

MUNICIPAL LIABILITY

BUILDING AND OCCUPANCY PERMITS

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LIABILITY ISSUES CAN ARISE WHEN ISSUING BUILDING AND OCCUPANCY PERMITS AS A RESULT OF THE INTERACTION BETWEEN

- THE MANITOBA BUILDING CODE and
- THE MANITOBA FIRE CODE

THE BUILDING CODE MUST COORDINATE WITH THE FIRE CODE

HOW CAN BUILDING OFFICIALS ADDRESS AND MANAGE THE RISKS?

LIABILITY AND RISK MANAGEMENT: 2 CIRCUMSTANCES

BUILDING CONSTRUCTION, RENOVATION OR DEMOLITION:

- BUILDING CODE REQUIRES COMPLIANCE WITH FIRE CODE

ISSUING OCCUPANCY PERMITS UNDER MUNICIPAL BY-LAWS:

- MUST COORDINATE BETWEEN THE BUILDING CODE AND FIRE CODE

FIRST

NEED TO UNDERSTAND

- 1. Building and Fire Code sources of authority
- 2. Requirements when administering each Code

- Both Codes provide for the protection of a building and the safety of persons in case of a fire.
- The Codes are intended to be coordinated with each other.
- Buildings must comply with both Codes.
- Buildings are classified based on their principle or major use.
- The Codes
 - ❖ break down occupancy types based on use, and
 - ❖ apply standards and requirements based on a building's category of use.

THE MANITOBA BUILDING CODE

- Sets standards and requirements for when buildings are being constructed or renovated, and where a change in a building's occupancy class.
- Includes life safety requirements.
- The Buildings and Mobile Homes Act adopts the Building Code and applies to the:
 - 2(1) construction, erection, placement, alteration, repair, renovation, demolition, relocation, removal, occupancy or change in occupancy of any building or addition to a building.
 - Exceptions
 - 2(2) This Act does not apply to
 - (a) a farm building having a building area that is less than the prescribed building area; or
 - (b) any building or class of buildings excluded by the regulations; or
 - (c) any part of the province or any municipality excluded by the regulations; or
 - (d) any of the things set out in subsection (1) the doing of which was commenced or completed before June 14, 1974.

MUNICIPALITIES MUST ADOPT AND ENFORCE THE BUILDING CODE

Municipal responsibility

4. ...unless excluded under clause 2(2)(c) each municipality shall adopt and enforce any building construction code or building construction standard adopted, established or prescribed under section 3 for the province or the municipality or the part of the province in which the municipality is situated, and may make such by-laws as are necessary for those purposes.

Every municipality must have a building by-law in place that requires owners to apply for and obtain a building permit before carrying out work regulated under the Act and by-law.

- Building Code and building by-laws are administered and enforced by
- building officials with municipalities,
 - planning districts in municipalities in a planning district, or
 - the Office of the Fire Commissioner, by agreement.

THE MANITOBA FIRE CODE

SETS standards and requirements for the maintenance of fire and life safety systems for buildings.

DEALS with the maintenance of the life safety systems built into a building at the time of construction.

REQUIREMENTS include

- ❖ signage,
- ❖ fire safety planning,
- ❖ fire extinguishers,
- ❖ sprinkler systems,
- ❖ dealing with the carrying out of activities that might cause a fire hazard, and
- ❖ limitations on hazardous material in buildings.

THE FIRES PREVENTION & EMERGENCY RESPONSE ACT

This Act adopts the Fire Code and requires municipalities to adopt and enforce the Fire Code

Local authorities to enforce fire code

20. Within its boundaries, a local authority must, in accordance with the procedures of this Act, enforce the *Manitoba Fire Code* as it is prescribed for the part for the province in which the local authority is situated.

Municipalities may adopt higher standards, but the standards must not be in conflict with the Fire Code requirements adopted under this Act:

Local authority may establish higher standards

28(1) Nothing in this Act prevents a local authority from making and enforcing by-laws relating to matters dealt with by this Act or the regulations, including making by-laws that impose or prescribe higher or more stringent standards or requirements than those provided for by this Act or the regulations.

By-law inconsistent with other legislation

28(2) A by-law that is inconsistent with this Act or with a regulation that is in force in the part of the province in which the local authority is situated is of no effect to the extent of the inconsistency.

THE FIRES PREVENTION & EMERGENCY RESPONSE ACT

This Act requires municipalities to carry out fire safety inspections for prescribed buildings as set out in the Act and Regulations:

Local authority must inspect prescribed buildings

21(1) Subject to subsection (3), a local authority must (a) establish a system for conducting regular fire safety inspections of prescribed buildings within its boundaries; and (b) ensure its local assistant, or a person exercising the powers, duties and functions of a local assistant, carries out those inspections.

Records to be kept and made available

21(2) The local authority must ensure that (a) a record in the approved form is made of every fire safety inspection of a prescribed building done by the local authority; (b) the records are made available, on request, to the fire commissioner; and (c) unless otherwise prescribed by regulation, the records are kept for at least seven years.

THE FIRES PREVENTION & EMERGENCY RESPONSE ACT

- Every municipality must have a system in place for carrying out fire safety inspections as required by the Act.
- In Manitoba, the administration and enforcement of the Fire Code lies with municipal fire officials, often the Fire Chief or the Office of the Fire Commissioner by agreement with the municipality.
- The Planning Act does not require planning districts to become involved in enforcing the Fire Code.
- This Act does not require inspections and approvals for building construction, renovation or change in use as does the Buildings & Mobile Homes Act.

AMM TEMPLATE FIRE BY-LAW

Adoption of the Fire Code template wording:

Adoption of Fire Code
 3. *The Municipality hereby adopts the Code as part of this by-law, and the whole thereof, save and except such portions as are hereinafter deleted, modified or amended, and is hereby incorporated as if fully set out at length herein. Any reference to this by-law shall be construed as a reference to the whole by-law, including the Code.*

AREAS OF POTENTIAL LIABILITY
 When the Building Code and Fire Code interact

1. Where Building Code requires compliance with Fire Code for building construction, renovation or demolition.

2. When issuing an occupancy permit under a municipal building by-law: coordination between the Building Code and the Fire Code required.

1. Building construction, renovation or demolition

Permit approval process:
Building Code requires
Fire Code to be considered

- Part 8 - Safety Measures at Construction and Demolition Sites
- 8.1.1.1. Scope
- 2) This Part applies to fire safety and the protection of the public during the construction, alteration or demolition of every building, including any incomplected or abandoned building.
- 3) Fire safety at construction and demolition sites shall conform to Section 5.6. of Division B of the NFC.
- 8.1.1.3. Demolition Procedures
- 1) Measures shall be taken during demolition to protect the public in conformance with Section 5.6. of Division B of the NFC.

Building Construction, Renovation or Demolition
Fire Code Section 5.6

Section 5.6. Construction and Demolition Sites
5.6.1.1. Application

1) This Section applies to fire safety for buildings, parts of buildings, facilities, adjacent buildings or facilities, and associated areas undergoing construction, alteration or demolition operations.

5.6.1.2. Protection of Adjacent Buildings

1) Protection shall be provided for adjacent buildings and facilities that would be exposed to fire originating from buildings, parts of buildings, facilities and associated areas undergoing construction, alteration or demolition operations. (See Appendix A.)

Building Construction, Renovation or Demolition
Fire Code Section 5.6

5.6.1.3. Fire Safety Plan

1) Except as required in Sentence (2), prior to the commencement of construction, alteration or demolition operations, a fire safety plan shall be prepared for the site and shall include

- a) the designation and organization of site personnel to carry out fire safety duties, including a fire watch service if applicable,
- b) the emergency procedures to be followed in the event of a fire, including
 - i) initiating a fire warning,
 - ii) notifying the fire department,
 - iii) instructing site personnel on the procedures to be followed once the warning has been initiated, and
 - iv) confining, controlling and extinguishing the fire,
- c) measures for controlling fire hazards in and around the building (Appendix A),
- d) a maintenance procedure for firefighting measures required in Section 5.6.

2) Where construction, alteration or demolition operations occur in an existing building that is required to have a fire safety plan conforming to Section 2.8., the fire safety plan shall take into account the changes occurring to the building.

Building Construction, Renovation or Demolition

Fire Code Section 5.6

5.6.1.4. Access for Firefighting

- 1) *Unobstructed access to fire hydrants, portable extinguishers and to fire department connections for standpipe and sprinkler systems shall be maintained.*
- 2) *A means shall be provided to allow firefighters to perform their duties on all levels of the building.*
- 3) *Provision shall be made for the use of existing elevators, hoists or lifts to assist firefighting personnel in reaching all levels of the building.*
- 4) *Access routes for fire department vehicles shall be provided and maintained to construction and demolition sites.*
- 5) *Where a construction or demolition site is fenced so as to prevent general entry, provision shall be made for access by fire department equipment and personnel.*

BUILDING CODE

Building Construction, Renovation or Demolition

QUESTIONS

- HOW CAN A BUILDING OFFICIAL ENSURE THE REQUIREMENTS OF SECTION 5.6 OF THE FIRE CODE ARE MET WHEN ADMINISTERING THE BUILDING CODE FOR THE CONSTRUCTION OR DEMOLITION OF A BUILDING?**
- CAN THE BUILDING OFFICIAL DECIDE NOT TO CONSIDER FIRE CODE COMPLIANCE?**

BUILDING CODE

Building Construction, Renovation or Demolition

The building official has no choice. The requirements of the Fire Code must be complied with if the building is covered by section 8.1 of the Building Code and section 5.6 of the Fire Code.

Compliance is required despite most by-laws adopting the Fire Code not containing a requirement for the administration and enforcement of the Fire Code when dealing with the construction or demolition of buildings.

HOW CAN A BUILDING OFFICIAL ENSURE COMPLIANCE?

- ✓ Involve the Fire official responsible for administering the Fire Code. May include review of plans, dealing with the owner, inspection of the property or building.
- ✓ Require the owner's designer to provide proof of compliance with Fire Code requirements. This proof could be reviewed by the municipality's Fire official to ensure Fire Code compliance.
- ✓ Develop a protocol and policy on how these issues to be addressed.
- ✓ Challenges include: building official time, additional steps in approval process, coordination with Fire official who may work for a municipality or the OFC, and additional costs.

AREAS OF POTENTIAL LIABILITY
When the Building Code and Fire Code interact

Second area of potential liability
Coordination between the Building Code and the Fire Code when issuing an occupancy permit under a municipal building by-law.

AREAS OF POTENTIAL LIABILITY
When the Building Code and Fire Code interact

- Standard building by-laws require occupancy permits for buildings.
- Purpose of an occupancy permit is to ensure that work for which a building permit has been issued has been completed in accordance with the Building Code and permit, and that the building meets other applicable requirements.
- Unlike building permits, occupancy permits are intended for the public's benefit, to be made public at the premises.
- The building by-law sets out the types of buildings and circumstances requiring an occupancy permit (major buildings or uses, not single family dwellings).

Excerpt from AMM template building by-law

"Code" means the Manitoba Building Code as established, adopted and revised from time to time under Section 3 of the Buildings and Mobile Homes Act

4.2.3. Occupancy Permits:

Except as otherwise permitted herein, no person shall occupy or use or permit the occupancy or use or change the occupancy or use of any building or part thereof, for which an occupancy permit is required hereunder.

4.2.3.1 An Occupancy Permit is required from the authority having jurisdiction for:

- (a) the occupancy of any new building or structure or portion thereof except a single-family dwelling, a two-family dwelling or a multi-family dwelling without shared exit facilities;
- (b) the occupancy of any existing building or structure where an alteration is made thereto, except a single-family dwelling, a two-family dwelling or a multi-family dwelling without shared exit facilities;
- (c) for a change from one Major Occupancy group to another or a change from one division to another within a Major Occupancy group in any existing building or structure, or part thereof;
- (d) for a change from one use to another within the same division in a Major Occupancy group which results in an increase in the occupant load;
- (e) for a change or addition of an occupancy classification of a suite in a building; and
- (f) for a change from a use not previously authorized to a new use.

Excerpt from AMM template building by-law

4.2.3.2 Before the issuance of an occupancy permit, the owner shall (unless the authority having jurisdiction waives such requirement) submit Letters of Assurance in the form set out in the applicable Schedules F and G, as attached hereto, confirming that the construction of the building, work or project conforms with the plans, specifications and related documents for which the building permit was issued.

4.2.3.7 Notwithstanding apparent compliance with this by-law, the authority having jurisdiction may refuse to issue an Occupancy Permit if the building, structure or proposed use is to the authority having jurisdiction's knowledge in violation of a Zoning by-law, or any other by-law of the authority having jurisdiction.

4.2.3.8 An applicant for a Occupancy Permit shall supply all information requested by the authority having jurisdiction to show compliance with the by-law and any other relevant by-laws of the authority having jurisdiction

4.2.3.9 The required Occupancy Permit shall be displayed and maintained in a legible condition by the owner or his agent in a location acceptable to the authority having jurisdiction.

AREAS OF POTENTIAL LIABILITY
When the Building Code and Fire Code interact

The Building Code requires the Fire Code to be considered as part of the permit approval process:

1.1.4.1. Fire Safety Plan

1) Where a fire safety plan is required, it shall conform to Section 2.8. of Division B of the NFC.

Section 2.8.2.1 of the Fire Code provides - Measures in a Fire Safety Plan:

- 1) In buildings or areas described in Article 2.8.1.1., a fire safety plan conforming to this Section shall be prepared in cooperation with the fire department and other applicable regulatory authorities and shall include
 - a) the emergency procedures to be used in case of fire, including
 - i) sounding the fire alarm (see Appendix A),
 - ii) notifying the fire department,
 - iii) instructing occupants on procedures to be followed when the fire alarm sounds,
 - iv) evacuating occupants, including special provisions for persons requiring assistance (see Appendix A),
 - v) confining, controlling and extinguishing the fire,
 - b) the appointment and organization of designated supervisory staff to carry out fire safety duties,
 - c) the training of supervisory staff and other occupants in their responsibilities for fire safety,
 - d) documents, including diagrams, showing the type, location and operation of the building fire emergency systems,
 - e) the holding of fire drills,
 - f) the control of fire hazards in the building, and
 - g) the inspection and maintenance of building facilities provided for the safety of occupants. (Appendix A.)

OCCUPANCY PERMITS

QUESTIONS

- ❑ HOW CAN A BUILDING OFFICIAL ENSURE THE REQUIREMENTS OF SECTION 2.8 OF THE FIRE CODE ARE MET WHEN ADMINISTERING THE OCCUPANCY PERMIT?
- ❑ CAN THE BUILDING OFFICIAL DECIDE NOT TO CONSIDER FIRE CODE COMPLIANCE?

OCCUPANCY PERMITS

- Despite template building by-law referring to Building Code compliance only, the purpose of an occupancy permit is to ensure compliance with all requirements.
- Fire Code compliance must be taken into account when considering issuance of an occupancy permit.
- Risks associated with the issuance of an occupancy permit are higher than with a building permit. The occupancy permit is a public document, intended to be relied upon by the public.
- When the public sees an occupancy permit, they assume the building complies with all applicable requirements for the expected use of the building.

HOW CAN A BUILDING OFFICIAL ENSURE COMPLIANCE?

- ✓ Involve the Fire official responsible for administering the Fire Code. May include review of building information, dealing with the owner, inspection of the property or building.
- ✓ Require the owner's designer to provide proof of compliance with Fire Code requirements. This proof could be reviewed by the municipality's Fire official to ensure Fire Code compliance.
- ✓ Develop a protocol and policy on how these issues to be addressed.
- ✓ Challenges include: building official time, additional steps in approval process, coordination with Fire official who may work for a municipality or the OFC, and additional costs.

WHAT IF THE BUILDING OFFICIAL FAILED TO CONSIDER THE FIRE CODE AND A BUILDING IS DAMAGED OR SOMEONE IS INJURED AS A RESULT OF A FIRE?

The municipality is a good target: insurance is available to pay the damages, always around and easy to find, not bankrupt.

The Tortfeasors and Contributory Negligence Act: As long as the municipality has any liability, it can be required to pay all of the damages and be left chasing the other responsible parties.

The property owner may share some responsibility for the damages, but their actions are not a bar to recovery unless their actions made it impossible for the inspector to discover the problem.

PROTECTION FROM LIABILITY

The Municipal Act does provide some protection for municipalities and building officials:

"building standard" means
(a) a building construction standard adopted, established, prescribed or varied under *The Buildings and Mobile Homes Act*, and
(b) a standard adopted, established, prescribed or varied under a regulation under *The Fires Prevention and Emergency Response Act*;

"inspection" means an examination, review, survey or other action permitted or required to enforce a building standard;

Requests for inspections
387(1) A municipality is not liable for a loss related to
(a) the manner or extent of an inspection; or
(b) the frequency, infrequency or absence of inspection; unless the inspection was requested at the appropriate stage of construction and with reasonable advance notice before the inspection was required, and the municipality failed to conduct the inspection or conducted it in a negligent manner.

Negligent inspections
387(2) An inspection is conducted in a negligent manner only if it fails to disclose a defect or deficiency that
(a) could be reasonably expected to be detected; and
(b) falls within the scope of the inspection being conducted.

PROTECTION FROM LIABILITY

Certification by professionals
387(3) For the purpose of an inspection, a municipality may rely on a certification or representation by an engineer, architect, surveyor or other person with expertise respecting the thing being certified or represented, and a municipality that relies on such a certification or representation is not liable for any loss or damage caused by the negligence of the engineer, architect, surveyor or other person in making the certification or representation.

Matters outside scope of inspection
387(4) An inspection by a municipality to enforce a building standard does not create or impose a duty on the municipality with respect to any matter not being inspected.

Failure to comply with conditions
387(5) If conditions are imposed by the municipality in respect of or in the course of an inspection, the municipality is not liable to any person for loss or damage as a result of the conditions not being complied with, unless the municipality
(a) knew of the failure to comply with the conditions;
(b) had the power to order that the conditions be complied with; and
(c) failed to order compliance.

PROTECTION FROM LIABILITY

Failure to prevent or limit loss

387(6) A municipality is not liable for loss or damage resulting from an inspection or a failure to inspect if the person claiming the loss knew or ought to have known of the thing or matter that caused the loss and failed to take reasonable steps to limit or prevent the loss.

Inspection not a guarantee

387(7) An inspection or a system of inspections by a municipality is not a representation, guarantee, warranty or insurance of the quality or standard of construction of, or of any other thing respecting, the property, building, utility, structure or other thing inspected.

Seven horizontal lines for notes.

PROTECTION FROM LIABILITY

Protection from liability

403(1) A member of a council or council committee, or a municipal officer or volunteer worker is not liable for any loss or damage suffered by a person by reason of anything said or done or omitted to be done by the member, officer or volunteer worker in good faith in the performance or intended performance of powers, duties or functions under this or any other Act.

- The municipality is protected from liability if the building official's actions fall within the limited protection under section 387 of the Act.
- If the municipality is not protected under the Act and is found liable, the building official is still protected from liability under section 403(1) if their actions are in the good faith performance of their duties.

Seven horizontal lines for notes.

PROTECTION FROM LIABILITY

Additional protection may be provided under the Fires Prevention and Emergency Response Act where a person acts under the authority of that Act:

Protection from liability

41 No action or proceeding may be brought against the fire commissioner, a designate or any other person acting under the authority of this Act for anything done or not done, or for any neglect, (a) in the performance or intended performance of a duty under this Act or the regulations; or (b) in the exercise or intended exercise of a power under this Act or the regulations unless the person was acting in bad faith.

However, it is unlikely this Act would protect a building official from liability. Protection is limited to a person acting under this Act, which is not the case when a building official is administering a building by-law.

Seven horizontal lines for notes.

Thank you

Questions?

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