



Infill Housing Strategy – Non-Conformance With The Building Permit Documents

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 905.475.4848 extension 2189

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,
- (a) to ensure that construction does not proceed unless any permit required under this Act has been issued by the chief building official;
 - (b) to construct the building in accordance with the permit;
 - (c) to use appropriate building techniques to achieve compliance with this Act and the building code; and
 - (d) when site conditions affect compliance with the building code, to notify the designer and an inspector or the registered code agency, as appropriate. 2002., c.9, s. 3.

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.



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.

A copy of the order has been included.



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</p> <p>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</p>



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

			modification or removal based on any revised building permit documents being issued.
--	--	--	--

Order issued by:

Signature:

Note:

- It is illegal to obstruct the visibility of a posted Order. It is also illegal to remove a posted Order unless authorized by an inspector or Registered Code Agency. [*Building Code Act*, 1992 s. 20]
- An Order may be appealed to the Superior Court of Justice. [*Building Code Act*, 1992 s. 25]. It may also be appealed to the Building Code Commission concerning the sufficiency of compliance with the technical requirements of the Building Code. [*Building Code Act*, 1992 s. 24]
- Failure to comply with this Order could result in a Stop Work Order. [*Building Code Act*, 1992 s. 14]
- Failure to comply with this Order is an offence which could result in a fine. [*Building Code Act*, 1992 s. 36]
- No construction affected by this Order is to be covered until inspected and approved. [*Building Code Act*, 1992 s. 13]



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

Documented Photo(s)

Note: This page does not form part of the Order, it is provided for information purposes

The administration fees associated with the issuance of this Order are contained within the Building Bylaw. Fees noted within the Building By-Law cannot be waived or appealed.

Note: As of January 1, 2023 the City of Markham Building Bylaw provides for additional fees to be applied where further site investigations and file updates are conducted.

Why was this Order issued?

You have received an Order to Comply because unauthorized changes have occurred to your construction, demolition or alterations project without our authorization.

In Ontario, it is against the law to construct not in accordance with the building permit documents. Any construction that is unauthorized is considered building without a permit'. This unauthorized work will not form part of the building permit until a revision is authorized by the Chief Building Official and is subject to further legal proceedings.

Sections 8(12) and (13) of the Ontario Building Code Act state;

8 (12) No person shall make a material change or cause a material change to be made to a plan, specification, document or other information on the basis of which a permit was issued without notifying, filing details with and obtaining the authorization of the chief building official. 1992, c. 23, s. 8 (12).

8 (13) 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. 1992, c. 23, s. 8 (13).

Building permits are necessary to ensure construction meets minimum standards, which protects everyone from unsafe and faulty buildings. Not only is making unauthorized changes to your building permits illegal, you may have unintentionally compromised other components of your home, including structural, mechanical, building envelope, zoning etc.

Required action and compliance date

Under this heading on the Order to Comply, four Items that require your action in order to achieve compliance with this Order

Item 1 - Requires you to submit a report from a professional (architect, professional engineer, provincially qualified designer) that will provide the following information. This report must be submitted to the Building Inspector by the date indicated or a Stop Work Order will be issued.

- 1) The scope of unauthorized changes, and
- 2) How the unauthorized changes have affected,
 - a) Zoning
 - b) Any Committee of Adjustment decision requirements
 - c) Heritage approval
 - d) Structural components



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

- e) Mechanical components
- f) Plumbing components
- g) Life safety components



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

Item 2 – File an application and obtain a building permit revision for all of the as-built construction that is not part of your current building permit. Alternatively, you may remove all the unauthorized work and restore the building to conform to the building permit documents. Submit a report from the architect, professional engineer or provincially qualified designer that the construction has been restored. The date by which you are required to comply with Item 2 is set out on the Order.

Item 3 – Since you received this Order to Comply for failure to adhere to your building permit documents, an increase in review of your projected is now warranted. You are required to continue submitting a report from an architect, professional engineer or provincially qualified designer every two weeks from the date of the issuance of this Order to Comply. The purpose of the report is to confirm that construction is continuing in accordance with the building permit documents, including any authorized changes.

How do I apply for a revision to the building permit?

1. Based on the report performed by the architect, professional engineer or provincially qualified designer for compliance with Item 1 of this Order to Comply, prepare the necessary technical drawings and specifications. The extent of plans required depends on the scope of your project. Your plans must identify all proposed and completed work in enough detail for us to be able to confirm that the changes will comply with the building code, zoning standards and other applicable laws. Include the report as part of your building permit revision application prepared for compliance with Item 1.
2. Please see our online Guides to Building Permits, as all building permit applications must be performed online. It shows the forms, drawings and documents you need to send us for each type of permit application. Your building permit application must include, a completed application form, drawings and supporting documentation and the applicable fee.

More detailed information about required plans and other permit application requirements is available from our website:
www.markham.ca

What happens after that?

If your plans are complete and your proposed revised work complies with the building code, zoning standards and applicable law, you will be issued a revision to your building permit. You must post the revision permit card on site before continuing work. You must complete the work according to the approved plans and arrange the required inspections. The inspector may require you to uncover any work that was completed and covered prior to inspection.

Can my permit revision application be refused?

The rules for issuing building permits are very explicit and are common throughout Ontario. If your proposed work contravenes any applicable laws, the City is prohibited from issuing a permit and must refuse it. In this case you will receive a notice of refusal.

What do I do if my application for revision is refused?

You can revise your plans in order to comply with applicable laws, or remove the work and arrange a re-inspection. If you revise your plans, all construction must be completed and inspected in strict accordance with the final plans.

What penalties can apply?

It is illegal to start construction before obtaining a permit, to fail to comply with an Order or direction issued by an inspector, to furnish false information in an application, or to contravene the building code. A person convicted of any of these offences is liable to a fine of \$50,000 for a first offence. A person convicted of failing to comply with a Stop Work Order is liable to a fine of \$10,000 for each day the offence continues.

In addition, this Order to Comply may be registered in the land registry office and may affect future transactions involving the property such as transfer of ownership and financial transactions. You will not be notified if the Order to Comply is registered on title.

Building Inspections – 101 Town Centre Blvd – Tel: 905-475-4850



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

The administration fees associated with the issuance of this Order are contained within the Building Bylaw. Fees noted within the Building By-Law cannot be waived or appealed.

Documented Photo(s) of Unauthorized Construction

Note: This page does not form part of the Order, it is provided for information purposes