

Potential Changes to Ontario's Building Code: PARKING STRUCTURES

Building and Development Branch
Fall 2017 Consultation

This consultation paper is for discussion purposes. The proposed regulatory amendments described in this document would only be considered if amendments to the *Building Code Act, 1992*, set out in Schedule 2 of the Stronger, Fairer Ontario Act (Budget Measures), 2017 are passed. We welcome feedback and request comments by January 4, 2018.

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Potential Changes to Ontario's Building Code: PARKING STRUCTURES

This consultation paper outlines a proposal for an amendment to the Building Code. This proposed amendment would identify maintenance standards and prescribe certain types of buildings for a mandatory building condition evaluation. Under proposed amendments to the *Building Code Act, 1992*, (if passed) that are currently under consideration, certain building owners (as defined in the proposed amendments to the *Building Code Act, 1992*,) would be responsible for ensuring that building condition evaluations are undertaken and that required standards are met.

It is the intent that the evaluations would be coordinated by a person who is a licensed engineering practitioner (i.e. meaning a person who holds a licence, limited licence or temporary licence under the *Professional Engineers Act*) or architect. The evaluator would determine whether the prescribed buildings meet maintenance standards set out in the Building Code. It is also proposed that the resulting evaluation reports would be made available to building officials and accessible to the public where it is identified that prescribed buildings are not being maintained to the standards. For information purposes, building officials would also be notified when an evaluation has been completed and the building is in compliance with those maintenance standards.

I. INTRODUCTION

The government has recently introduced proposed amendments to the *Building Code Act, 1992*, in its Stronger, Fairer Ontario Act (Budget Measures), 2017. The proposed amendments are intended to address the recommendations that were made by the Elliot Lake Commission of Inquiry following the collapse of the Algo Centre Mall in 2012.

The proposed amendments, if passed, would enable the government to make regulations establishing mandatory maintenance and evaluation programs for prescribed types of buildings through a Building Condition Evaluation Program.

This consultation paper outlines potential regulatory amendments to the Building Code to establish a Building Condition Evaluation Program for buildings with rooftop parking and exposed, multi-storey, above ground parking structures built before 1988. This regulation is proposed to be brought forward if the bill is passed.

II. BACKGROUND

One of the Elliot Lake Commission of Inquiry's recommendations was the establishment of an advisory panel to provide expert and technical advice on the inspection of existing buildings. As a result, the Building Safety Technical Advisory Panel was established by the then Ministry of Municipal Affairs and Housing and provided its recommendations in a [report released January 2016](#).

The proposals in this consultation paper are intended to respond to the Commission's recommendations and benefit from the Building Safety Technical Advisory Panel's advice.

Building Code Legislation and Regulations

Ontario's Building Code is a regulation made under the *Building Code Act, 1992*. It sets out technical and administrative requirements related to the construction, renovation, change of use and demolition of buildings. The Ministry of Municipal Affairs (the ministry) is responsible for the administration of the *Building Code Act, 1992*, and the Building Code.

Subsection 34(5) of the *Building Code Act, 1992*, sets out the purpose of the Building Code regulation as follows: "...to establish standards for public health and safety, fire protection, structural sufficiency, conservation, including, without limitation, energy and water conservation, and environmental integrity, and to establish barrier-free requirements, with respect to buildings as well as to establish processes for the enforcement of the standards and requirements."

The Building Code also works in conjunction with other legislation, regulations, and standards, including:

- The Electrical Safety Code
- The Fire Code
- The *Occupational Health and Safety Act, 1990*, and Regulations

The Building Code generally applies to new construction or renovation. However, the proposed Building Condition Evaluation Program regulation would apply to both new and existing buildings if they meet the criteria. This change would promote public safety by helping to ensure that certain higher risk types of buildings are properly maintained and regularly evaluated for structural sufficiency.

III. CONSULTATION DISCUSSION ITEMS

The following items outline the changes to the Building Code that are being considered with respect to a Building Condition Evaluation Program for specific types of parking structures.

1. Prescribed Types of Buildings

Implementing a Building Condition Evaluation Program would minimize risks to public safety by helping to ensure that building owners (as defined in the proposed amendments to the *Building Code Act, 1992*) maintain their buildings in accordance with established standards and perform periodic evaluations. It is intended that the evaluations focus on the structural sufficiency of the building. The proposed changes are scoped to specifically capture those types of parking structures that have characteristics similar to the Algo Centre Mall parking structure and that are considered to present a higher risk to public safety if not properly maintained.

The ministry is proposing that the following specific types of buildings be subject to the Building Condition Evaluation Program:

Note: the following figures are examples for illustrative purposes only and do not represent all possible occupancy configurations, building heights or number of storeys.

All buildings, regardless of the date of construction, that contain parking on the roof or part of the roof of the structure and that also have levels beneath the parking occupied with non-parking uses. This would include retail/commercial uses (e.g., shopping malls), industrial and residential uses, and also parking structures with car rental kiosks or car wash/auto detailing stands.

Figure 1.1: Type 1 Buildings to be Subject to Building Condition Evaluation Program

Roof	Parking
Level 3	Other Occupancy
Level 2	Other Occupancy
Level 1	Other Occupancy

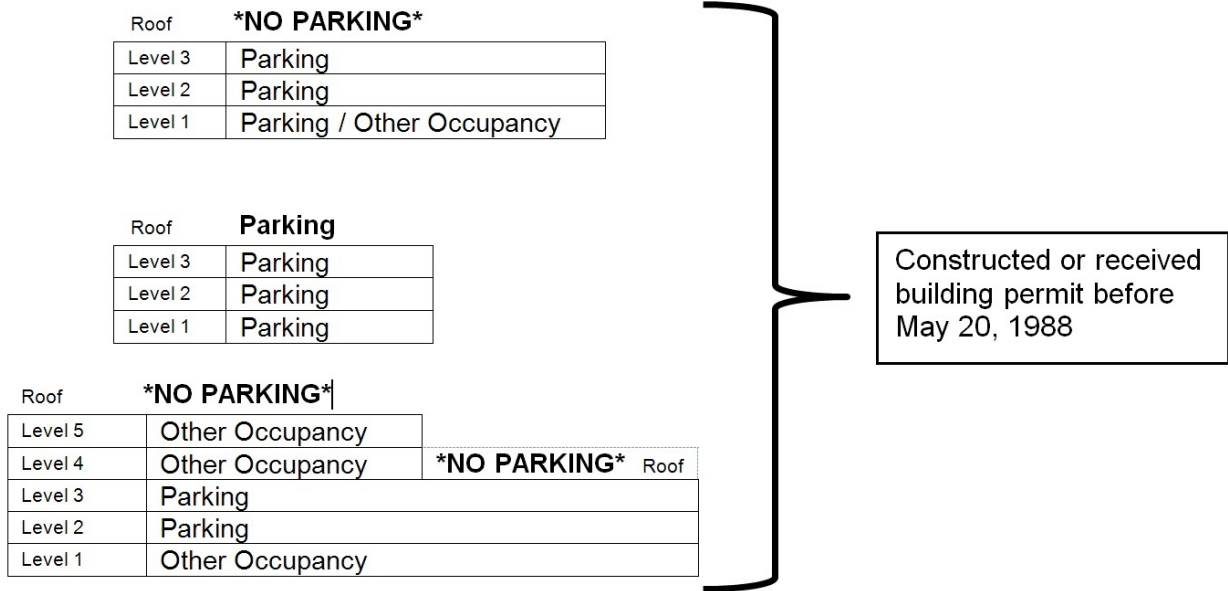
Roof	Parking
Level 3	Parking
Level 2	Parking
Level 1	Other Occupancy

Roof	*NO PARKING*	
Level 5	Other Occupancy	
Level 4	Other Occupancy	Parking
Level 3		Parking
Level 2		Parking
Level 1		Other Occupancy

All structures that meet these criteria, regardless of construction date

- ii. All above-ground, multi-storey parking structures that are not fully enclosed within the building envelope and were constructed or received a building permit before May 20, 1988 (the date that the 1988 CSA parking structures standard (CSA S413) was incorporated by reference in the building code).

Figure 1.2: Type 2 Buildings to be Subject to Building Condition Evaluation Program



The types of buildings described above and which would be captured by the proposed Building Condition Evaluation Program are similar to the building that collapsed in Elliot Lake in 2012. [The Building Safety Technical Advisory Panel's report \(January 2016\)](#) noted that parking structures are a type of building that poses a higher risk to public safety if not properly maintained. The report states:

The deterioration of parking garages and structures exposed to vehicle access has been identified as a significant risk, due primarily to the severe corrosion of steel elements (including steel embedded within concrete) that occurs in the presence of common de-icing chemicals combined with moisture and oxygen.

Parking structures built before 1988 in particular were considered by the Advisory Panel to be the “highest priority existing building type” for conducting risk evaluations and evaluations of structural adequacy due to the fact that they were constructed prior to the incorporation of the CSA parking structure standard (CSA S413) in the Building Code. The 1988 CSA standard codified research and construction advancements over the course of the 1980s. The durability of parking structures was significantly improved after the standard was introduced in 1988 and further increased with subsequent CSA standard amendments.

It is proposed that the regulation apply to all buildings that have exposed rooftop parking located above another occupancy and any above-ground, multi-storey parking structures that were constructed or received a building permit before May 20, 1988. It is *not* the intent of this proposed regulation to apply to at-grade parking lots. It is also not intended to include parking garages that are fully enclosed within a building envelope that would have limited exposure to the elements.

Guiding Questions:

- a. Can you suggest other types of parking structures at higher risk for endangering public safety if not adequately maintained?
- b. Should the ministry consider prescribing a size threshold for the parking structures that would be subject to the proposed Building Condition Evaluation Program? If yes, what is the threshold that should be considered?

2. Maintenance Standards

A key component of the Building Condition Evaluation Program is the establishment of maintenance standards. These standards would set out the minimum safety requirements that the prescribed buildings would be required to meet.

In accordance with the recommendations of the Building Safety Technical Advisory Panel and similar to other legislation such as the *Occupational Health and Safety Act, 1990*, the ministry is proposing that the building or part of the building as described in the proposed regulation would be required to be maintained and operated so that:

- It is capable of supporting any reasonably anticipated loads that may be applied to it.
- Moisture is prevented from causing deterioration, degradation or any other adverse impact on the integrity of the building's structural components, connectors or other elements essential to the structural integrity of the building, or that are necessary to maintain the stability of non-structural components, the failure of which could adversely impact public safety.

Guiding Question:

- a. Do you agree with the above proposed maintenance standards as minimum safety requirements? If not, why? What would you change?

3. Conducting a Building Condition Evaluation on Prescribed Parking Structures

The ministry has proposed amendments to the *Building Code Act, 1992*, that would, if passed, make the owner of the building responsible for ensuring a building condition evaluation is undertaken. The ministry is proposing that evaluations of the prescribed parking structures would need to be carried out in person, on-site and in accordance with new Building Code requirements, as well as standards of professional practice and guidelines as established by the Professional Engineers Ontario (PEO). It is intended that the evaluation focus primarily on the structural sufficiency of the building and related building elements associated with moisture control. The evaluation provisions may also require that the roof of the structure (where applicable), and in some cases other aspects of the building (e.g., walls, structural supports) be evaluated to determine whether the maintenance standards are being met.

PEO has recently published a [Structural Condition Assessments of Existing Buildings and Designated Structures Guideline](#). Section 8.8 of this document provides additional guidance and references with regard to the appropriate assessment of parking structures, including those which would be prescribed under the proposed regulation. It is proposed that the professional undertaking a Building Condition Evaluation use this guideline. Additionally, it is proposed that an evaluation report would be required to be prepared by the professional using a prescribed form established by the ministry.

Guiding Question:

- a. What role, if any, should the government play in prescribing the details of how a Building Condition Evaluation should be conducted?

4. Who can Conduct a Building Condition Evaluation on Prescribed Parking Structures

The ministry is proposing to require that building condition evaluations of the types of buildings described above be conducted by a licensed engineering practitioner or an architect licensed in Ontario. The licensed engineering practitioner or architect may require the expertise of other professionals (e.g., other engineers, specialists, technologists) to complete certain parts of the evaluation. It is acknowledged that there may be overlap in the roles and expertise of various professions that may be involved in a building evaluation.

Given the scope of the proposed maintenance standards described above, it is essential to ensure that the evaluations are conducted correctly and with the appropriate level of expertise. It is therefore important that the building owner only employ licensed engineering practitioners or architects licensed to practice in Ontario to be responsible for a building condition evaluation.

Currently, the province of Quebec is the only jurisdiction in Canada that has mandatory inspection requirements for existing buildings. Quebec's Building Safety Code ([Division VI: Provisions relating to the maintenance of façades and multi-storey garages](#)) mandates that owners of multi-storey garages must ensure that in-depth "verifications" of those buildings are conducted by a professional engineer on a prescribed periodic basis. This approach has informed the current proposal under consultation.

Guiding Question:

- a. Do you agree with the ministry's proposal to require that building condition evaluations be coordinated by licensed engineering practitioners or architects licensed to practice in Ontario, in accordance with their professional guidelines or protocols? If not, why not and what would you recommend as an alternative?

5. Frequency of Building Condition Evaluations on Prescribed Parking Structures

The ministry is proposing to establish a mandatory Building Condition Evaluation schedule. For buildings in existence at the time the regulation comes into force, it is proposed that building owners would be required to have a building condition evaluation undertaken within three years of the proposed regulation coming into effect. Thereafter, owners would be required to have an evaluation undertaken no later than every six years from the date of the initial evaluation. New buildings that are constructed after the regulation comes into effect and that meet the criteria would be required to prepare an evaluation six years after the day they are first occupied and subsequently every six years from the date of the initial evaluation. This evaluation schedule is consistent with Quebec's Building Safety Code, which required owners of multi-storey garages that are more than five years old to obtain an initial in-depth verification report within three years of the regulation coming into effect.

Guiding Questions:

- a. Do you agree that requiring the initial building condition evaluation within three years of the proposed regulation taking effect is a reasonable amount of time for owners of existing buildings to have the proposed prescribed parking structures be correctly identified and evaluated? If not, what amount of time would you recommend, and why?
- b. Is a six-year evaluation cycle following the initial evaluation an appropriate amount of time to ensure that buildings maintain their structural sufficiency? If not, what amount of time would you recommend, and why?

6. Document Retention

For the purpose of the proposed regulation, the government is considering a document and information retention protocol for Building Condition Evaluation reports prepared by a licensed engineering practitioner or architect.

The Elliot Lake Commission of Inquiry made recommendations regarding increased transparency and public access to information regarding the structural safety condition of buildings. The ministry is proposing that the building owner (as defined in the proposed amendments to the *Building Code Act, 1992*) retain all Building Condition Evaluation reports that are generated, for the duration of their ownership or management of the building. The Commission recommendation also stated that these records should be kept electronically, with physical copies to be held at a location other than the subject building.

The proposed amendments to the *Building Code Act, 1992*, if passed, would require building owners to provide copies of prescribed information to the Chief Building Official upon request, and to other persons as may be prescribed. The ministry proposes to require that Building Condition Evaluation records be provided by the building owner to municipal building officials upon request, as well as to any prospective purchaser should the building go up for sale or to any new property manager if they are responsible for maintenance of the building. Once sold, the records would then be required to be transferred to any new owner, with the same retention requirement.

A jurisdictional review has shown that this is in line with Quebec's regulation, which states that "information and documents concerning a multi-storey garage must, during the garage's lifetime, be recorded in or appended to a register kept available on the premises for consultation by the Board." Quebec's Building Safety Code ([Division VI: Provisions relating to the maintenance of façades and multi-storey garages](#), s.385 (5) and (6))

It is proposed that the regulation require, in cases where the Building Condition Evaluation indicates a potentially dangerous condition (i.e. where maintenance standards are not being met), the person who has conducted the Building Condition Evaluation to provide their findings and report to the building owner as well as the Chief Building Official. A Chief Building Official or municipal building inspector would then be able to review the report and determine whether or not to take enforcement action as set out in the proposed Building Code Act amendments.

If the Chief Building Official or inspector decides to issue an order related to an apparent contravention, the resulting order (which would specify the nature of the contravention) would then have to be posted on the building in a place that is visible to the public, posted on the principal authority's website or made available at the municipal building department offices upon request, and registered on the property title.

In cases where the Building Condition Evaluation indicates that the maintenance standard has been met, it is proposed that the evaluator would be required to send the cover page of the report to the Chief Building Official. It is proposed that the cover page would indicate when the Building Condition Evaluation was carried out, who conducted the evaluation, and whether the maintenance standard was met.

The ministry is also proposing that the person who conducted the Building Condition Evaluation notify the Chief Building Official when the building has met the required maintenance standards. In these cases only a notification is needed and the full report would not have to be submitted.

Guiding Questions:

- a. Do you agree that requiring a building owner to retain copies of evaluation reports for the duration of their ownership of the building is reasonable? If not, why not?
- b. Is it reasonable for these reports and related information or documentation to be kept on site? Please explain your rationale.
- c. Should Chief Building Officials be notified when an evaluation report finds that the maintenance standard has been met?

7. Prescribed Publicly Available Documents

The ministry is proposing to require that certain prescribed documents respecting a building or part of a building that is subject to the Building Condition Evaluation Program be made publicly available by the local principal authority upon request.

These documents can be provided electronically and/or at the building department's offices during regular office hours. The documents that are proposed to be required to be made available by request would include:

- The Building Condition Evaluation report that has been provided to the building official of the municipality or other principal authority.
- Any orders issued by the Chief Building Official in response to concerns arising from the building condition evaluation.

Under the proposed Act amendments, if passed, the principal authority would have the ability to set a fee to recover the cost of providing this information.

Guiding Questions:

- a. Is the list of proposed documents that would be made publicly available appropriate?
- b. Are there other documents that should also be made publicly available upon request?

8. Principal Authority's Duties and Powers Related to Complaints

Under the proposed amendments to the *Building Code Act, 1992*, principal authorities would be required to establish complaints policies with respect to the maintenance, operation or evaluation of buildings or parts of buildings that are prescribed as being subject to a Building Condition Evaluation Program. The complaints policy would establish a way for the public to file complaints about the condition of a prescribed building. Complaints about the conduct or work of the licenced engineering practitioner or architect would continue to be directed to the professional licencing body.

Under the proposed amendments to the *Building Code Act, 1992*, complaints about the compliance of buildings subject to the Building Condition Evaluation Program with the proposed new maintenance standards would be required to be recorded by the municipality. The record would also need to include any enforcement action that was taken by the Chief Building Official or inspector as a result of the complaint. If the Chief Building Official or inspector decides that no enforcement action is required, the municipality would need to document the rationale for why no action was taken. The ministry proposes to make regulations requiring that the information described above be made publicly available upon request.

Guiding Question:

- a. Do you agree with the proposed process for principal authorities dealing with complaints from the public with respect to buildings that are proposed to be subject to the Building Condition Evaluation Program? If not, why not?

IV. SEEKING YOUR INPUT

Public consultation is an important part of developing legislation and regulations in Ontario. By providing your feedback on this consultation paper, you can help the Ministry of Municipal Affairs develop a robust regulation.

The proposed amendments to the Building Code are intended to implement proposed amendments to the *Building Code Act, 1992*, which were introduced on November 14, 2017. If those amendments pass, the government proposes to proceed with changes to the Building Code described in this document.

The consultation document is being posted on the Regulatory Registry for 50 days.

We look forward to your feedback. Your involvement helps ensure that potential Code changes are fully informed, technically and economically feasible, and enforceable. Comments are also appreciated regarding the timing of the potential changes. Your input is valued and will be seriously considered before the government makes final decisions on what has been proposed.

You can send comments in writing to:

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Or by email to:

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The ministry requests your feedback by January 4, 2018.