

## **Response to the Provincial Consultation on Partial and Phased Occupancy of Super-Tall Buildings**

**Date:** March 11, 2022

**To:** Planning and Housing Committee

**From:** Chief Building Official and Executive Director, Toronto Building

**Wards:** All

### **SUMMARY**

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Tall buildings have been part of Toronto's urban landscape since the early twentieth century. Their construction reflects a healthy economy and vibrant construction industry. With skyscrapers becoming taller and the construction process taking longer, the Ministry of Municipal Affairs and Housing is consulting on whether the Building Code should be amended to include prescriptive requirements to allow partial occupancy for "super-tall" buildings that are still under construction and what those requirements should be.

The purpose of this report is to provide City Council with recommendations for a response to the Ministry of Municipal Affairs and Housing as it considers potential Building Code changes in this area.

The early occupancy of a partially constructed skyscraper presents unique public safety hazards to those within the building and people in the public realm adjacent to the construction site. While the Building Code allows partial occupancy of buildings in certain cases, it does not permit this to occur unless the entire building's structure and enclosing walls are completed to the roof. These provisions reflect typical high-rise building construction practices.

If the Province were to proceed with permitting early occupancy of super-tall buildings, it should only do so after careful consideration by people with specific expertise in construction site safety and the hazards of allowing the public to interact with an active construction site. The report recommends that City Council ask the Ministry of Municipal Affairs and Housing to convene this expert panel (including the City of Toronto) with a mandate to consider and develop recommendations on whether and how the Building Code may be amended to allow partial occupancy of "super-tall" buildings.

In a dense urban environment such as Toronto, construction-related incidents have further identified that there are gaps in current legislation which should be addressed more broadly to strengthen public safety during the construction process. Safety of the public from an active construction site is not a matter currently regulated through the Building Code Act, 1992 or the Occupational Health and Safety Act (aside from covered public walkways adjacent to a site). The report further recommends that the Government of Ontario fill the gap in the existing legislation to ensure that no person is exposed to undue risk from active construction sites.

This report has been written in consultation with the Acting Fire Chief and General Manager, Toronto Fire Services and the General Manager, Transportation Services.

## **RECOMMENDATIONS**

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

1. City Council, in response to the Ministry of Municipal Affairs and Housing consultation on partial and phased occupancy of "super-tall" buildings, request that the Minister of Municipal Affairs and Housing convene a task-force of experts in construction site safety (including the City of Toronto) with a mandate to develop and recommend prescriptive Building Code requirements which must be met to allow safe partial occupancy into "super-tall" buildings that are still under construction; and
2. City Council request that the Government of Ontario, consider the development of prescriptive regulations setting out requirements for safety measures at construction sites to protect public safety and ensure that no person is exposed to undue risk, in addition to the existing provisions of the Building Code and the Occupational Health and Safety Act.

## **FINANCIAL IMPACT**

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There are no financial impacts arising from the adoption of the recommendations in this report.

## **DECISION HISTORY**

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There is no decision history on this matter.

## COMMENTS

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The Ministry of Municipal Affairs and Housing is asking the City of Toronto, and other stakeholders, to provide input on whether the Building Code should be amended to include prescriptive requirements to allow partial occupancy for "super-tall" buildings that are still under construction and what those requirements should be. The threshold at which a building would be considered "super-tall" has not been identified in the consultation.

This consultation was posted on the Regulatory Registry from February 11, 2022 to March 14, 2022. It was not possible for staff to bring this matter forward to City Council for consideration during the posting period, though there is still opportunity for City Council to provide recommendations directly to the Ministry of Municipal Affairs and Housing.

Super-tall buildings are becoming more common and because of the unique construction challenges, can take two to three years longer to fully complete than a typical high-rise building. As skyscrapers become taller, the construction process is taking longer. The Ministry of Municipal Affairs and Housing is considering Building Code changes which would permit the occupancy, or partial-occupancy of the lower floors before the building's structure and enclosing walls are completed. The Building Code currently allows early occupancy when the building's structure and enclosing walls are completed to the roof and reflect typical high-rise building construction practices.

While skyscrapers are part of the City of Toronto's landscape and their construction reflects a healthy and vibrant construction industry which is vital to our local economy, any potential changes to the Building Code must protect the building occupants and the public during the construction process. The Building Code Act, 1992 establishes the framework for the regulation of the construction of buildings and the Occupational Health and Safety Act sets out the duties of employers in protecting workers from health and safety hazards on the job. There is an additional need for legislation to protect the public safety during the construction, alteration or demolition of buildings, especially if occupancy is permitted in what is essentially an ongoing construction site.

Due to its position as the largest City in Ontario, Toronto would be most affected by any Building Code changes impacting skyscraper construction. The development of prescriptive criteria which must be met to allow occupants into a building while it is still under construction should be undertaken in a careful and measured way. Staff are not aware of any standard or code criteria which are broadly used by other North American jurisdictions in regulating this issue.

Consequently, should the Ministry of Municipal Affairs and Housing proceed in considering Code requirements in this new area, it is important that it engage the appropriate technical experts in the area of construction site safety (in addition to building officials and emergency services) and that the government strengthen legislation affecting public safety during the construction process. The Building Code

does not regulate the manner in which buildings are constructed and the Occupational Health and Safety Act protects workers. There is a gap in the regulatory framework as there are no specific regulations that protect the public who could be permitted to occupy a partially constructed building under construction. The construction of super-tall buildings can pose specific hazards for the public who may occupy incomplete buildings and the public spaces adjacent to the construction sites; both need to be carefully considered in the development of potential regulatory changes.

## **CONTACT**

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## **SIGNATURE**

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