



Provincial Consultation on Ontario's Building Code Service Delivery

Date: January 6, 2020

To: Planning and Housing Committee

From: Chief Building Official and Executive Director, Toronto Building

Wards: All

SUMMARY

The purpose of this report is to provide City Council with a summary of the staff response to 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. The Province is responsible for administering the Ontario Building Code Act and Building Code, while the City of Toronto is responsible for enforcement within its boundaries.

The report contains recommendations consistent with the Chief Building Official's response to the Province. Due to the timing of the consultation (September 25 - November 25, 2019), it was not possible for those comments to be brought before Toronto City Council for consideration, or endorsement. This report focuses on the proposals which, in the view of Toronto Building staff, would have an impact on Building Code enforcement in the city.

Toronto Building staff are supportive of proposed changes to Ontario's qualification and registration system for building practitioners. The current system has created recruitment and staffing challenges for the City. On the matter of enforcement, the introduction of administrative penalties into legislation would support the City's efforts to address non-compliance with the Building Code. Staff are also supportive of strengthening the co-ordination and oversight of design professionals on complex building construction projects.

On the proposal to create an administrative authority for provincial Building Code services, staff identified concerns on matters of governance, accountability and a diminished municipal voice in building regulatory policy development at the Province. Toronto Building staff do not support the introduction of a program (known as the Certified Professional Program) whereby builders would be allowed through legislation to hire designers (who are also Architects and Professional Engineers) to assume the plan review and inspection roles and responsibilities on behalf of municipalities. While it is important to rely on design professionals to streamline the process, there are a

number of concerns with this model, including potential conflicts of interest. The consultation did not contain any proposals to amend the Ontario Fire Code, the Fire Protection and Prevention Act, or the role of the Office of the Fire Marshal.

The provincial consultation was also an opportunity to identify to the Province that the City of Toronto has experienced challenges in enforcing building regulations and has had to develop creative solutions to address pressing issues; particularly as they relate to high risk work, public education on good construction practices and public safety during construction. Finally, the submission identified that Toronto Building is currently undertaking a Program Review to identify a service model which meets public expectations including effective, efficient and timely services. The Ministry of Municipal Affairs and Housing has been invited to be part of that discussion to help inform its further consideration of the proposals on which it consulted.

This report has been written in consultation with the City Manager's Office and the Fire Chief and General Manager, Toronto Fire Services.

RECOMMENDATIONS

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

1. City Council request that the Ministry of Municipal Affairs and Housing conduct further consultations directly with the City of Toronto on its proposals to change how Ontario Building Code services are delivered in Ontario.
2. City Council advise the Minister of Municipal Affairs and Housing that Toronto City Council:
 - a. Supports revising the provincial qualification and registration program for building practitioners;
 - b. Supports the use of a Prime Consultant on complex buildings;
 - c. Requests that the Chief Building Official of the City of Toronto be an ex-officio, voting member on the proposed administrative authority's Board of Directors; and,
 - d. Does not support the introduction of a Certified Professional Program in Ontario.
3. City Council direct the Chief Building Official and Executive Director, Toronto Building to report back to the Planning and Housing Committee by the end of 2020:
 - a. With an update on the implementation of the proposed changes to provincial delivery of Building Code services, at the appropriate time; and,
 - b. On the results of the Toronto Building Program Review.
4. City Council request that the Government of Ontario incorporate the National Building Code requirements relating to fire safety during construction into the Ontario Building Code.

FINANCIAL IMPACT

There are no direct financial implications arising from the recommendations in this report.

DECISION HISTORY

At its meeting of July 16, 2019, Toronto City Council adopted Member Motion MM9.20, "Making home renovations safer - requesting changes to the Ontario Building Code based on the inquest into the death of Ryan Pearce" which recommended that:
<https://www.toronto.ca/legdocs/mmis/2019/mm/bgrd/backgroundfile-135852.pdf>

1. City Council request the Minister of Municipal Affairs and Housing to implement changes to the Ontario Building Code that will require all underpinning and bench footing work to be undertaken under the general review of a supervised person, and City Council advise the Minister of Municipal Affairs and Housing that the City of Toronto is prepared to assist with evaluating the regulatory changes needed to accomplish Recommendation 1 from the Office of the Chief Coroner's Inquest into the death of Ryan Pearce.
<https://www.toronto.ca/legdocs/mmis/2019/mm/bgrd/backgroundfile-135852.pdf>

At its meeting of May 22, 2018, Toronto City Council adopted amendments to the City of Toronto Municipal Code to implement regulations concerning the posting of public notice on residential infill construction and demolition sites.
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.PG29.1>

COMMENTS

Context

Ontario's Building Code (the Code) is a regulation made under the Building Code Act (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 Ministry of Municipal Affairs and Housing. In addition to Code development, the Province also establishes and administers the qualification and registration requirements for building practitioners (including Building Officials) in Ontario. Municipalities in Ontario are responsible for implementing the administrative requirements of the Act and enforcing the Code within their boundaries.

On September 24, 2019, the Province of Ontario released a public consultation document called, "**Transforming and Modernizing the Delivery of Ontario's Building Code Services.**" The consultation identified that the government is proposing changes in response to stakeholder requests for better and timely services to support the implementation of the Code. The government consulted on three areas of particular interest to the City of Toronto:

- Qualification, Training and Recruitment

- Prime Consultants and Certified Professionals
- Administrative Authority

Chief Building Official's Response

In response to the consultation, the Chief Building Official commented on areas where the Province needs to give further attention and consideration. The submission noted that due to the timing of the consultation, the comments were submitted without having the opportunity to bring them forward to Toronto City Council for consideration or endorsement.

In addition, it is important to note that a number of the proposals and ideas in the consultation paper were introduced with limited details and particulars. In many cases, the concepts were preliminary in nature and not fully developed. As a result, the comments in the response were necessarily limited by the maturity of the ideas presented in the consultation paper. In addition to the general comments provided in the response, it was noted that if some of the concepts are pursued, further consultation with stakeholders, including the City of Toronto, will be necessary and appropriate before final decisions on implementation or approval can be made.

Qualification, Training and Recruitment

Of the issues needing modernization, qualification, training and recruitment are the most urgent from the City of Toronto's experience.

In speaking with new graduates at post-secondary career fairs, Toronto Building staff have observed that there is limited awareness of career opportunities related to the administration of the Code, limited Code knowledge, and building regulations in general. Toronto Building has been actively working with local colleges on this issue. There is, however, an opportunity now to integrate Code training with post-secondary course curricula. By taking this approach, students could be significantly more aware of career options in the building regulatory sector. In addition, this could provide new post-secondary graduates with the necessary foundation and knowledge for a career in this field. For newcomers to Canada, there are also opportunities to broaden equivalency provisions so that more programs and professionals are pre-qualified.

The Province's understanding of the issues with its training and examination regime is consistent with the City of Toronto's experience. The current system, for example, is heavily focused on the technical application of the Code. There is also a disconnect between the various study materials and what is actually assessed on the exams. The current provincial system has, as a result, contributed to a shortage of qualified and/or experienced people in this sector.

Moreover, the skills needed to be a successful building inspector have evolved. While technical training is still important, today's inspectors also need to be competent in customer service and conflict resolution skills in order to facilitate compliance with the Code. The expectations of both the public and the building industry have changed. They expect positive interactions and a transparent regulatory experience from the first building permit application to the final inspection. This includes inspectors having the

ability to fully explain Code requirements using professional written and verbal communication skills. Provincial exams and qualifications should not be a barrier to recruitment or entrance into the profession. As a result of these challenges, well-suited candidates can become discouraged and then pursue other building design and construction careers. Considering the recruitment challenges faced by the City of Toronto, it is critical that candidates be able to qualify in a timely manner.

Prime Consultants

The consultation asked whether the use of Prime Consultants and Certified Professionals would support a more streamlined building permit application process.

Code requirements are becoming increasingly more complex as they expand to address evolving fire and life safety and environmental sustainability objectives. Often these requirements impact the work carried out by multiple design professionals and disciplines. The Province has proposed that the legislation introduce roles and responsibilities for a Prime Consultant. This designated design professional would have the responsibility for coordinating Code compliance amongst all the professionals engaged in the design and construction of the project. Toronto Building staff support the use of a Prime Consultant and recommended that they be identified for all large complex projects. However, it is a necessary condition that the legislation include requirements for appropriate training and understanding of the Code in order to obtain the designation.

Certified Professionals

The government consulted on the use of a Certified Professional Program in the Province of Ontario, similar to the system used to some extent in British Columbia. Municipalities in British Columbia that choose to participate in the program (e.g., the cities of Vancouver and Surrey) continue to issue building and occupancy permits through an administrative type process; however, Certified Professionals assume the roles and responsibilities on behalf of municipalities for the plan review and inspection processes and they are hired by the developers. Certified Professionals are required to be licensed as an Architect or Engineer under the applicable provincial acts. While these Certified Professionals hold legal and ethical obligations under their professional act, conflict of interest concerns and perceptions are at times expressed by the public and other regulators. In Ontario's early-2000s, building regulatory reform undertaking, there was a similar concern that proposed "builder appointed" Registered Code Agencies may lead to a reduction in compliance and safety. As a result, that model was not ultimately adopted into legislation.

In the City of Toronto, the public relies on the expertise of our qualified staff for an independent and objective review of construction. This regulatory oversight by our building inspectors provides the public with assurance that the buildings where they live, work and visit meet all fire and life standard requirements while achieving other Code objectives such as environmental protections and accessibility. A regulatory system where all practitioners, such as designers and builders, are fully qualified on Building Code requirements would eliminate the need for multiple reviews and inspections by

building inspectors and ultimately, lead to improved permit processing times while achieving a high level of Code compliance in buildings.

It should also be noted that the regulatory model in Vancouver is different from Ontario. For example, depending on the professional discipline, engineers must hold enhanced qualifications and their designs must undergo a concept review by an independent engineer, prior to permit application. In addition, an architect or engineer must conduct enhanced field reviews on the building's exterior walls during the construction process. These additional qualifications and requirements are not applicable in Ontario's regulatory model. Before considering Certified Professionals in Ontario, it would be appropriate to examine expanding the roles and responsibilities of registered professional engineers and architects in Ontario and strengthen the ability of municipalities to rely on these professional designers.

Toronto Building does not support the Province further pursuing the introduction of a Certified Professional Program. In addition to the issues and concerns raised above, it is the staff view that a streamlined building permit application process could be more effectively and efficiently achieved through the development of training programs for all building practitioners.

Building Code Administration and Enforcement

The Province has correctly identified that municipalities need additional tools to support and enhance enforcement of the Act and Code. Court proceedings are costly and time-consuming for building officials, and other municipal departments, and do not always facilitate timely compliance with building regulations.

Toronto Building recently used ticketing in the City's strategy to minimize the negative impacts of infill residential construction. Recognizing that there is a continuum of enforcement strategies available to building officials, Toronto Building has expanded the use of tickets (under the Provincial Offences Act) to expedite compliance with outstanding orders. Over three years, the use of tickets has shown, through a targeted enforcement strategy, to be an effective tool. A more comprehensive administrative penalty framework (compared to tickets issued under the Provincial Offences Act) would enhance the City's current abilities to address building related offences. Toronto Building would welcome and support having a regulation passed to facilitate the use of administrative penalties and anticipates using them with regularity.

Administrative Authority

The Province is proposing to introduce a new administrative authority to deliver a range of Building Code services to principal authorities (including the City of Toronto) responsible for enforcement. An administrative authority is an arms-length, non-profit government agency, such as the Technical Standards and Safety Authority (TSSA) and the Electrical Safety Authority (ESA).

While the City may benefit from additional support from the Province in Code enforcement, an administrative authority is not necessarily required, or necessary in order for this to occur. The consultation document was unclear on a number of aspects

related to a potential administrative authority and did not articulate why this model was chosen. The significant areas of concern, identified in the staff submission, relate to governance and accountability.

The administrative authority would appear to benefit Ontario's smaller municipalities rather than larger urban areas. Due to the volume of building permit activity in Toronto, the City would also be the greatest contributor to funding the authority through a mandatory levy on building permits. Nevertheless, the governance decisions made by the Board of Directors on how the administrative authority is operated will directly impact Toronto and the construction activity in the city. It would be essential, therefore, that the Chief Building Official of the City of Toronto be an ex-officio, voting member on the administrative authority's Board of Directors.

If public safety is to be promoted, the scope, completeness and structure of the mandate and governance of the administrative authority must appropriately balance the interests of all industry stakeholders – especially between the building industry and building officials – in order to protect against potential conflicts of interest.

Accountability of the administrative authority, is therefore, the second area of potential concern. Creating this authority, as described in the consultation, will effectively separate building regulatory policy development from the administration of Building Code services. As a result, this fragmentation creates the potential for significant gaps between program development and delivery, reducing political accountability. There is concern that the oversight and transparency, provided by Freedom of Information laws, the Auditor General and the Provincial Ombudsman may not apply to the administrative authority, to the same extent that they do to the current system in which administration and policy is combined in the Ministry of Municipal Affairs and Housing.

A further concern is that there is potential for the government's role to develop into one of oversight and management of the administrative authority, rather than providing policy direction and Code development. This risk is potentially exacerbated as the Province moves towards greater harmonization with the national codes. The City of Toronto plays a key role in Ontario's Code development process by identifying both emerging and urgent needs for Code changes. There is a clear channel of communication and accountability in the current process. Care should be taken so that this voice is not fragmented and that the provincial government remains accountable for the policy development informing both technical and administrative matters related to the Act and the Code.

Current Gaps

In its rationale for the proposed changes, the Province correctly identified that municipalities have been facing a number of challenges in the enforcement of building regulations. The high volume and complexity of construction in the City of Toronto has made it necessary for City Council and Toronto Building to develop creative solutions to address pressing issues and strengthen public safety. As the Province considers changes to how building services are delivered, the staff submission identified several gaps in current building regulation which need to be addressed.

High Risk Work: The Code does not currently require that underpinning and bench footing type work be carried out under the general review or supervision of a qualified person. Due to the potential for failure during construction, this work is considered to be a high risk activity. In 2014, 19-year old, Ryan Pearce died while working on home renovations in north Toronto that included underpinning of the home's foundation. On February 8, 2019, the Chief Building Official wrote to the Minister of Municipal Affairs and Housing supporting the recommendation from the Office of the Chief Coroner that the Code require this review and supervision. Without these Code changes, Toronto Building has put procedures in place so that professional oversight is strengthened. However, expeditious attention by the Province is required in order to implement the legislative amendments. Toronto City Council affirmed its support for these changes in July, 2019. A municipal policy is not a replacement for provincial regulation on the matter of worker and public safety.

Residential Infill Public Notice: In 2016, Toronto Building developed an inter-divisional strategy to minimize the negative impacts of infill construction in existing neighbourhoods. As part of this strategy, Toronto City Council directed Toronto Building to require signs on construction sites in order to provide clear, accessible and useful information to the public. This was a challenge, as the Code does not authorize the inclusion of additional information on the permit placard. A number of North American cities require that construction sites contain signs or notices providing the public with information and often combine the sign with the permit placard.

A municipal by-law was ultimately passed by City Council, under the authority of the City of Toronto Act, in order to require the posting of the public notice in order to help foster clarity about the rules and support good construction practices. Feedback from both the building industry and residents' groups has been positive. There is a need to examine the legislation and expand the ability of municipalities to address public expectations and the need for information about the construction process, beyond basic identification that a permit has been issued.

Public Safety during Construction: The Act and the Code regulate the design and construction of buildings in Ontario. However, there is a need for the provincial government to strengthen public safety during the construction process. Municipalities with construction in dense urban environments, like Toronto, have limited ability in this area. Instead, the City of Toronto relies on tools such as construction management plans. Public expectations of the Building Code have changed. The public expects

municipalities to have a role in public safety during the construction process. As part of the National Building Code harmonization process, consideration should be given to this matter and to what role Part 8 (Safety Measures at Construction and Demolition Sites) of the National Building Code could play in Ontario. The Ontario Building Code does not address fire or life safety concerns during renovation, or other construction projects in occupied structures. An emerging trend has been identified with the use of combustible exterior cladding in occupied residential buildings. At present, the Ontario Building Code does not address the inherent risks during the installation of these products and does not contain the prescribed requirements and safeguards found in the National Building Code.

The Fire Chief and General Manager, Toronto Fire Services has engaged the Ontario Fire Marshal with respect to these concerns and has formally requested the assistance of the Ontario Fire Marshal in having the necessary amendments to the Ontario Building Code implemented.

Toronto Building Program Review

Similar to the Province, Toronto Building has also identified that it is necessary to think about how it will continue to deliver its services with more resiliency, better respond to changing construction activity and meet the public expectations for effective, efficient and timely services. KPMG has been engaged to conduct the Program Review and the work is currently underway. A broad range of internal partners and external stakeholders will be consulted. The work will be completed by late-summer 2020 with a report to the Planning and Housing Committee anticipated in the fourth quarter of 2020 (to share the results, outcomes and an implementation strategy).

Conclusion

In response to the recent consultation on Ontario's Building Code services, Toronto Building staff expressed support for proposed changes to the provincial training and qualification system for practitioners, as well as providing additional enforcement tools for municipalities. However, the Chief Building Official cautioned that streamlining of development, while an important objective, should not be achieved at the cost of public safety, accountability, transparency or housing affordability. The Chief Building Official also raised concerns with the proposed introduction of an administrative authority and did not support a Certified Professional Program.

The Province has not identified a timeline to implement the proposals, or indicated whether further consultation will be undertaken. Staff have advised the Ministry of Municipal Affairs and Housing that further direct consultation with the City of Toronto is required. Toronto Building staff will continue to participate in any future consultations and report to City Council, when appropriate, on the anticipated implications for the City of Toronto should the government proceed further with the proposals.

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