

BUILDING MAINTENANCE BYLAW

EXECUTIVE SUMMARY

Council approval is required to enact a Building Maintenance Bylaw. The proposed bylaw would apply to buildings that are five or more storeys tall and 10 or more years old, and is intended to ensure public safety with regard to building exterior maintenance. Weather exposure, climate extremes and normal wear and tear can result in the external components of buildings deteriorating, becoming damaged and presenting a potential hazard to the public if they detach from the building - a contributing factor being a lack of appropriate maintenance. The proposed Building Maintenance Bylaw will establish a minimum maintenance standard and a requirement to carry out a building exterior visual assessment on a regular basis. The bylaw was developed using a stakeholder engagement process which brought together building owners, property managers, and building science professionals to identify and resolve the key issues. The City of Calgary will use an auditing approach to ensure that exterior visual assessments are being carried out and buildings are being maintained to the required standard.

ADMINISTRATION RECOMMENDATION

That the Standing Policy Committee on Planning and Urban Development recommends that Council give three readings to the proposed Building Maintenance Bylaw in Attachment 1.

RECOMMENDATION OF THE SPC ON PLANNING AND URBAN DEVELOPMENT, DATED 2016 JUNE 08:

That Council give three Readings to **Proposed Bylaw 33M2016** the Building Maintenance Bylaw.

PREVIOUS COUNCIL DIRECTION / POLICY

On 2016 May 06 the Standing Policy Committee on Planning and Urban Development deferred Administration's response to direction to bring back a proposed Building Maintenance Bylaw until no later than 2016 Q3.

On 2015 October 07, the Planning, Development & Assessment department (PDA) (now known as Planning & Development) took a report to the Standing Policy Committee on Planning and Urban Development, presenting a draft Building Maintenance Bylaw. The committee directed that "the Report PUD2015-0674 be referred to Administration, for further consultation with stakeholders, and return to the SPC on Planning and Urban Development no later than 2016 May, with a new proposed building maintenance bylaw".

BACKGROUND

In recent years there have been a number of significant weather events that have had an impact on buildings and infrastructure in Calgary. For example, wind storms in 2011 resulted in a number of cases of exterior elements such as signs detaching from buildings and creating hazardous conditions. There have been other recent examples of aging buildings experiencing facade elements detaching and creating a hazard.

The City's role in these situations has been reactive – that is, once a hazardous situation occurs, City resources are called upon to investigate the situation, secure the site with Calgary

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Fire Department, Calgary Police Service or other emergency service personnel, and then follow up with enforcement actions such as laying charges under the *Alberta Safety Codes Act*, R.S.A. 2000, c. S-1 (SCA).

In order to be more proactive in preventing such events, The City has identified a need for a process by which it can ensure that owners are maintaining their buildings to keep them safe and hazard free, to provide a way for owners to identify potentially hazardous conditions early on, and to ensure remedial action is taken so that hazards do not materialize.

A 2015 report with a proposed draft bylaw was referred back to Administration for further stakeholder consultation. Administration established an external stakeholder working group who met regularly over a period of five months to discuss the issues and provide input. Stakeholders provided their views on safety, their current practices, requirements for a person qualified to perform a visual assessment, scope and frequency of assessments and other topics. The critical issues for the stakeholders were addressed by making some key changes to the proposed bylaw. The results of these changes have been incorporated into the draft bylaw provided for Council's consideration here.

INVESTIGATION: ALTERNATIVES AND ANALYSIS

Jurisdiction

There are a number of legislative provisions which relate to ensuring building safety. The *Alberta Safety Codes Act* is legislation that brings together the standards and enforcement provisions for a number of building disciplines under a single Act, as it establishes regulations for the administration and enforcement of the Building Code, Fire Code, Plumbing Code, Gas Code, Electrical Code, and others.

The Alberta Building Code (ABC) establishes the standards and specifications for new building construction as well as renovations. Sentence 2.2.15.1 of Division C of the ABC requires an owner to remedy an unsafe building condition.

The Quality Management Plan (QMP) is an agreement between The City (as an accredited municipality pursuant to the SCA) and the Province to ensure that oversight of the SCA is carried out within the municipality. The City has committed to administering and enforcing the SCA; this is achieved in part through the employment of a number of provincially appointed Safety Codes Officers (SCOs) who are tasked with carrying out inspections and enforcement activities.

S. 66(1) of the SCA states that a bylaw that purports to regulate a matter set out in the SCA is inoperative. This means that a municipal bylaw that overlaps with any component of the SCA could not be used as the basis of a municipal bylaw infraction. However ss. 66(2)(b) of the SCA allows for municipalities to pass bylaws respecting minimum maintenance standards for buildings and structures.

S. 7 of the *Municipal Government Act*, R.S.A. 2000, c. M-26 (MGA) enables municipalities to pass bylaws respecting the safety, health and welfare of people and the protection of people and property, and the enforcement of bylaws made under the MGA or any other enactment.

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Purpose and Rationale for the Bylaw

Weather exposure, climate extremes and normal wear and tear can result in the external components of buildings deteriorating, becoming damaged and presenting a potential hazard. The risk of deterioration and damage becomes more dangerous the higher and older the building, and the risk of falling debris and the resulting harm are generally far greater on the outside of a building than inside.

When a building is completed the building permit is signed off and occupancy is granted by The City. From that point on the full responsibility for maintaining the building rests with the building owner. Many buildings are owned and managed by professional property owners and managers. As a matter of best practices and to protect their investments, owners and managers of these buildings typically conduct regular inspections of various components of the building and undertake regular maintenance and repair programs. However, this is not universally true of all building owners and managers.

The City currently has no specific authority to ensure that adequate maintenance practices for building exteriors are being carried out on an ongoing basis. While The City will investigate if a complaint is made about a problem with a building, The City's role is largely reactive.

The proposed Building Maintenance Bylaw takes a proactive and preventative approach to reduce risks to the public. The purpose is to increase safety for members of the public by ensuring that the exteriors of buildings over five storeys and 10 or more years old are inspected regularly and maintained in a consistent way. It is noteworthy that the Building Code draws a distinction between buildings under and over five storeys, because different and more complex construction techniques and materials are needed for taller buildings. The bylaw provides The City with some enforcement tools to prevent building exterior conditions from becoming hazardous to the public.

Review of Other Jurisdictions

Research into what other municipalities do to regulate building safety revealed few examples of a proactive approach, such as the one being proposed through this report. While it is quite common for Canadian municipalities to have a property standards bylaw requiring buildings and their sites to be maintained, the model is typically reactive. There is a requirement to maintain property, and offences and fines are established for violations of the standards. However, enforcement is complaint based and reactive only.

The approach proposed in the Building Maintenance Bylaw is inspired by that taken by New York City and the Province of Quebec. New York requires owners of buildings to submit reports on the state of the building exterior to the city every five years, starting in the fifth year after construction of the building. The City of Chicago has a similar ordinance.

At the provincial level, Quebec passed an amendment to its Safety Code in 2012, adding a "Building" chapter with provisions requiring that every five years building owners must obtain an audit report, prepared by an engineer or architect, stating that the building's facades do not

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present hazardous conditions. If the audit report identifies any defect that could contribute to the development of hazardous conditions, the owner must notify the authority and develop and carry out a plan to correct the defect. The rules apply to buildings that are five or more storeys in height, and 10 or more years old.

Approach

Calgary's proposed Building Maintenance Bylaw follows the proactive model adopted by New York City and Quebec. The proposed wording for the Building Maintenance Bylaw is set out in Attachment 1. The bylaw establishes a requirement for building owners to visually assess the condition of the building envelope and document the findings in the prescribed form every five years. A draft version of the prescribed form is set out in Attachment 2. This document will be known as the Building Exterior Visual Assessment (BEVA); the details of the form will be set by the Chief Building Official and may be updated from time to time. The BEVA will be accompanied by a Guideline document for users; a draft of the Guideline is set out in Attachment 3. Building owners must retain the records of those visual assessments for the life of the building, must transfer them to a new owner upon a change of ownership of the building, and must provide them to The City upon request.

The bylaw does not require that the BEVAs be filed with The City. Enforcement of the bylaw will be carried out on an audit basis, whereby The City will request the BEVA records for selected buildings and follow up with owners to ensure that buildings have been properly maintained. By not requiring reports to be filed with The City, the process is streamlined and cost-effective for both building owners and The City. This approach is also aligned with that taken by Occupational Health and Safety Alberta whereby safety records must be maintained by employers and made available upon request. Building owners will be required to maintain the BEVA records for the life of the building.

The timeline for compliance is phased in based on the age of existing buildings. This will provide the necessary time to build awareness among building owners and enable them to retain services to have a BEVA prepared. If the bylaw comes into force in 2017 January as proposed, the audit-based enforcement of the bylaw would commence when the first cohort of buildings is required to have a BEVA, namely 2018.

Scope

The proposed bylaw will apply to buildings that are five storeys or more above grade and 10 or more years old. The BEVA applies to the exterior building envelope which includes the walls and roof. This scope is risk based: buildings that are taller and older pose a greater risk of deterioration. The greatest risk to general public safety arises from the potential for elements of the exterior of the building to detach and fall to the ground (the building owner of course is also responsible for ensuring the safety of the interior of buildings for occupants). In addition, the bylaw scope provides the Chief Building Official with the authority to require that a building or structure less than five storeys have a BEVA prepared. This would enable The City to review major occupancy buildings that may expose the public to risk but don't meet the five storey criterion, such as a stadium or performing arts facility.

Roles and Responsibilities

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The responsibility for complying with the bylaw rests with the building owner, who must ensure that BEVAs are completed, and that the documents are retained and made available to The City upon request.

The bylaw provides that a BEVA must be completed by a person with sufficient education, skills, training and experience relating to roofs and/or walls such that the visual assessment may reasonably be relied upon. The qualifications of the person conducting the visual assessment must be recorded on the BEVA. An owner may use multiple consultants when completing the BEVA. The definition of who can carry out a visual assessment was a key discussion point in the stakeholder engagement process, and the final wording reflects the input of the group.

The responsibility for administering the bylaw, once adopted, will rest with the Calgary Building Services (CBS) business unit, which includes The City's Safety Codes Officers (SCOs). In order for SCOs to have the requisite authority to enforce the Building Maintenance Bylaw, the intention is to appoint several of the senior SCOs as Bylaw Officers. This will ensure an efficient use of resources as the personnel with expertise in the codes will be authorized to request owners to produce their BEVA, and then follow up to ensure compliance with the bylaw. If hazardous conditions are observed by SCOs, or noted in the BEVA and not remedied, charges could be laid under the SCA.

Standards for Maintenance

There are standards available to building owners and managers who employ a regular regime of building inspection and maintenance. Examples include:

- "Recommended Practices in Health & Safety: A Guide for Building Owners and Managers," a publication prepared jointly by the Building Owners and Managers Association (BOMA), Calgary Chapter and The City of Calgary; and
- The ASTM International "Standard Guide for Property Condition Assessments: Baseline Property Condition Assessment Process" (E-2018-08) Standard.

These standards are not mandatory; they are guidelines that assemble a variety of best practices in building exterior maintenance. These standards and others were considered by The City of Calgary in the development of the Building Exterior Visual Assessment tool that will accompany the Building Maintenance Bylaw. Through the engagement process, stakeholders indicated that these standards are, in many cases, already in use as part of regular building inspection and maintenance.

Duties and Offences

The proposed bylaw creates a duty for building owners to keep the building envelope in good repair and free from hazardous conditions. There is a duty to visually assess the condition of the building envelope at least every five years, and to record the results in the Building Exterior Visual Assessment form. Owners must retain these records for the life of the building, and provide copies of the BEVAs to The City upon request.

The bylaw establishes a duty for building owners to take immediate steps to remedy or mitigate a hazardous condition, and to report a hazardous condition in writing to The City's Chief

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Building Official. When The City receives such a report, it will open an investigation and provide advice to the owner as to appropriate remedial action.

Failure to comply with any of these duties is an offence under the bylaw. The penalties associated with offences are set out in Schedule “A” to the bylaw. Minimum and specified penalties range from \$1,000 to \$5,000.

Enforcement and Implementation

An implementation plan is set out in Attachment 4. The application of the bylaw will be phased in based on the age of buildings. The City will identify a selected number of buildings each year to audit compliance with the bylaw. An awareness and education plan will be developed to communicate the requirements of the new bylaw, the process The City will follow to administer and implement the bylaw, and information to help building owners comply. The communication strategy will be maintained over the long term and refreshed as needed to ensure that awareness of the bylaw requirements is maintained continuously in future years among the building owner community.

Implications for Building Owners

When the bylaw comes into effect, affected building owners will be required to periodically carry out Building Exterior Visual Assessments. Through the engagement process, Administration sought to understand the current industry practices for regular building maintenance and assessments, and to align the requirements of the bylaw with those practices.

The stakeholders provided a great deal of information about current practices in building maintenance, and indicated that most building owners do have some program of regular inspection and monitoring for their buildings, along with a plan and budget for maintenance and capital improvements. Inspection frequency could be weekly, monthly, annually or up to every five years. As well there are a number of events that could trigger a building condition assessment, such as a pending purchase and sale transaction for the building, application for re-financing, or a condominium corporation’s reserve fund study. The BEVA is similar to these types of activities and could be prepared in conjunction with regular building assessments. The stakeholders indicated that the cost of doing a building assessment typically represented 1.5% to 2% of a five-year maintenance budget, but could range from 0% to 5% of that five-year budget.

In order to obtain more information on what the costs could be for building owners, a consulting firm was retained to provide an independent cost analysis. The consultants (ISL Engineering and Land Services) asked professional envelope assessment firms to provide a cost estimate to complete a BEVA on three different building typologies. The results indicated that a typical assessment could be a general visual inspection of the walls conducted from the ground, or a more detailed, close-up inspection involving specialized equipment such as a swing stage.

The responses indicated that the cost for a general visual inspection would range from \$500 to \$3,000, with a typical cost of \$1,500. The more detailed inspection cost would range between \$1,800 and \$18,000, with a typical cost of \$8,700. The ranges reflect the high degree of variability in building size and complexity.

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By phasing in the applicability of the bylaw, building owners will have some time to plan ahead for what could be an additional expense. As well, the definition of who may complete a BEVA will give some flexibility in the expenditure required to have a visual assessment prepared.

Stakeholder Engagement, Research and Communication

The proposed Building Maintenance Bylaw was developed using a stakeholder engagement process. A summary of the engagement and communication activities is set out in Attachment 5.

The first phase of engagement took place in the spring and summer of 2015, and included both internal and external stakeholders. In the second phase (fall 2015 to spring 2016), the external Stakeholder Working Group included representatives from groups representing both commercial and residential building owners and managers, non-market housing, construction, building and real estate industries and professional associations. Some of the stakeholders consulted include the Building Owners & Managers Association, Calgary Chapter (BOMA), the Canadian Condominium Institute, Calgary Residential Rental Association, Alberta Association of Architects, the Association of Professional Engineers and Geoscientists of Alberta, Alberta Building Envelope Council, Alberta Roofing Contractors Association, Alberta Condominium Managers Association, Trinity Place Foundation and the Mustard Seed (representing a larger group of non-market housing providers), and Boardwalk Rental Communities, among others.

Internal stakeholders were also engaged in the development of the bylaw and tool. All departments were contacted and participating business units included Calgary Community Standards, Calgary Fire Department, Calgary Housing, Facility Management, Real Estate & Development Services, and Infrastructure & Information Services.

Stakeholders were asked to provide input on safety, their current practices, requirements for a person qualified to perform a visual assessment, scope and frequency of visual assessments, cost and the proposal of a digitally based tool for completing a BEVA. A series of interactive meetings and consultation opportunities were used to gather input throughout the development of the proposed bylaw. As well there was regular communication on the progress of the bylaw with stakeholders through a website, monthly email newsletter and intranet.

The engagement process led to some key changes in the proposed bylaw which responded to the concerns of the participating stakeholders, particularly in relation to the characterization of the assessment as purely visual, frequency of visual assessments and the qualifications to conduct a visual assessment. Attachment 6 provides some letters of support from stakeholder participants indicating their support of the process and the proposed bylaw.

Upon enactment of the bylaw, Administration will launch an educational campaign to build an understanding among industry and community members of how compliance can be achieved. The existing stakeholder working group has indicated a willingness to meet from time to time in the future and to assist in reaching a wide network of building owners, managers, engineers, architects, non-market housing providers and other industry members.

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Strategic Alignment

The Building Maintenance Bylaw is a tool that will enable The City to continue to strengthen its resiliency and capacity to prepare for and respond to natural disasters and emergency situations.

Social, Environmental, Economic (External)

Buildings are a key component of the urban fabric. They provide for housing, workplaces, industry, commerce, services and many other public and private uses. Ensuring that buildings are maintained keeps the economy functioning and provides space and opportunity for most of the social and economic activities of the community.

Maintaining longevity of buildings contributes to protection of the environment by reducing the need to demolish buildings prematurely because they have not been properly maintained, thereby making wise use of existing resources.

When the exteriors of buildings are not properly maintained through a regular program of assessment and repairs they can create a risk of hazards for the public. Failing materials, unsecured exterior elements and the like can detach and fall off potentially causing injury and/or property damage. Preventing such harm is essential to protecting public safety.

Financial Capacity

Current and Future Operating Budget:

There will be some costs associated with communication, administration and enforcement of the new Building Maintenance Bylaw. It is anticipated that in 2017 and 2018 expenditures for these activities will be absorbed within the existing operating budget of the Calgary Building Services business unit.

Current and Future Capital Budget:

Capital costs required to support the administration and enforcement of the new Building Maintenance Bylaw may be incurred for information technology expenditures. It is anticipated that in 2017 and 2018 these expenditures will be absorbed within the existing capital budget of the Calgary Building Services business unit.

Risk Assessment

The proposed Building Maintenance Bylaw is aimed at reducing risk of harm to the general public caused by hazards associated with buildings that have not been assessed and maintained on a regular basis. The scope of the bylaw has been crafted to focus on buildings that pose the highest risk to the public (five storeys or greater, 10 or more years old). There is also authority for the Chief Building Official to require other buildings to comply with the bylaw.

The proposed bylaw will result in a large number of buildings becoming subject to the operation of the bylaw at the same time. This risk has been mitigated by providing a phased-in schedule for applicability of the bylaw based on risk (oldest buildings will be the first to require compliance).

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There is some risk that building owners will be slow to comply with the bylaw, with the result that The City will need to be proactive in its enforcement efforts which could result in additional expenditure for enforcement and prosecution activity.

REASON(S) FOR RECOMMENDATION:

The proposed Building Maintenance Bylaw will provide The City of Calgary with a way to proactively ensure that building exteriors are regularly visually assessed and maintained so that they do not create a risk of hazard or unsafe conditions as it relates to exterior components detaching from buildings that could affect the general public.

ATTACHMENTS

1. **Proposed Bylaw 33M2016**
2. Proposed Form for a Building Exterior Assessment
3. Guideline for Using the Building Exterior Assessment
4. Implementation Plan
5. Summary of Engagement and Communication Activity
6. Stakeholder Letters of Support