

# THE MUNICIPAL COUNCILLOR'S GUIDE 2014



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## SECTION 6: BUILDING REGULATION

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The Building Code Act, 1992 (BCA) lays out the legislative framework governing the construction, renovation, demolition and change of use of buildings in Ontario. The Building Code is a regulation made under the BCA; it sets out technical and administrative requirements.

The BCA defines the purposes of the Building Code to include the establishment of standards for public health and safety, fire protection, structural sufficiency, energy conservation, water conservation, environmental integrity, and barrier-free accessibility of buildings.

Under the BCA, municipalities are generally responsible for the enforcement of the Act and the Building Code within their jurisdiction. Municipal councils must appoint a chief building official and as many building inspectors as are necessary for the proper enforcement of the Act and the Building Code. The chief building official and inspectors must meet qualification requirements established by the Act and the Building Code, which include successful completion of Building Code legal and technical examinations in their area of practice.

Chief building officials and inspectors are to perform their duties in accordance with a code of conduct established by the municipality in compliance with the BCA. SECTION 6: Building Regulation

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Chief building officials and inspectors are to perform their duties in accordance with a code of conduct established by the municipality in compliance with the BCA.

The role of a chief building official includes establishing operational policies for the enforcement of the BCA and Building Code, and coordinating and overseeing their enforcement.

The chief building official is also responsible for issuing permits for the construction, renovation, change of use or demolition of buildings that conform to the requirements of the BCA and the Building Code. These requirements include compliance with the list of applicable law in the Building Code, making the Building Code a powerful enforcement tool.

Chief building officials and inspectors are also responsible for exercising powers and performing other duties assigned to them under the BCA and the Building Code, including reviewing plans, inspecting construction, and issuing orders.

It is important to note that this enforcement role is assigned specifically to the chief building official and inspectors by the BCA, which is a provincial law. Council does not have a role under the BCA or the Building Code in decision-making on building permit applications or the issuance of orders. Chief building officials and inspectors are independent of municipal council when exercising these powers and duties. However, it is appropriate for municipal councillors or staff to direct concerns regarding the safety of buildings to building officials for the building officials to take action as they see fit.

The BCA requires that municipalities and other principal authority establish and enforce a code of conduct for chief building officials and building inspectors. The purposes of a code of conduct are set out in the BCA and include:

- a. promoting appropriate standards of behaviour and enforcement actions;
- b. preventing practices which may constitute an abuse of power; and
- c. promoting appropriate standards of honesty and integrity by a chief building official or building inspector in the exercise of a power or the performance of a duty under the BCA or Building Code.

A code of conduct must provide for its enforcement, include policies or guidelines to be used when responding to allegations that the code of conduct has been breached, and include disciplinary actions that may be taken if the code of conduct is breached. A code of conduct must also be brought to the attention of the public.

The 2012 Building Code is written in an objective-based format. Under this approach, the objectives underlying the prescriptive requirements of the Code are identified. This allows for a better understanding of Code requirements, and creates a framework for the evaluation of innovative building materials, systems and designs. Specifically, the objective-based format allows designers and builders to submit as part of their permit applications “alternative solutions” to the technical requirements of the Building Code. Since 2006, as part of their role in reviewing building permit applications, building officials have also been responsible for reviewing and approving “alternative solutions.” An alternative solution is a proposal regarding building materials, systems and designs that differs from, yet still provides the same level of performance as, the technical requirements found in the Building Code.

The Building Code includes service level standards that municipalities must meet, including timeframes for making a determination on a building permit application such as issuing a permit or refusing to issue a permit, giving full reasons, and timeframes for construction inspections following the receipt of notice from the building permit holder. For example, the Building Code sets a 10-day timeframe for the approval or refusal of a building permit application for a house.

Chief building officials and inspectors also have the power to issue orders when buildings are found to be unsafe and in emergency situations. Chief building officials may also take actions to remedy the unsafe conditions and immediate dangers.

The BCA and the Building Code also address fees charged by municipalities for building permit applications and related activity. These services should generally be self-supporting. Permit application fees should cover the cost to operate the building department. In this way, delivery of building department services should generally not affect the municipal budget. However, the fees are not permitted to exceed the anticipated reasonable costs of the municipality to enforce the Act.

Building permit fees can also include a component designated for a reserve fund. The reserve fund is intended to ensure that, even if building activity in a municipality undergoes a downturn, building department services can continue to be provided for a time without impact on the municipality’s finances. Money in the reserve fund can only be used for costs of delivering services related to the administration and enforcement of the BCA. As a consequence, the reserve fund is not accessible for council to use to fund other municipal activities. Building permit fees and reserve fund policies are often subject to regular review by council, and can be modified to reflect local conditions within the general intent that the services remain self-supporting.

Municipalities are also permitted under the BCA to enter into agreements to share the costs of delivery of building services, and successful examples exist. Alternatively, private sector firms known as a “Registered Code Agency” can also be contracted to deliver many building services on behalf of a municipality or municipalities.

The Building Code is subject to regular review and update. The current edition – called the 2012 Building Code – came into effect in January 2014. However, interim Building Code amendments are occasionally made to reflect government priorities, innovations in construction and design, changes in other jurisdictions, emerging issues, and coroner’s jury recommendations. For example, amendments to make new buildings more accessible will come into effect in January 2015.

Additional information on the BCA and the Building Code is available by telephone from MMAH’s Building and Development Branch at **(416) 585-6666**, by fax at **(416) 585-7455** or on the Building Code website at: [ontario.ca/buildingcode](http://ontario.ca/buildingcode).

## **PROPERTY STANDARDS BYLAWS**

The BCA gives municipalities the power to adopt a municipal property standards bylaw. The bylaw may establish standards for the maintenance and occupancy of properties within all or part of the municipality, and require properties that do not conform to the standards to be brought into conformity.

Prior to making a property standards bylaw, council must include policies relating to property conditions in the municipal official plan or adopt, by bylaw approved by the Minister of MAH, a policy statement containing provisions relating to property conditions. A municipal Property Standards Committee must be established to hear appeals from property owners and occupants who have received orders to comply with the bylaw.

The BCA also provides that municipal property standards officers may inspect properties and issue orders to enforce property standards.

The property standards bylaw does not necessarily have to be administered by the chief building official, despite the fact that the BCA provides municipalities with the ability to have a property standards bylaw. Council has the discretion to decide how best to deliver this function. Some assign this role to the buildings department; others establish an independent property standards department.

## **KEY TIPS**

- Consider sharing building department services with your neighbours.
- Familiarize yourself with the code of conduct approved by council that outlines appropriate standards of behaviour and practices governing the activities of the chief building officials and inspectors.
- Councillors are reminded that the work of the building department within their municipality is to help ensure the health and safety of the public. As such, they operate independently and without interference from council or councillors when exercising the powers and duties assigned to them under the Building Code Act, 1992.