

COMMUNITY DEVELOPMENT COMMITTEE

*HIS WORSHIP, THE MAYOR
AND COUNCILLORS*

SUBJECT: MODERNIZATION STRATEGY: BUILDING REGULATORY SYSTEM

RECOMMENDATION:

1. THAT Council request the Minister Responsible for the Modernization Strategy to include consideration of initiatives to ensure the competency of all participants in the building regulatory system, as outlined in Section 5.0 of this report.

REPORT

The Community Development Committee, at its Open meeting held on 2007 May 29, received and adopted the *attached* report regarding the province's modernization strategy for the building regulatory system. The Committee noted that much of the modernization strategy, as presented to-date, is supportable and will have a positive impact on the health and safety of our City buildings and their occupants, as well as the local economy. The Committee further advised that City staff will monitor the initiative to ensure that the integrity of the system is maintained, that the health and safety objectives of the Code are met and that the City's discretion in adopting policies and procedures is respected.

As a lack of clear, mandatory competency requirements are missing from the current proposals, the Committee recommended that the Minister responsible for the modernization strategy be asked to include initiatives to increase the competency of all participants in the building regulatory system.

Respectfully submitted,

Councillor Colleen Jordan
Chair

Councillor Dan Johnston
Vice Chair

Councillor Garth Evans
Member

COPY: CITY MANAGER
DIRECTOR PLANNING & BUILDING
CHIEF BUILDING INSPECTOR
CITY SOLICITOR

TO: CHAIR AND MEMBERS
COMMUNITY DEVELOPMENT
COMMITTEE

DATE: 2007 MAY 25

FROM: DIRECTOR PLANNING AND BUILDING

SUBJECT: MODERNIZATION STRATEGY: BUILDING REGULATORY SYSTEM

PURPOSE: To provide background, current status and next steps for the Province's Modernization Strategy – Building Regulatory System

RECOMMENDATION:

1. **THAT** Council request the Minister Responsible for the Modernization Strategy to include consideration of initiatives to ensure the competency of all participants in the building regulatory system, as outlined in Section 5.0 of this report.

REPORT**1.0 REASON FOR REPORT**

At its 2007 May 07 meeting, Council referred a Council Correspondence item from the UBCM regarding the Modernization Strategy for the building regulatory system to the Community Development Committee and to staff for more information on the process.

2.0 BACKGROUND

In 2006 January, the Provincial government initiated a Modernization Strategy to improve the effectiveness and to respond to a need for change in the building regulatory system - the system for achieving safety in the design, construction and occupancy of buildings.

Key drivers of the need for change were:

- Changes to local building bylaws triggered by the Municipal Insurance Association's model building bylaw
- Inconsistent enforcement and application of the British Columbia Building Code
- Lack of clearly defined roles and responsibilities
- Liability
- Competency

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Since the announcement, construction industry representatives, including the building design and construction sectors and local governments, have met in a series of workshops to map the current system, identify what's working and what's not, and to "build ideas." City of Burnaby Building Department staff have been involved in a number of these workshops. Both the Chief and the Deputy Chief Building Inspectors sit on the Building Policy Advisory Committee which provides direct advice and feedback to the Building Policy Branch within the Office of Housing and Construction Standards. The Building Policy Branch is responsible for the Modernization Strategy within the Ministry of Forests and Range.

The Modernization Strategy is currently considering four "shifts" in the building regulatory system:

- Shift 1: Clearly defined authorities and accountabilities for the oversight of building construction
- Shift 2: Predictable, consistent oversight processes
- Shift 3: A responsive, timely framework and effective tools for decision making
- Shift 4: Managing the distribution of liability and risk effectively

Each shift is discussed in more detail in the **ANALYSIS** section of this report.

The Building Policy Branch is hosting a series of regional meetings to solicit additional feedback and direction from elected officials and senior staff from local government. The Lower Mainland regional meeting is scheduled for 2007 June 06 at the Hilton Vancouver Metrotown. Legislation is expected to be introduced early in 2008.

3.0 REGULATORY FRAMEWORK

The British Columbia Building Code (the Code) is a regulation made under the authority of the Local Government Act that applies (with a few exceptions) to the entire Province.

The Community Charter authorizes local governments to regulate, prohibit and impose requirements in relation to buildings and structures for the health, safety or protection of persons or property.

The Burnaby Building Bylaw sets out a regime to administer the Code in the City of Burnaby. The City currently reviews plans, issues building permits, monitors key aspects of construction and issues certificates of occupancy.

4.0 ANALYSIS

The Modernization Strategy is currently considering four “shifts” in the building regulatory system. (Italicized explanatory notes below are excerpted from the Office of Housing and Construction Standards – Province of British Columbia Website – <http://www.housing.gov.bc.ca/modernization/>)

Shift 1: Clearly defined authorities and accountabilities for the oversight of building construction.

“Oversight is the review of building design and construction to ensure Building Code compliance by an independent third party with whom building project participants (owners, designers, builders and trades) have no contractual relationship.

System participants have frequently observed that roles, responsibilities and accountabilities for oversight in British Columbia are poorly defined and understood. This shift clarifies what oversight is, who has authority and is accountable for oversight, and how accountabilities for oversight can be fulfilled.

The shift proposes local government oversight of high-risk areas of building design and construction. For local governments that choose not to provide oversight, an alternative third party, such as the BC Safety Authority or a private-sector agency, would act as a backup. Design professionals (architects and engineers) could assist in some aspects of oversight.

This shift will also:

- *enable professional associations’ authority to designate specialists; and*
- *create a mechanism for requiring the use of specialists for particular aspects of building design and construction.”*

Staff Comment

Independent third party oversight of construction has been identified as a key component to ensuring safe and healthy buildings. Currently, there are jurisdictions in the Province where, for reasons of public policy, lack of resources or liability concerns, that important aspects of construction are not being inspected. The Province is considering mandatory oversight (inspection) of certain aspects of construction, whether it be high risk occupancies or aspects of construction that represent a high risk. It is understood that the current proposal will offer local government the opportunity to continue its oversight role in building construction or, if a local council decides not to administer a regulatory scheme, that an independent third party would be available as backup. Independent third party may be the BC Safety Authority (with an expanded mandate) or a private sector agency.

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The Province proposes to provide additional tools for municipalities involved in building oversight. Those tools include allowing the engineering and architectural governing bodies to establish specialist designations (i.e. Building Envelope Professional and Structural Engineer of Record). Specialist designations will increase opportunities for municipalities to rely on professional assurance and professional oversight for high risk areas of construction.

The Modernization Strategy is proposing legislation to facilitate a Province wide Certified Professional (CP) program.¹ A CP program would be a tool to assist municipalities dealing with extremely high volumes of permits, or municipalities without the technical expertise or resources, to provide effective oversight. Although the Province is proposing to put in place facilitating legislation, it is understood that adoption of a CP program would be at the discretion of each local Council.

City of Burnaby Perspective

This shift aims to mandate independent third party oversight of construction, to clarify roles and responsibilities and, in particular, clarify the role of the professional in the construction regulatory system.

As the City currently reviews plans and inspects key aspects of construction, it is not anticipated that a Provincially mandated third party oversight will materially affect its operations or resources.

The City does rely on professional assurances for certain types and aspect of construction. Both the clarification of the role of the professional and the development of professional specialist designations are seen as tools available to the City to ensure that the health and safety aspects of construction are achieved within available resources and without exposure to unacceptable liability.

Shift 2: Predictable, consistent oversight processes

“The system for achieving safety in the design, construction and occupancy of buildings relies on timely, consistent and informed decision making. Decision making is based on individual expertise and opinion, as well as on political, social or economic pressures. As a result, achieving consistency is often challenging.

New authorities and processes, as well as the updating of current tools, will assist decision-makers as well as those affected by their decisions.

¹ Under authority of the Vancouver Chapter, a CP Program is currently practiced in the City of Vancouver. In the City of Vancouver, the CP provides private “third party” plan review and inspection services. City staff continue to monitor construction and the work of the CP but on a more restricted basis.

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This shift supports predictable decision making, with a focus on three areas:

- *consistent interpretations of Building Code provisions*
- *risk based mechanism for applying the Building Code to existing buildings*
- *application and scope of Letters of Assurance”*

Staff Comment

Professionals, designers, builders, building officials and others work with the Code on a daily bases. Consistent, authoritative, timely and binding interpretation of the Code has proven problematic. While there is an adhoc Interpretations Committee made up of industry representatives, it is voluntary and has no legal standing. The Provincial Building Code Appeal Board has provided a valuable service but is seen by many as too slow in a rapid paced industry. The Modernization Strategy is considering a variety of options to provide timely Code interpretations to the industry.

Code mandated Letters of Assurance have proven an invaluable tool to confirm owner and professional responsibility for the design and construction of buildings. It is contemplated that the application of Letters of Assurance may be expanded to include additional areas of construction, including the more complex components of Part 9 buildings (typically houses).

A working group has been established to review mechanisms to apply consistent application of code requirements to existing buildings.

City of Burnaby Perspective

This shift aims to provide consistent interpretations of Building Code provisions, risk-based mechanism for applying the Building Code to existing buildings and an expansion of scope and application of Letters of Assurance.

City of Burnaby staff are well trained and skilled in the interpretation and application of the Code. There are times, however, that an independent third party review of complex or contentious code decisions would speed up processing, reduce client frustration and improve customer service. Staff have lobbied both the Building Policy Branch and the Modernization Strategy for a mechanism to provide timely and consistent code interpretations.

Similarly, there is no clear framework to apply the Code to existing buildings. This lack of a framework results in a permit by permit negotiation which can be time consuming and frustrating to applicants as well as an increase in potential liability to the City. A Provincial framework for the application of the Code to existing buildings will improve consistency, provide the City clear authority to affect upgrades and generally improve the health and safety of the existing building stock.

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The City currently relies on professional Letters of Assurance for certain aspects of construction (typically Part 3 or complex buildings). The Letters of Assurance (first introduced in 1992) have proven an invaluable tool for clarifying roles and responsibilities and accountabilities.

As such, an expansion of the applicability and scope of Letters of Assurance (complex aspects of small buildings) would be a welcome additional tool for the City.

Shift 3: A responsive, timely framework and effective tools for decision making

“Third party oversight can be carried out through a variety of mechanisms, including code enforcement by local governments, independent authorities or private-sector agencies; and peer review by professionals not affiliated with the design firm. The specific oversight processes that this shift addresses are plan review, building inspection and evaluation of alternative solutions.

These processes currently vary significantly from jurisdiction to jurisdiction. Variation in processes may create inefficiencies and delays in building projects and increase construction costs. System participants largely support the need for more consistent oversight.

To make processes for plan review and inspections more consistent across British Columbia, this shift relies on identification of specific high-risk areas to target. Oversight processes must, at a minimum, target these specified areas.

New processes for alternative solutions will help reduce inconsistency in this area.”

Staff Comment

The proliferation of new Building Bylaws since 2000 has resulted in inconsistent enforcement of the Code across the Province. Some municipalities have opted to do no inspections and rely solely on professionals, while others continue to review plans, monitor or inspect construction and issue occupancy permits. This has resulted in uneven health and safety standards across the Province and frustration for builders working in multiple jurisdictions.

It is understood that the proposed framework would establish a minimum Provincial standard for oversight to ensure that those aspects of construction that represents the highest risk to public health and safety are inspected by an independent third party.

The new objectives-based Code contains provisions for “alternate solutions”. Alternate solutions allow qualified individuals to propose alternate or equivalent measures to achieve compliance with the objectives of the Code.

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It is anticipated the Modernization Strategy will be proposing mechanisms to ensure a consistent approach to alternate solutions across jurisdictions, a database to inform future changes to the Code and an appeals process.

City of Burnaby Perspective

This shift aims to ensure consistent processes for code compliance and enforcement (plan review; inspections; evaluating alternative solutions) across the Province. Some municipalities have opted out of doing inspections. The City, however, has bylaw mandated inspections of those aspects of construction that historically have proven to be high risk (foundations, drainage, framing, fire stopping, etc). As such, while a Provincially mandated risk based oversight mechanism is yet to be clearly defined, it is not anticipated this would significantly change the number of inspections that the City of Burnaby Inspectors currently undertake. City staff will be monitoring the Modernization proposals to ensure that any new mandated inspections or oversight are not out of line with current practice and do not represent an additional burden on resources.

The City currently has a process in place to administer the review of alternate solutions or equivalencies including a fee, an internal review and commenting process, as well as a mechanism to rely on professional assurance that the work has been completed. A Provincial mechanism to ensure a consistent approach to alternate solutions across jurisdictions, a database to inform future changes to the Code and an appeals process is supportable.

Shift 4: Managing the distribution of liability and risk effectively

"This shift examines distribution of liability in the building regulatory system in order to reduce inequity among participants and balance accountabilities when building defect disputes arise. Although the provincial government is not reviewing joint and several liability at this time, the Ministry of Attorney General has recently completed a consultation on a proposal to reduce the Ultimate Limitation Period (ULP) from 30 to 10 years. This shift assumes the possibility of a reduced ULP in the near future.

Our Modernization Strategy discussions with building stakeholders have revealed a lack of consensus on a proposal to introduce mandatory post-construction bonding, and liability and project-based insurance, as a way of mitigating the costs of liability imbalance. At this time, further research into data collection and its impact on analyzing construction liability issues is being examined.

The Ministry of Attorney General has completed their consultation on the Ultimate Limitation Period. The Modernization Strategy will keep participants informed as new developments from this review occur."

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Staff Comment

Exposure to liability is a reality for all participants involved in construction. The lack of system wide competency requirements for all participants in the construction industry can lead to building defects. These defects expose all participants to potential litigation. Municipalities, as a result of joint and several liability, have been targeted as potential contributors to settlements because of their “deep pockets” and the fact that local government carry on long beyond the lifetime of limited corporations.

City of Burnaby Perspective

From a risk management perspective, the Burnaby Building Bylaw is structured such that Inspectors monitor construction for health and safety purposes while, at the same time, internal business procedures are in place to protect the City from unacceptable liability exposure. For example, the City relies on professional Letters of Assurance for complex buildings.

The City of Burnaby Council has, by resolution, forwarded to the Ministry of Attorney General its support of the reduction of the Ultimate Limitation Period for construction claims to ten years.

5.0 COMPETENCY

While a number of participants in the Modernization Strategy workshops, including City of Burnaby staff, identified the need to raise industry competency as a major factor in improving the performance of the construction system, the Province has not identified this as a priority in its package of proposed changes. While municipal Plan reviewers and Inspectors are actively supported by their local government employers in advancing training, and Professional organizations (architects and engineers) have ongoing professional development programs, many participants in the construction industry require little to no formal training to participate.

Unregulated designers, contractors, subcontractors and trades people potentially delay construction, impact the ultimate safety, health and quality of buildings and, ultimately, increase the liability exposure of all participants in the system.

This lack of training, combined with a buoyant economy and in-migration of labour not familiar with local conditions, is a significant concern. As clear, mandatory competency requirements are missing from the current proposals, it is recommended that the Minister responsible for the Modernization Strategy be asked to include initiatives to increase the competency of all participants in the building regulatory system.

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6.0 CONCLUSION

The current Code was adopted in 2006 after several years of national, provincial and local consultation. As such, the Modernization Strategy is not considering changes to the Code, but rather the building regulatory system that applies and enforces it. Code changes, such as proposals to change the minimum size of secondary suites, would form part of the next Code review cycle (typically five years).

Much of the Modernization Strategy, as presented to-date, is supportable and will have a positive impact on the health and safety of our buildings and their occupants, as well as for the local economy. To-date, the proposals have lacked detail and draft legislation is not yet available for review. As such, City staff will monitor the initiative to ensure that the integrity of the system is maintained, that the health and safety objectives of the Code are met, that the City's discretion in adopting policies and procedures is respected and that implementation of the proposed initiatives is not at the expense of City resources.

As a lack of clear, mandatory competency requirements is missing from the current proposals, it is recommended that the Minister responsible for the Modernization Strategy be asked to include initiatives to increase the competency of all participants in the building regulatory system.



B. Luksun
Director Planning and Building

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