

Infill Housing Strategy – Non-Conformance with the Building Permit Documents

ONTARIO BUILDING CODE ACT

Role of chief building officials

- (6) It is the role of a chief building official,
- (a) to establish operational policies for the enforcement of this Act and the building code within the applicable jurisdiction;

Role of builders

- (3) It is the role of a builder,
- (b) to construct the building in accordance with the permit;
 - (d) when site conditions affect compliance with the building code, to notify the designer and an inspector or the registered code agency, as appropriate.

Role of various persons

- 1.1 (1) It is the role of every person who causes a building to be constructed,
- (a) to cause the building to be constructed in accordance with this Act and the building code and with any permit issued under this Act for the building;

BACKGROUND

The number of new infill home projects are increasing each year. Unfortunately, these projects have a record of non-compliance with the building permit documents and construction practices that generally disrupt the surrounding community. As a result, we are monitoring infill home projects with the aim to;

- Ensure compliance with the approved building permit documents,
- Maintain safe neighbourhoods by ensuring secure construction sites, and
- Increase communication with other Markham departments to provide a co-ordinated approach to the enforcement of other City by-laws related to construction the affects of construction sites have on the community, such as parking and debris on the roadway.

OBJECTIVE

The objective of this Builder Tip advise owners and builders of new home infill projects of their responsibilities under the Building Code Act to construct in accordance with the Building Permit Documents and to obtain a revision to their building permit prior to making any changes on the construction site.

This Builder Tip was developed to establish an operational policy for the enforcement of the Building Code Act with respect to failure to construct in accordance with the Building Permit documents.

IMPACT ON THE NEIGHBOURING COMMUNITY

When an infill home is not be constructed in accordance with the approved building permit drawings, this often causes a negative impact on the surrounding community, such as the following;

Building Code - variations of the exterior cladding materials and openings can give a different appearance to the project from the street. Additional opening may expose adjacent properties to increased fire hazards.

Zoning By-law – variations can lead to increased building height, the building being located closer to property lines and increased lot coverage.

Lot Grading – variations of the building height, setbacks and lot coverage can affect the grading of the property, which in turn can affect negatively on adjacent properties.

ENFORCEMENT

The Building Code Act contemplates that owners and builders will comply with the laws regarding building construction in Ontario, including constructing a building in accordance with the approved Building Permit Documents. Once a building permit is issued, the Building Standards Department relies on the owner and builder to construct in accordance with the building permit documents.

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However, once construction varies from the building permit documents, this reliance has failed and now it is appropriate for the project to receive additional oversight by a professional or qualified person.

Note: Construction that has not been authorized by the building permit documents may be considered illegal construction and deemed construction without a building permit.

Where construction does not conform to the Building Permit documents, you can expect to receive an Order to Comply. Each Order to Comply has a \$300 administration fee. The Order will require you to do the following;

1) Submit a detailed report from an Architect, Professional Engineer or provincially qualified designer that details how the unauthorized construction impacts the following building components;

- a) Architectural
- b) Structural
- c) Mechanical
- d) Energy Efficiency (EEDS)
- e) Plumbing
- f) Heritage approval
- g) Markham zoning bylaw
- h) Committee of Adjustment decisions

Also, the report must comment on how the remaining as-built construction is in compliance with the Building Permit documents.

2) Obtain authorization from the chief building official in the form of a revised building permit. The report in Item 1 must be submitted with the application for revision.

3) Submit a monthly professional report from the date this Order to Comply was issued, that confirms all construction is continuing in accordance with the building permit documents. The submission of the reports may discontinue once an Occupancy Permit has been issued by the building inspector.

4) You are advised that construction on the items identified on this Order should not continue and may require modification or removal based on any revised building permit documents being issued.

FAILURE TO COMPLY

Failure to comply with the Order to Comply will result in the issuance of a Stop Work Order, stopping the entire project until a revision to the Building Permit is issued. Each Stop Work Order issued has a \$1,000 administration fee.

REMOVAL OF THE ORDER

The issuance of an Order to Comply, see appendix A, will form part of the department records and this information will be released to any party upon request. The Order will also be listed on the Building Department website that is available for public access. Finally, the Order may be register on title in accordance with Section 12(5) of the Building Code Act.

Removal of the Order or compliance with the Order will occur once;

- 1) An application for a building permit has been submitted, issued and inspected, and
 - 2) The issuance of an Occupancy Permit⁽¹⁾.
- (1) Until an Occupancy Permit is issued, monthly reports required under Item 3 of the Order are to be submitted.



Builder Tip

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Appendix A



Order to Comply

Pursuant to Subsection 12(2) of the *Building Code Act, 1992*

The City of Markham, 101 Town Centre Blvd.
Markham, Ontario, L3R 9W3
905 477-7000
Building Code Identification Number 16175

Address to which Order applies:

Order Number:

Date Order Issued:

Building Permit Application No.:

Order issued To:

Order issued To:

The inspection on or about _____ (date) at the above-referenced address found the following contravention(s) of the Building Code or the *Building Code Act, 1992*.

You are hereby ordered to correct the contraventions itemized below by the dates listed.

Item	Reference	Description and location	Required action and compliance date
1.	<i>Building Code Act</i> s. 8(13) and 18(1)	<p>1) No person shall construct or demolish a building or cause a building to be constructed or demolished except in accordance with the plans, specifications, documents and any other information on the basis of which a permit was issued or any changes to them authorized by the chief building official.</p> <p>2) The following construction has not been authorized by the Building Permit documents; (list of unauthorized work)</p>	<p>1) You are required to submit a detailed report from an Architect, Professional Engineer or provincially qualified designer that provides how the unauthorized construction will impact the following building components;</p> <ul style="list-style-type: none"> a) Architectural b) Structural c) Mechanical d) Energy Efficiency (EEDS) e) Plumbing f) Heritage approval g) Markham zoning bylaw h) Committee of Adjustment decisions <p>The report must comment on how the remaining as-built construction (other than the construction listed under Description and Location) is in compliance with the Building Permit documents. Submit this report by (date)</p> <p>2) Obtain authorization from the chief building official in the form of a revised building permit by (date)</p> <p>3) Submit a professional report every 2 weeks from the date of this Order to Comply was issued that confirms all construction is continuing in accordance with the building permit documents.</p> <p>4) You are advised that construction on the items identified on this Order should not continue and may require modification or removal based on any revised building permit documents being issued.</p>

The Building Standards Department issues BUILDER TIPS as part of our customer service program. They are designed to provide an improved understanding of the Building Code and to reduce the costs associated with correcting infractions. Please contact your area building inspector for further information or call the Building Standards Department at (905) 475-4850