the ability to establish procedures for the revocation of building permits. The New Chapter 363 provides clarity for both permit holders and the City on the processes and procedures for revocation and ensures that the Chief Building Official's discretion is exercised reasonably. The new revocation process clearly establishes when and under what circumstances a revocation notice is issued and establishes a reasonable time period for the permit holder to respond to the Chief Building Official's intention to revoke the permit. This enables a fair and transparent

process, granting the permit holder the opportunity to respond to a notice of an intention to revoke a permit.

The revised revocation procedures in the New Chapter 363 also address recommendations from the Auditor General in the (January 15, 2014) report, "Toronto Building – Improving the Quality of Building Inspections". The Auditor General recommended that Toronto Building improve the effectiveness of building inspection services, including ensuring that permits are not left open indefinitely. The new procedures permit the revocation process to proceed after reasonable time is granted to the permit holder to comply with the Code and By-law requirements.

To further implement the Auditor General's recommendation to resolve open permits, the provisions of the New Chapter 363 require owners/builders to provide notice of readiness of inspection at the commencement of construction and one at the completion of construction, after occupancy has been granted. These two new inspections will enable Toronto Building to be more aware of a building's construction status. In turn, this will assist Toronto Building in determining whether there are appropriate grounds for revoking a permit. Appropriate action by Toronto Building would be initiated using the procedures contained in the New Chapter 363.

Certified Plans

The New Chapter 363 clarifies the existing certified plans process. This is a pre-review of building plans by Toronto Building to verify and certify that a proposed building is in compliance with the Code. Once the building plans are certified by Toronto Building, a permit applicant may use the plans multiple times for identical buildings in different locations in the city. Toronto Building still issues a building permit under section 8 of the Act for each proposed building; however, with certified plans the permit review is less complex.

Toronto Building currently certifies certain plans/designs/systems for: tents, portable classrooms and houses in a plan of subdivision. Introducing the provisions and requirements for certified plans into the New Chapter 363 will clarify the entire process for applicants. It is consistent with the Division's objective of having a comprehensive, user-friendly by-law that contains all of Toronto Building's application processes. It also allows Toronto Building to introduce the certified plan process for other types of buildings or structures in the future as appropriate.

Conclusion

The adoption of the new Toronto Municipal Code Chapter 363 is necessary to implement the changes in the Building Code Act, 1992 and the Building Code with respect to Alternative Solutions and to provide enforcement powers for building inspectors to achieve compliance with the City's construction site fence requirements. The new Chapter 363 will provide a clear and concise set of provisions that can be enforced uniformly across the city, improving transparency and administrative fairness.

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ATTACHMENTS

Appendix 1: Proposed Amendments to Chapter 363 of the Toronto Municipal Code