



Building and Development Overview for Councils

Disclaimer

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The slides should not be relied on for legal or official purposes. For authoritative text, recourse may be had to the legislation

As local facts and circumstances are variable, users may wish to consider obtaining their own legal advice when particular legal issues or decisions arise

Purpose

- To provide an overview of:
 - The Building Code Act, 1992 (BCA)
 - The Building Code
 - The Ministry's Role
 - The Municipality's Role
 - The Role of the Chief Building Official and Building Inspectors
 - Building Permits, Fees and Reporting
 - Alternative Enforcement Models
 - Complaints

Building Code Act, 1992 (BCA)

- Lays out the legislative framework governing the construction, renovation, demolition and change of use of buildings
- Defines the purposes of the Building Code to include the establishment of building standards for the following:
 - public health and safety
 - fire protection
 - structural sufficiency
 - energy conservation
 - water conservation
 - environmental integrity
 - barrier-free accessibility

Building Code

- A regulation made under the BCA
- Sets out technical and administrative requirements for the construction, change of use, renovation and demolition of buildings in Ontario
- Generally regulates new construction (including significant renovations)
- Generally does not regulate existing buildings
 - Exceptions:
 - Regulates operation, maintenance and re-inspection of existing small on-site sewage systems (e.g. septic systems)

Context (cont'd)

- The Building Code Act, 1992 and the Building Code complement other legislative tools that:
 - Regulate fire safety in existing buildings (the Fire Code)
 - Regulate electrical safety in buildings (the Electrical Safety Code)
 - Regulate specialized building systems (e.g., elevators and pressure vessels are the responsibility of the Technical Standards and Safety Authority)
 - Regulate the construction process (Occupational Health and Safety Act)
 - Regulate the maintenance and occupancy of existing buildings (municipal property standards by-laws)

Code Development in Ontario

- Ontario's first Building Code regulation came into force in 1975
- New editions of Ontario's Building Code are released on a regular basis, approximately every 5 to 7 years
- Interim changes to the Code are made as needed
- The current edition is the 2012 Building Code (Ontario Regulation 332/12) – it was filed November 2, 2012, and most of the changes came into effect January 1, 2014
- Amendments to the Code reflect provincial priorities, stakeholder requests, building sector innovation, emerging situations and Coroner's inquests

Ministry of Municipal Affairs (MMA) Role

- MMA administers the Building Code Act, 1992 and the Building Code:
 - Develops legislation and regulations
 - Supports the Federal/Provincial/Territorial code development process (to promote code harmonization)
- MMA supports innovation:
 - Building Materials Evaluation Commission
 - Issuance of Minister's Rulings
- Support for building sector:
 - Qualification of building practitioners and maintenance of a registry
 - Code advisory services
 - Oversee the delivery of Building Code training
 - Development resource material to assist stakeholders to understand their responsibilities
 - Building Code Commission (dispute resolution)

Municipal Role

- Enforcement of the BCA and the Building Code is assigned to local “principal authorities”
 - Principal authorities are primarily local municipalities
 - Principal authorities may be conservation authorities and boards of health in the case of on-site sewage systems located in certain areas
- Enforcement responsibilities include:
 - Reviewing building permit applications and permit issuance
 - Construction inspections
- The BCA provides authority to take enforcement action (orders and prosecutions) where
 - Contraventions of the Act and the Building Code are found
 - Buildings are found to be unsafe or an immediate danger to the health and safety of any person (also includes power to take actions to remedy the unsafe or dangerous conditions)

Municipal Council

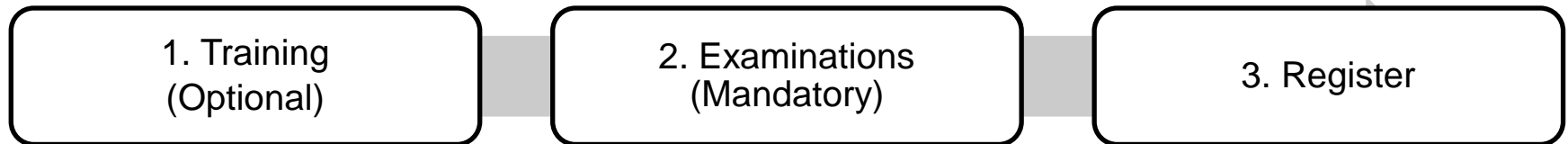
- Councils must appoint a chief building official and as many building inspectors, as necessary, to carry out enforcement of the BCA and the Building Code
- Council must establish and enforce a code of conduct for its CBO and building inspectors
- Council sets building permit fees (discussed later)
- Council has no role in decision-making on whether to issue or refuse building permits or to issue orders under the BCA

Chief Building Official (CBO) and Inspectors

- BCA assigns powers and duties for enforcement directly to the CBO, including:
 - establishing operational policies for the enforcement of the BCA and Building Code
 - coordinating and overseeing their enforcement
- CBO and inspectors must
 - meet qualification requirements in the categories that they intend to practice in in their official capacity
 - be registered with the province
 - perform their duties in accordance with the code of conduct established by the municipality in accordance with the BCA
 - Enforcement of the code is a municipal responsibility – the code is not regulated by the province

Chief Building Official and Inspectors

- In Ontario, there is a three-step process for CBOs and inspectors to be registered to practice:



- Examinations cover administrative and technical material across 14 categories (i.e., house, small buildings, large buildings, HVAC, septic systems, plumbing, legal, etc.)
- At minimum, Chief Building Officials must be qualified and registered in the Chief Building Official – Legal category
- Building inspectors must be qualified and registered in the Legal – General category plus the categories they operate within

Building Permits – Timeframes for Issuance and Setting Fees

- The Building Code includes service level standards that municipalities and other principal authorities must meet, including:
 - timeframes for making a determination on a building permit application, which involves issuing a permit or refusing to issue a permit and giving full reasons, and
 - timeframes for construction inspections following the receipt of notice from the building permit holder
- Municipal building departments can be funded through revenue generated from Building Code enforcement, building permit issuance in particular
 - Municipal councils set the building permit application fee
 - The total amount of the fees must not exceed the anticipated reasonable cost to enforce the BCA and the Building Code within the municipality

Building Permit Fees – Reserve Fund and Changing Fees

- Many municipalities and other principal authorities maintain a building reserve fund which:
 - Can be used to offset the year-to-year fluctuations of enforcement costs and revenues and to maintain stability in the number of building inspectors, and for capital projects related to enforcement of the BCA
 - Cannot be used for any purpose other than administration and enforcement of the BCA
 - If used for another purpose, it may be difficult to show the fees do not exceed the anticipated reasonable costs to enforce the BCA
- Where a change in permits fees is being proposed, the municipality is required to hold a public meeting:
 - Provide an estimate of enforcement costs, the amount of the fee change, and a rationale for the change

Municipal Reporting

- Under the BCA, municipalities and other principal authorities must prepare annual reports covering:
 - Fees collected
 - Building permit enforcement and administration costs
 - Extent of any reserve fund
 - Council is responsible for this reporting
- The annual report must be made available to the public
- Through their annual Financial Information Returns, municipalities also report on the following:
 - total construction activity
 - building permit review timeframes
 - total complete and incomplete applications

Alternative Enforcement Models

- The BCA provides flexibility to provide alternate enforcement arrangements, e.g., a principal authority may enter into an agreement with:
 - Another municipality to provide joint enforcement of the Act and Code
 - An upper tier municipality to carry out enforcement of the Act and Code
 - A Health Unit for enforcement of the Act and Code as it relates to plumbing, or
 - A Health Unit or Conservation Authority for enforcement of the Act and Code as it relates to on-site sewage systems
- Alternatively, BCA allows principal authorities to contract with private-sector firms known as a “Registered Code Agencies” to deliver many building services on behalf of a municipality or municipalities

Complaints

- Complaints regarding decisions made by the chief building official and/or municipal building departments are heard by the Building Code Commission (BCC) or the Superior Court of Justice
- BCC is an adjudicative body whose mandate is to resolve disputes involving:
 - sufficiency of compliance with the technical requirements of the Code
 - legislative time frames for permit processing and site inspections
- An aggrieved person may also appeal a decision or order of the chief building official or inspector to the Superior Court of Justice (generally involves matters other than those heard by the BCC)
- MMA sometimes receives complaints about the conduct municipal building officials and inspectors
 - These complaints are referred back to the municipality
 - Creation and enforcement of a municipal code of conduct for building officials and inspectors is a municipal responsibility – the code of conduct is not regulated by the province

Complaints – Recent BCC Examples

- Examples of complaints that the BCC could hear:

“I applied for a building permit 25 days ago and I have not had a response from the building department.”

- The BCC could hold a hearing to determine whether the municipality complied with the permit processing time frames.

“I am doing some interior renovation work at my business. The municipality is insisting that I install the thermostat controls 4 feet above the floor and I have installed them 5 feet above the floor. The controls won’t be used by the public – do I have to move the controls?”

- The BCC could hold a hearing to determine whether sufficiency of compliance with the Code has been achieved.

Recent Building and Development Branch Activity

○ Policy Development

- Developing potential requirements for a Next Edition of the Building Code – consultation expected to start shortly
- Implemented Mid-Rise Wood and Barrier-free accessibility amendments in 2015
- Contributing to government Climate Change Action plan implementation
- Working with National Research Council and other stakeholders on potential construction requirements for tall wood buildings
- Developing approaches to respond to Elliot Lake Inquiry recommendations

○ Supporting documents

- Published Report of the Building Safety Technical Advisory Panel
- Published Guideline – “Fire Protection During Construction of 5 and 6 Storey Wood Frame Buildings”

Resources Available

- The Building Code Act, 1992 and the Building Code are available free to the public on the government's e-Laws website at www.e-laws.gov.on.ca
- The Ministry of Municipal Affairs website contains a wide variety of information related to the 2102 Building Code at www.mah.gov.on.ca/Page7393.aspx. Key pages include:
 - Building Code page on MMA website:
 - <http://www.mah.gov.on.ca/Page7393.aspx>
 - CodeNews e-mail registration page:
 - <http://www.mah.gov.on.ca/Page8778.aspx>
 - Building Code related publications:
 - <http://www.mah.gov.on.ca/Page8446.aspx>
 - Building Code practitioner qualification and registration (including link to public registry):
 - <http://www.mah.gov.on.ca/Page8591.aspx>
- The Building Code Compendium, which contains the BCA, the Building Code, supplementary standards, explanatory appendix notes, etc. is available for purchase at ServiceOntario locations or on-line at www.publications.serviceontario.ca

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