

Update: Building Code Changes to Permit Partial Occupancy of Super Tall Buildings During Construction

Date: June 20, 2022

To: Planning and Housing Committee

From: Chief Building Official and Executive Director, Toronto Building

Wards: All

SUMMARY

This report responds to City Council's request that the Chief Building Official and Executive Director, Toronto Building, report back to the Planning and Housing Committee on any further consultations and changes to the Building Code that permit partial occupancy of super tall buildings.

In April 2022, the Chief Building Official and Executive Director, Toronto Building reported to City Council that the Ministry of Municipal Affairs and Housing was consulting on proposed Building Code changes that would introduce prescriptive requirements to allow partial occupancy of super tall buildings that are still under construction. In considering the report, City Council adopted recommendations requesting that the Ministry of Municipal Affairs and Housing convene a task-force of experts in construction site safety and conduct further consultations before proceeding with any Building Code changes.

In late-April, the Province amended the Building Code by introducing Article 1.3.3.7 (Occupancy Permit - Super Tall Buildings) to allow the early and partial occupancy for super-tall buildings. This Article sets out the obligations and criteria under which the Chief Building Official must allow partial occupancy of super tall buildings (now defined as 65 or more storeys, or more than 250 metres in building height) where the structure and enclosing walls of the building are not completed to the roof.

This report summarizes the new Article and recommends that City Council request additional amendments prior to November 1, 2022. The report also contains recommendations intended to address any additional technical changes that may be required to support public safety. These amendments would support the construction of these super tall buildings, but also clarify issues related to municipal risk.

This report has been written in consultation with Legal Services, Transportation Services, Municipal Licensing and Standards, and Toronto Fire Services.

RECOMMENDATIONS

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

1. City Council request that the Minister of Municipal Affairs and Housing, prior to November 1, 2022, amend Building Code Article 1.3.3.7 (Occupancy Permit - Super Tall Buildings) in order to address issues in the Article related municipal risk and monitoring of public safety during construction by:

- a. Identifying the roles of each party involved in the partial occupancy of super tall buildings,
- b. Removing the option for the Chief Building Official to request an indemnity and insurance and replace with language clearly identifying that the municipality and the Chief Building Official will not be liable, and that all risk shall be borne by the owner, builder and other parties involved in the construction, implementation and monitoring of the partial occupancy plan; and,
- c. Requiring that an expert provide certification that the partial occupancy plan has been complied with, and that there is monitoring through the period of partial occupancy with a requirement that the Chief Building Official be informed immediately if there is non-compliance with the partial occupancy plan at any stage.

2. City Council request that the Minister of Municipal Affairs and Housing direct staff from the Ministry of Municipal Affairs and Housing to engage staff from Toronto Building, Municipal Licensing and Standards, Toronto Fire Services and Transportation Services, and conduct further consultation with experts in construction site safety, to identify any recommended changes to the list of Building Code requirements that must be met for the safe partial occupancy of super tall buildings.

FINANCIAL IMPACT

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

DECISION HISTORY

At its meeting of April, 6, 2022 City Council considered item [PH32.3](#) "Response to the Provincial Consultation on Partial and Phased Occupancy of Super-Tall Buildings and adopted the following:

1. City Council, in response to the Ministry of Municipal Affairs and Housing consultation on partial and phased occupancy of "super-tall" buildings, request the Minister of Municipal Affairs and Housing to:

- a. convene a task-force of experts in construction site safety (including the City of Toronto on the task-force) with a mandate to determine if the Building Code should be amended to permit safe partial or phased occupancy of "super-tall" buildings that are still under construction, and if so, to develop and recommend prescriptive Building Code requirements that must be met to permit safe partial or phased occupancy; and
 - b. conduct further consultations on the specific findings and recommendations of the task-force before proceeding with any changes to the Ontario Building Code to permit the partial or phased occupancy of "super-tall" buildings.
2. City Council request the Government of Ontario to 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.
 3. City Council request the Chief Building Official and Executive Director, Toronto Building, in consultation with the General Manager, Transportation Services and the Fire Chief and General Manager, Toronto Fire Services, to report back to the Planning and Housing Committee on any further consultations and changes to the Building Code that permit partial and phased occupancy of super-tall buildings.

COMMENTS

Proposed Building Code Changes & City of Toronto Response

In April 2022, City Council considered a report from the Chief Building Official and Executive Director, Toronto Building outlining proposed changes to the Building Code which would introduce prescriptive requirements to allow partial occupancy of super tall buildings that are still under construction and what those requirements should be. The Ministry of Municipal Affairs and Housing did not provide draft Building Code requirements for comment at that time. Instead the Ministry solicited feedback on criteria which may need to be addressed, and how to appropriately define "super tall" buildings.

The staff report identified that the construction of very tall buildings within an urban environment (especially in Toronto) presents a particular set of public safety hazards for both building occupants and the public who may occupy the area surrounding construction sites.

The report further identified that there is an additional need for legislation to protect public safety during the construction, alteration or demolition of buildings, especially if occupancy is permitted in what is essentially an ongoing construction site. Currently, 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.

In response to the Ministry's consultation, City Council requested that the Minister of Municipal Affairs and Housing convene a task-force of experts in construction site safety, which would include the City of Toronto, to determine if the Building Code should be amended allow partial or phased occupancy of these buildings and to develop and recommend the prescriptive Building Code requirements.

Building Code Amendments Enacted

On April 29, 2022, [Ontario Regulation 451/22](#) was filed under the Building Code Act, 1992 introducing Article 1.3.3.7 (Occupancy Permit - Super Tall Buildings) to allow the early and partial occupancy for super-tall buildings. The new Building Code Article applies to buildings that will be constructed to a height of 65 or more storeys (or more than 250 metres). The amendments prohibit the occupancy, or partial occupancy of these super tall buildings unless a permit is issued.

The regulation sets out a positive obligation for the Chief Building Official to issue the permit, if an applicant provides notice to the Chief Building Official that the intent is to partially occupy the building and certain criteria are met. These criteria address a range of fire and life safety requirements intended to protect occupants and those within the public realm adjacent to the construction site. The Article also includes matters related to occupant well-being. The criteria include:

- Completion of the building structure to the floor of the storey that is 10 storeys above the uppermost storey to be occupied
- Separation of the crane from parts of the building to be occupied with walls acting as guards where the crane mast is inside the building
- Measures to prevent access to parts of the building and site that are incomplete and still under construction
- A covered walkway over the means of egress from the building and all other areas that can be accessed by occupants
- Measures such as lighting in corridors, sprinkler, fire alarm and smoke control systems in areas which would be occupied
- Measures, such as construction debris disposal, dust, odour, and pests, among others

The amendments maintain existing Building Code requirements authorizing partial occupancy of a building once the structure and enclosing walls of the building are completed to the roof.

The matter of risk has been addressed in the regulation by compelling the permit holder and such other person as the Chief Building Official determines, to agree in a written submission to the municipality that they will assume all risk in occupying the building (or part of it) in accordance with the new Article, and any other conditions set out by the Chief Building Official. The submission to the Chief Building Official is also required to

include plans and measures intended to address health, safety and protection of property. A professional engineer is then required to review the plan and attest to its adequacy.

For transition to the new requirements, people who apply for a building permit by November 1, 2022, have until December 1, 2022 to provide notice to the Chief Building Official that they intend to occupy part of a super tall building during construction. After November 1, 2022 building permit applicants have to provide that notice at the time of building permit application.

City of Toronto Response

Criteria and Construction Plans for Partial Occupancy

Toronto Building and Legal Services staff, in consultation with Toronto Fire Services Municipal Licensing and Standards, and Transportation Services are assessing the legislation and identifying how to appropriately coordinate each Division's role in the implementation of the new permissions for partial occupancy of super-tall buildings. Staff are also reviewing the criteria set out in the regulation to identify any technical concerns, omissions, or challenges to implementation.

The report recommends that City Council request that the Minister of Municipal Affairs and Housing direct staff from the Ministry of Municipal Affairs and Housing to meet with staff from Toronto Building, Municipal Licensing and Standards, Toronto Fire Services and Transportation Services to identify any areas where further amendments to the criteria would be required, in addition to further consultation with experts in construction site safety.

The new requirement to submit plans and measures intended to address health, safety and protection of property (to the Chief Building Official) does not include any provisions to verify compliance with the partial occupancy plan, or that the builder will monitor and verify compliance through the construction process. Due to the height of these buildings, construction can take upwards of four to six years. While a professional engineer is required to review the plan and attest to its adequacy at application, this report recommends changes to the legislation which would require that an expert certifies compliance with the partial occupancy plan, and that there is monitoring through the period of partial occupancy with a requirement that the Chief Building Official be informed if there is non-compliance with the plan at any stage.

Risk Management

Risk management remains a significant issue of concern. The risk for a municipality in the Chief Building Official authorizing the occupation of the building, or part of it has only been partially addressed in the new provisions. The primary issue of concern previously identified for City Council by staff is that building officials are not the appropriate technical experts in the area of construction site safety as the Building Code does not

regulate the manner in which buildings are construction. The Occupational Health and Safety Act, meanwhile, protects workers.

The amendments do not provide the clarity that is required to adequately assign all responsibility of risk to the permit holder. Instead, the regulation requires the Chief Building Official to assess and determine the adequacy of the required safety measures and construction plans; The Chief Building Official is tasked with determining whether any additional safety measures would be appropriate for each individual site. Building inspectors, under the current regulatory framework, are not required or expected to have the specific technical training in all areas to identify these types of public safety issues resulting from the construction process and are not provided with enforcement mechanisms to obtain compliance.

The new provisions require that the permit holder and any other person (as determined by the Chief Building Official) enter into an agreement assuming all risk is not sufficient to protect the municipality from liability. The onus is on the municipality to ensure that the agreement addresses all possible bases for liability and that all of the relevant parties who should enter into the agreement are identified. As a result, the municipality and Chief Building Official would be liable if any bases for liability are missed and the municipality will not be adequately protected if any parties are missed in the agreement. This is an area of regulation which should be amended to either absolve the municipality of liability, or state with specificity the parties that will bear the risk in all matters pertaining to the partial occupancy.

To address the issues of municipal risk, this report recommends that City Council request that the Minister of Municipal Affairs and Housing amend the Building Code, prior to November 1, 2022, in order to clearly identify the roles of each party involved in the partial occupancy of super tall buildings. Removing the option for the Chief Building Official to request an indemnity and insurance should also be replaced by language which clearly identifies that the municipality and the Chief Building Official will not be liable, and that all risk shall be borne by the owner, builder and other parties involved in the construction, implementation and monitoring of the partial occupancy plan. With these amendments, the regulation would appropriately apportion all risk to those undertaking construction.

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SIGNATURE

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