



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

Legal Options Available to City to Protect the Public Interest with respect to Proposed Changes to Building Code Service Delivery

Date: January 27, 2020

To: City Council

From: City Solicitor

Wards: All

REASON FOR CONFIDENTIAL INFORMATION

The attachment to this report contains advice that is subject to solicitor-client privilege.

SUMMARY

The Planning and Housing Committee considered PH12.1 "Provincial Consultation on Ontario's Building Code Service Delivery", a report from the Chief Building Official and Executive Director, Toronto Building, at its January 22, 2020 meeting. That report summarized the Ministry of Municipal Affairs and Housing's recent consultation on proposed changes to how the Province delivers its services related to the Ontario Building Code. Toronto Building staff identified concerns with the Province's proposal to create an administrative authority for provincial Building Code services and introduction of a program (Certified Professional Program) whereby builders would be allowed through legislation to hire designers to assume the plan review and inspection roles and responsibilities on behalf of municipalities.

The concerns noted by staff in PH12.1 "Provincial Consultation on Ontario's Building Code Service Deliver" suggest that the public interest could be negatively impacted if the Province were to proceed with implementing an administrative authority and a Certified Professional Program like those proposed in the Transforming and Modernizing Ontario's Building Code Services Consultation. The Planning and Housing Committee directed the City Solicitor to report directly to City Council on January 29, 2020 on any legal options available to the City to protect the public interest with respect to the proposed changes to Building Code Service Delivery. This report and its confidential attachment respond to that direction.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the confidential instructions to staff in Confidential Attachment 1.
2. City Council direct that the confidential instructions in Confidential Attachment 1 remain confidential at the discretion of the City Solicitor and that the balance of Confidential Attachment 1 remain confidential in its entirety, as it pertains to potential litigation and contains advice that is subject to solicitor-client privilege.

FINANCIAL IMPACT

The financial implications are discussed in Confidential Attachment 1.

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

DECISION HISTORY

Planning and Housing Committee considered item PH12.1 "Provincial Consultation on Ontario's Building Code Service Delivery" on January 22, 2020.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.PH12.1>

The Planning and Housing Committee directed the City Solicitor to report directly to City Council on January 29, 2020 on any legal options available to the City to protect the public interest with respect to the proposed changes to Building Code Service Delivery.

COMMENTS

Issues with Proposed Changes to Building Code Service Delivery

The Chief Building Official and Executive Director, Toronto Building summarized the Province's proposed changes to Building Code Service Delivery in PH12.1 "Provincial Consultation on Ontario's Building Code Service Delivery". This report should be read in conjunction with PH12.1.

The Chief Building Official and Executive Director, Toronto Building noted that Toronto Building staff are supportive of many of the proposed changes suggested by the Province in their consultation. However, there are concerns with the following two proposed changes:

1. Introduction of an Administrative Authority; and,
2. Introduction of a Certified Professional Program.

Those proposals were included in the consultation paper with very limited details and particulars. At this time and based on a review of the consultation paper, it is difficult to anticipate what the scope and structure of those changes would be. In any event, the Chief Building Official and Executive Director, Toronto Building has appropriately spotted and noted issues with those proposals. For the Administrative Authority, there is risk of eroding the government's role in policy direction and Code development. For the Certified Professional Program, it introduces a conflict of interest. Each of those issues presents a risk to the public's safety. In the case of the Certified Professional Program proposal, Toronto Building has stated that it does not support the Province further pursuing the introduction of it.

Regulatory Regime Overview

The Building Code Act, 1992 (the "Act") is a statute that has been passed by the Province of Ontario. The Act sets out the legal framework for regulation of building construction and demolition. The Province has authority to make changes to the Act.

The Ontario Building Code (the "Code") is a regulation passed under the Act. The Code contains the technical requirements for the design and construction of buildings in Ontario. The Lieutenant Governor in Council has authority to determine the content of the Code.

The Act currently provides each municipality with the responsibility for the enforcement of the Act in the municipality. The Act also provides municipalities with authority to pass certain by-laws, generally regarding administrative matters like classes of permits and fees.

CONTACT

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SIGNATURE

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ATTACHMENTS

Confidential Attachment 1 - Legal Advice and Confidential Instructions to Staff