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**TO:** CITY MANAGER **DATE:** 2012 May 09

**FROM:** DIRECTOR PLANNING AND BUILDING

**SUBJECT: PROVINCIAL WHITE PAPERS ON A MODERN BUILDING REGULATORY SYSTEM AND CERTIFICATION OF BUILDING OFFICIALS**

**PURPOSE:** To provide comment on proposals contained within the White Papers issued by the Building and Safety Standards Branch.

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**RECOMMENDATIONS:**

1. **THAT** Council endorse the comments contained in this report as the City's response to the subject White Papers issued by the Building and Safety Standards Branch.
2. **THAT** Council request the Provincial Government, through the Minister of Energy and Mines, and Minister Responsible for Housing, Honourable Rich Coleman, to respond to the comments received from local governments and all other building regulatory system participants through the release of 'revised' White Papers by the Building and Safety Standards Branch, prior to advancing any specific legislative changes to implement finalized proposals.
3. **THAT** a copy of this report be sent to Trudy Rotgans, MAIBC, Executive Director, Building and Safety Standards Branch, Office of Housing and Construction Standards, Ministry of Energy and Mines and Minister Responsible for Housing, PO Box 9844 Stn Prov Govt, Victoria, B.C. V8W 9T2.

**REPORT****1.0 BACKGROUND**

In 2012 February, the Building and Safety Standards Branch (the Branch) of the Ministry of Mine and Energy issued two White Papers entitled: "*A Modern Building Regulatory System*" and "*Certification for Local Government Building Officials*". The purpose of the White Papers is to present proposals for potential regulatory changes to the building regulatory system for comments from local governments, building officials, professional engineers and architects, the building industry and other participants in building regulatory system.

The White Paper on "*A Modern Building Regulatory System*" presents proposals to strengthen the Provincial role as the sole authority to adopt and provide interpretations for a uniform Building Code across the Province. The White Paper on "*Certification for Local Government Building Officials*" proposes a system for mandatory certification of building officials including continuing professional development.

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The Province has sought comments on the proposals across the building regulatory system through a variety of means including meetings with building officials, an online survey and other direct consultations. On 2012 March 27, the Branch hosted a consultation meeting in Burnaby which was attended by Councillor Sav Dhaliwal and the City's Chief Building Inspector, Patrick Shek. Staff have participated in the consultation process, and have provided comments on the White Paper proposals, as generally outlined in this report.

At this point in the consultation process, the Building and Safety Standards Branch has advised that the subject or revised proposals may be advanced to government for introduction of legislative changes; however, specifics of potential changes and the timing of changes remain to be determined.

The purpose of this report is to provide Council with the information on the proposals in the White Papers and to seek Council endorsement of the response from the City for submission to the Minister and the Building and Safety Standards Branch. This report recommends that the Province be requested to respond to the comments received from local governments and all other building regulatory system participants through the release of 'revised' White Papers by the Branch, prior to advancing any specific legislative changes to implement finalized proposals.

## **2.0 MODERN BUILDING REGULATORY SYSTEM**

Over the last 25 years, the Province had undertaken a number of different reviews on the building regulatory system, with incremental changes pursued through each. In 2004, a modernization strategy was established but was not implemented, as government priorities shifted to focus on 'greening' of the Building Code and mid-rise (6 storey) wood-frame construction provisions. In 2011, the Province started a further round of consultation with participants in the building regulatory system, which contributed to the development of the subject White Papers.

In 2012 February, the Province issued the White Paper entitled "*A Modern Building Regulatory System*". The following summarizes the proposals in this White Paper and presents staff comments provided to the Building and Safety Standards Branch for endorsement by Council.

### **2.1 Uniform Building Code Proposal**

For many years, the Province has been responsible to develop and maintain the B.C. Building Code (the Code), which sets the standards for the Province's building regulatory system. Local governments are able to adopt the Building Code through their bylaws and are responsible to administer, interpret and enforce the Code. For a number of years, the Province has also been moving towards a more uniform Building Code system, which would ensure more consistent application of standards and requirements across all jurisdictions in B.C.

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For example, prior to the establishment of the provisions in the Community Charter in 2003, local governments had the ability to pass bylaw provisions and standards to regulate building construction requirements that were over and above the provisions in the Building Code. An example of such provisions would be the setting of supplementary fire sprinkler system requirements which are in place in about 30 communities across B.C. Many other additional provisions are also in place across B.C. For example, Burnaby has a requirement for submission of a review of the building envelope details by a building envelope professional engineer for multiple family dwelling permit applications. This requirement was established to ensure proper design of building envelopes, which also reduces the City liability exposure.

Under the Community Charter, the Concurrent Authority provision now requires local governments to obtain Provincial approval if local governments want to establish bylaws that regulate building construction issues and items that are not in the Code. At this time, all bylaws that existed prior to the Charter are exempt from this requirement to obtain Provincial approval.

In 2008, this change to a more uniform code continued as the Community Charter was amended to allow the Province to issue binding interpretations of the Building Code. To date, however, the Province has yet to use this authority.

The Uniform Building Code proposal of the most recent White Paper continues this effort, as noted below.

### 2.1.1 *The Proposal*

To ensure consistency throughout B.C., the White Paper proposes that the Province be the sole authority to adopt building standards and issue binding code interpretations. Under the proposal, existing local bylaws that regulate building standards would be phased out. The Province proposes to work with local jurisdictions to find solutions to address local needs where local regulations are phased out.

#### *Department Comment*

Staff would have concern with the Province being the sole authority for the issuance of binding code interpretations, primarily as it would relate to the timeliness of interpretations needed to address permits and/or construction that was in progress.

While establishing a source of approved interpretations at the Provincial level would be of assistance to all jurisdictions in BC, provision should also be made to allow local jurisdictions to provide for interpretations, where necessary, to allow for advancement and prevent unnecessary delay of permit issuance and construction that is in progress.

Overtime, the Provincial collection of interpretations would provide a resource to also facilitate permit issuance and resolution of construction issues, however, in the short term, and in relation to active permit requests and construction, the sole reliance on

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seeking Provincial code interpretations could prove time consuming and could cause delay of construction, and as such, would not meet the day-to-day needs of the industry.

As a proposed approach, it is suggested that local jurisdiction should be allowed to continue to make interpretations, where necessary, to facilitate the permit and inspection process; with a source of approved interpretations being maintained at a Provincial level as a Province wide resource and to promote consistency throughout B.C.

Staff are also concerned with the proposal to phase out all local building regulatory bylaws, as proposed in the White Paper. Many local jurisdictions have pursued local bylaws to address specific community needs, as well as to respond to important issues where the Provincial government was unable to find a solution that could be applied uniformly across the Province. As noted, supplementary fire sprinklers are important to many jurisdictions, and were developed locally to address needs, without the necessity of having requirements forced on all other areas that do not have the same needs or objectives. This local approach, also allows for a response to an issue that may not be a current or future Provincial priority.

## **2.2 Alternative Solution and Product Evaluations Proposal**

Compliance of the Building Code can be achieved by either following the prescriptive requirements in the Code, or by proposing alternate solutions that meet the intent the Building Code. Specific building products and assemblies that are developed to meet the intent of the Building Code are required to be tested and listed by a recognized testing/certification agency, such as Underwriter Laboratory of Canada (ULC) or Canadian Construction Materials Centre (CCMC), in accordance with certain standards, such as those published by Canadian Standards Association (CSA). This process ensures building safety while allowing for the development and application of technologies that can decrease costs and allow for the introduction of alternate solutions to meet Building Code requirements. However, currently, each local jurisdiction must consider and determine whether to accept an alternate solution, which requires some level of expertise and multiple similar evaluations across jurisdictions.

### *2.2.1 The Proposal*

The White Paper is proposing that the Province establish a body to evaluate alternative solutions and new products in order to eliminate the need for multiple reviews across jurisdictions of the same alternate solutions. The decisions and approvals of the Province would be registered and made available to all industry participants.

#### *Department Comment*

Staff are supportive of this proposal. It would create a body in the Province to evaluate alternate solutions and new building products, and would establish a registry of approved alternate solutions that would assist local jurisdictions and builders. It would remove the requirement to review alternate solutions at a local level and the need for repetitive

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reviews of similar solutions across projects and jurisdictions, and enable alternate solutions to be shared or transferred between jurisdictions. This would also assist in the common review of new building products and assemblies that cover a very wide spectrum, and reduce the resources needed to complete the review, and avoid the transfer of some liability to a local jurisdiction that may have accepted new products for evaluation at a local level.

For Burnaby, the City has the available staff expertise to review and approve alternative solutions that are submitted by a Code Consultant for consideration by the City. This is a regular part of the City's Building Permit process, and results in comparable and improved responses to the prescriptive requirements of the Building Code where an alternate solution would provide for a better response. The City is less able to review and accept new building products and assemblies that are developed to meet the intent of the Building Code, particularly where the required testing and acceptance by a recognized testing/certification agency, such as Underwriter Laboratory of Canada (ULC) or Canadian Construction Materials Centre (CCMC), in accordance with certain standards, has not been achieved. This is a role that the Province could provide. Provincial review and acceptance of new building products and assemblies would reduce the time and costs for the industry in achieving certification through testing/certification agencies, it would reduce demands on City resources for this work, and further protect the City from any arising liability concerns.

### **2.3 Third Party Random Audits**

In the summer of 2011, the Province conducted a survey on the level of Code compliance on large projects. As a follow-up on the survey, the White Paper proposal is for the Province to obtain ongoing data on Code compliance through third party random audits. The results of the audit process would be used to determine if further changes are required to Code administration, training, inspections and standards to improve or ensure a proper level of code compliance.

#### **2.3.1 The Proposal**

The Province is proposing in the White Paper to conduct 60 audits on building projects that involved complex building design and construction. The audit process would be designed to include a review of the role of local government officials and registered professionals in the administration of Code processes.

#### **Department Comment**

Staff generally object to the Provincial proposal for an audit process. The associations for registered professionals (architects and engineers) have also expressed a broad range of concerns to the proposal. From a local government viewpoint, the implementation of code administration and compliance processes is under the sole discretion of local governments. The level of detail and involvement of local governments is set by each jurisdiction. As such, there is not a basis for a Provincial audit in relation to a fixed

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standard by the Province. The ability of local governments to determine the level of involvement in code administration process is necessary to allow for each area to respond to code administration requirements in relation to local need, resources, and interests.

## 2.4 Levy on Construction

In order to fund the Provincial role in this proposed Modern Building Regulatory System, a Provincial levy to be collected on behalf of the Province by local building departments is proposed in the White Paper. The estimated total amount of the Provincial levy is \$3.55 Million per year.

### 2.4.1 The Proposal

The levy on construction is proposed in the White Paper to be collected by building departments at the time of permit issuance. The levy could either be a percentage of the cost of construction or a flat rate.

#### *Department Comment*

Staff do not support the proposal for local governments to collect a levy on behalf of the Provincial government. The responsibility for funding the necessary Provincial role in the building regulatory system should come from Provincial sources rather than transferred only to the building industry for collection at a local level.

This process is an inefficient means to fund senior government responsibilities, and would transfer revenue collection responsibilities of the Provincial government to the local level. The proposed approach would increase the cost of construction and require duplication of revenue collection processes across all local governments, draw on the resources of local governments to collect and transfer funds to support a required Provincial responsibility, and add more layers to the necessary audit and accounting processes required for the collection and remittance of the levy.

We would suggest that the Province should fund its own role in the building regulatory system directly from Provincial sources.

## 3.0 CERTIFICATION FOR LOCAL GOVERNMENT BUILDING OFFICIALS

The qualification of all participants in the building industry is an issue of critical importance that has arisen in all Provincial consultations. It is an issue that includes participants at all levels and in all segments of the industry, whether they are designers, contractors, trades and/or building officials. In 2012 February, the Province issued a White Paper on “*Certification for Local Government Building Officials*”, that included the following proposals.

### 3.1 The Proposal

The White Paper proposes that a system for mandatory certification for building officials be established, that would also include requirements for continuing professional development. Specifics of the proposal include:

- Defining a 'building official' as any individual who administers or enforces the BC Building Code, and to include plan checkers, building inspectors and plumbing inspectors.
- Requiring all local government building officials to be a member of the Building Officials Association of BC (BOABC), and to meet qualifications of and obtain certification from BOABC.
- Limiting local governments to only employ certified individuals as building officials.
- Limiting the functions that building officials could perform in relation to their level of certification.
- Allowing newly hired building officials to obtain "intern status", while requiring interns to be supervised by other certified building officials until they have obtained the necessary certification.
- Requiring all existing building officials to obtain the required certification within four years.

Three levels of certification are proposed:

- Level 1 - one and two family dwellings.
- Level 2 - small buildings regulated under Part 9 of the Code with footprint not more than 600 m<sup>2</sup> and not more than 3 storeys.
- Level 3 - larger and more complex buildings regulated under Part 3 of the Code.

#### *Department Comment*

Generally, in broad terms, staff would support proposals for the establishment of mandatory certification requirements for building officials. In terms of consistency for the qualification of building officials, the development of a common qualifications and training standards, and overall benefit to the regulatory system to address public safety, this proposal has merit and would generally result in the longer term improvement of the regulatory system.

In Burnaby, the City seeks to hire employees that have the certification, and those with training that would support achieving certification following on the job experience. However, in terms of implementation of a new certification requirement, staff has identified a number of issues and concerns that have yet to be addressed by the Province or in the White Paper, that would impact on City operations, individual employees, and the continuity of the current service provision for the building industry in the Province. These would be of significant concern should a certification process not be appropriately implemented and supported by the Province with the necessary resources to achieve the desired outcome.

Key concerns include:

- ***Status of Existing staff***

The proposal, as presented, would require building staff in specific roles to obtain the necessary certification. The proposal outlines that existing staff would need to obtain certification within 4 years. However, the proposal does not make any allowances for current staff working in the profession who do not obtain the necessary certification. For example, where certification was not achieved, the current proposal would suggest that the staff would not be allowed to carry on in their current role in building departments. This raises a number of employment and contract issues across all jurisdictions that the Province would need to investigate and determine a successful approach to address these issues.

- ***Job Specifications***

Should the proposed 3 levels of certification requirements be established, there would be a corresponding need for local governments to reflect the certification levels within the job specifications used for positions at the local government level. For example, in Burnaby, the job specification for Building Inspectors has only one level – Level 3 Certification. Also, while in Burnaby, job specifications currently have certification requirements, this may not be the case in other local jurisdictions. As such, there could be a need in future to have job specifications and certification requirements adjusted by local governments across the Province to match all three levels of certification that would be available for an inspector/building official under the Provincial system.

- ***Impact on Recruitment***

The proposal for certification would impact the ability of all local jurisdictions to find and recruit certified staff to meet the demands of the construction industry for service. The requirements for certification would result in the reduction of the pool of potential employees that would be available in any jurisdiction to provide service. For example, mandatory certification would hinder the ability of local governments to hire part-time plan checkers and inspectors to provide coverage during peak work load periods or to provide coverage in response to retirements, sick, vacation or other work availability issues. Particularly, it would prevent hiring of well experienced building officials who may be retired or otherwise available to work part-time, but would not necessarily have current BOABC certification.

- ***New Training and Certification Costs***

The White Paper proposals do not provide for any government assistance to address training and certification costs. These are stated as being covered by local



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governments, and/or individuals in the profession, which is currently accommodated in Burnaby, but may not be covered in other jurisdictions. Costs associated with the certification process are approximately \$500 to obtain each of the Level 1 and Level 2, and \$2,100 for Level 3; \$448 for annual membership with BOABC per year. Other costs are also associated with initial training and preparation through courses, such as those offered at BCIT, and on-going professional development. Assistance from the Provincial government would be beneficial to support implementation of the certification system, and to offset new costs, at the local government and individual level, arising from application of the certification proposal.

- ***Certification for Other Participants***

While the importance of proper qualification for all participants in the construction industry is well recognized, the White Paper proposals did not address this issue in a broad manner, but focussed primarily at the local government building official level. While trades, such as electricians, plumbers and carpenters are licensed, many other trades involved in building construction are not licensed and require no certification or qualifications to work in the industry – these trades include roofing, building envelop, drywalling, and insulating.

In the White Paper, the Province mentioned that they will require qualification for new residential builders of 4 units or less, but the existing builders are grandfathered. The White Paper also stated that the need for code knowledge or skill qualifications of other system participants would be determined through the proposed third-party audit program, without providing any further details.

In recognition of the need for proper qualifications across all segments of the industry, it is suggested that the Province should expand the proposals to include all residential builders in a system of certification, as it is important to also qualify those that are directly involved in the design and construction of buildings.

#### **4.0 CONCLUSION**

As noted in the introduction of this report, the Building and Safety Standards Branch is not able to advise directly which of these proposals will advance to legislative proposals. At this point, the subject or revised proposals may be advanced to government for introduction of legislative changes, however, specifics of potential changes and the timing of changes remains to be determined.

Based on past processes involving the Building Code, staff would note that there have been five similar reviews undertaken since 1994, with very few proposals advancing to the implementation stage. Staff currently expects that there may be a similar level of government response and follow through on the current White Paper proposals.

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Nevertheless, staff continue to support the revisiting of some of the old initiatives, such as promoting uniformity and consistency in the application; interpretation and enforcement of the Building Code; centralizing new product approval; and pursuing careful and supported development of certification proposals that should also be extended to all design and construction industry participants.

The comments of this report do not support the establishment of a Provincial levy for issuance of local building permits to fund the Province role in the building regulatory system. As well, concerns are raised with regard to significant issues that would arise, should a certification process not be appropriately implemented and supported by the Province with the necessary resources to achieve the desired outcome. We are also concerned that certification for other participants of the building industry, such as contractors and trades, was not addressed in the White Paper proposals.

It is recommended that Council endorse the comments contained in this report as the City's response to the subject White Papers, with a copy of the report to be sent to the Building and Safety Standards Branch.

It is also recommended that Council request the Provincial government, through the Building and Safety Standards Branch, to respond to the comments received from local governments and all other building regulatory system participants through the release of 'revised' White Papers, prior to advancing any specific legislative changes to the implementation of the finalized proposals.



B. Luksun, Director  
PLANNING AND BUILDING

PS/LP:tn/ap

- cc: Deputy City Managers
- Fire Chief
- Chief Licence Inspector
- Chief Building Inspector
- City Solicitor