



Report to: Development Services Commission

Meeting Date: February 11, 2020

SUBJECT: Provincial Consultation on Transforming and Modernizing the Delivery of Ontario's Building Code Services

PREPARED BY: Chris Bird, Director of Building Standards, ext. 4716

RECOMMENDATION:

That Council of the City of Markham advise the Minister of Municipal Affairs and Housing that the City of Markham;

1. Supports further study and consultation on how Ontario Building Code services are delivered in Ontario;
2. Supports revising the administration of the provincial qualification and registration program for all building practitioners;
3. Supports Ontario Building Code amendments that facilitate the use of Prime Consultants in Ontario;
4. Does not support the implementation of a Certified Professional program in Ontario,
5. That the Chief Building Official report back with an update before the end of 2020, and,
6. That Staff be authorized and directed to do all things necessary to give effect to this resolution.

EXECUTIVE SUMMARY:

On September 24, 2019, the Ministry circulated a discussion paper titled *Transforming and Modernizing the Delivery of Ontario's Building Code Services* to solicit public comment about proposed administrative changes to the building code services provided by the Ministry. These proposals were not technical in nature.

The discussion paper stated that building sector stakeholders, including building officials, have been asking for better, more modern and timely services and resources to support their ability to understand and apply the highly technical and complex building code. The paper went on to say, "MMAH [the Ministry] has provided a suite of building code services in the past but over time the delivery of these services has not kept pace with the needs of the sector, making the model unsustainable. The Ministry needs to implement a model that will enable the delivery of improved services to promote consistency and better support the sector."

PURPOSE:

The purpose of this report is to provide Council with a high level summary of the proposals currently being considered by the provincial Ministry of Municipal Affairs and Housing to amend the administration of Ontario Building Code services and to address recent reports in the press about the Province 'eyeing changes that could see developers hiring their own inspectors.'

BACKGROUND:

Due to the timing of the Ministry consultation (September 25 – November 25, 2019) and due to the vague nature and limited details provided in the paper and by Ministry staff, it's difficult to provide a fulsome report to Council. Even now, it is unclear of the substantive direction the Ministry is taking. The aim of the consultation, according to a government statement, is 'modernizing and transforming the delivery of building code services to help speed up the construction of new housing and building projects, and better support Ontario's \$38-billion building industry.' The Large Municipalities Chief Building Officials [LMCBO] committee, a well-established and recognized group of Chief Building Officials representing municipalities from across the Province, submitted a collective response on the paper to the Ministry in November.

The Ministry's discussion paper focused on four main areas of particular interest:

- The establishment of an Administrative Authority
- Training, Qualification, Registration and Recruitment
- The use of Prime Consultants and Certified Professionals
- Building Code Administration and Enforcement

OPTIONS/ DISCUSSION:

Over time the ability to sustain effective delivery of services traditionally provided by the Ministry has become increasingly difficult and it is well recognized that they have not kept pace with the needs of the building sector. Accordingly, the Ministry is proposing a new model based on the establishment of an 'administrative authority', a private, non-profit corporation that would deliver services on a cost recovery basis.

The Administrative Authority [AA] model:

Historically, the provincial Ministry has been responsible for:

- Setting policy direction and establishing regulatory building standards in the form of the Building Code Act and Ontario Building Code;
- Overseeing the qualification and registration of building practitioners, including chief building officials, inspectors and designers; and
- Providing support to consumers (e.g. publishing guides and resources and explaining policy intent of code requirements)

The Ministry claims the AA model is the preferred option of the 10 models they explored. Since there was no known public consultation in that selection, building officials and other industry stakeholders are lacking clarity on how and why the AA model was selected. Functionally, it appears the Ministry would maintain the responsibility of setting policy and establishing regulatory standards. All other administrative functions noted above would be transferred to the AA.

A governance model has not been clearly articulated but operationally, it appears the Minister of MMAH would select a ‘board of directors’ and would have the authority to appoint the chair. LMCBO strongly recommended it include a balanced representation from all industry stakeholders including designers, builders, regulators and lawyers from both the public and private sector. And further that it should consist of knowledgeable practitioners of the BCA, OBC regulations and applicable laws and have experience working in the building industry. The mandate of the AA board cannot be politically driven or influenced; it must focus on the administrative matters relating to standards for competencies for all practitioners, and provide timely building code interpretations and guides, something that has been lacking for years.

To fund the operation of the AA, the Ministry is proposing a user fee, paid by permit applicants, for directly delivered services such as registration, Commission and product authorization fees and to collect a levy on top of municipal building permit fees proposed to be calculated at 0.016% of the construction value of the project, to be collected by the municipality and remitted to the AA, this representing a potential liability and administrative burden on the municipality.

LMCBO is not convinced that the AA model as described in the paper is the best solution to deliver the services needed in the Province. There are a number of concerns that must be addressed:

- Accountability and oversight of the AA
- Funding through additional fees collected by municipalities having higher construction volumes would be proportionally higher and would therefore contribute greater dollars to support the AA with no guarantee of services;
- Establishing uniform construction value on which to base the fee;
- Those individuals or organizations contributing significant funds (levies) may feel entitled to advantageous representation on the board and affect its decision making; and,
- Small businesses and less sophisticated applicants may object to the additional fee to be added to their building permit fee for services they don’t feel directly the beneficiary of.

Training, Qualification, Registration and Recruitment

The Ministry, in their discussion paper, acknowledge the shortcomings of the current training, examination and qualification regime. As proposed this would become the responsibility of the AA. Significant changes were made in the past through the enactment of the *Building Code Statute Law Amendment Act, 2002, S.O.2002, c.9-Bill 124* to introduce prescriptive timelines for permit review and issuance, and qualification of chief building officials, inspectors and designers. This was a bold initiative and was enacted, in part, to help improve compliance of permit submissions and expedite issuance. Unfortunately, municipalities have noticed no substantive improvement and there continues to be a gap in building code knowledge between designers and constructors with no accountability.

LMCBO is supportive of a more modernized training and qualification regime that should include the following:

- Delivery of a comprehensive training, qualification and examination program administered by experts in the industry and/or in education;
- In conjunction with that program, a more robust data base to confirm that practitioners are properly qualified in the right category of buildings;
- Improved and audited training in building code, construction practices and legal matters for all practitioners including inspectors, designers and builders;
- Continuous Professional Development (CPD) following the same protocol and taking into considerations the CPD requirements of other professional organizations of which regulators may already be members;
- Encouragement and promotion of the construction and regulatory industry within secondary and post- secondary schools to address building code knowledge and recruitment challenges in coming years;
- Training in soft skills like customer service and conflict resolution.

Prime Consultants and Certified Professionals

Currently, coordination of permit documents and submissions is frequently lacking leaving it to the regulator to complete. This leads to multiple submissions and extended permit processing times. Accordingly, LMCBO supports the introduction of a legislative requirement for a Prime (or coordinating) Consultant, a qualified person to coordinate designs and field reviews of design professionals involved in a project to ensure compliant, coordinated and complete submissions. The Ontario Association of Architects also supports such a program.

The government also consulted on the use of a Certified Professional program similar to that used in British Columbia and Australia. It is likely this is the type of program that recently reported in the press about the Province ‘eyeing changes that could see developers hiring their own inspectors.’ As the office of Municipal Affairs and Housing Minister Steven Clark recently quoted, ‘the idea remains a proposal at this point and no decisions have been made as consultations continue on updating the provincial building code.’

In British Columbia, municipalities that elect to participate in such a program, which they are not compelled to do, are few. Under that program, municipalities continue to issue building and occupancy permits through an administrative process but the Certified Professional [CP], hired by the developer, assume the role of plan review and inspection functions. Such CP’s, we understand, must be licensed as an Architect or professional Engineer, hold enhanced qualifications and their designs must undergo a concept review by an independent Engineer prior to permit application. While these professionals hold legal and ethical obligations under their respective Acts, potential for conflict of interest arise. There are significant concerns about how the industry would maintain independence of the Certified Professional from the hiring contractor and how to remove the municipality from liability under the existing “Joint and Several” liability regime. Recent disasters such as the Elliot Lake parking structure collapse, the Grenfell fire in London England, the Boeing 737 Max crashes and failing apartment buildings in Australia all involve some form of self-regulation and all point to the need for improved

regulations and independent government oversight. Accordingly, LMCBO does not support the introduction of a Certified Professional program but favors government oversight that provides independent and objective reviews of construction with an improved focus on training, qualifications and an improved permit submissions.

Additional Information: Streamlining of Development and Building Approvals

The Ministry's discussion paper presents proposals to transform and modernize the delivery of Ontario's Building Code services. It does not make specific proposals or recommendations to streamline development and building approvals; it's more about the functions not currently being provided by the ministry; an effective training and qualification regime, supports like building code interpretations, intent statement, guides and information bulletins to promote consistency and understanding in applying the building code and digital transformation. All of these will certainly help. But streamlining as important as it is, should not come at the expense of public safety and accountability. It should be noted that municipalities in Ontario have the authority to issue conditional permits prior to compliance with certain other applicable laws. This has been a widely adopted practice by most municipalities to get shovels in the ground at the earliest opportunity and in Markham is used on almost every building other than housing projects.

Several other organizations have offered their perspectives on means to improving and streamlining development and building approvals. They include:

- *Streamlining the Development and Building Approvals Process in Ontario* (July 2018), published by RESCON (Residential Construction Council of Ontario), and,
- The Ontario Association of Architects response to the Ministry's discussion paper
- *Modernizing Building Approvals in Ontario: Catching Up with Advanced Jurisdictions* (July 2017) published by Ryerson University's Centre for Urban Research & Land Development.

FINANCIAL CONSIDERATIONS

There are currently no financial considerations arising from the discussion paper.

HUMAN RESOURCES CONSIDERATIONS

None at the present time.

ALIGNMENT WITH STRATEGIC PRIORITIES:

Not applicable

BUSINESS UNITS CONSULTED AND AFFECTED:

None at the present time

RECOMMENDED BY:

Chris Bird,
Director of Building Standards

Arvin Prasad,
Commissioner of Development Services

ATTACHMENTS:

None