

Municipal Insurance Association of BC

“Ask Us Anything” Blog

Building Official Safety During COVID-19

March 26, 2020 Post by David Tupper



Building officials are required to enter buildings and construction sites, which are often filled with building trades people. How do you keep your officials safe from COVID-19? Does reducing on-site inspections impact liability? Is it prudent to accept photographs and written declarations in lieu of performing inspections?

Continuing to deliver services to the community while keeping staff safe during a high-risk period such as the COVID-19 outbreak is a delicate balance local governments must strike. Local governments will need to consider the risks present in their particular communities and choose one of the following three approaches to address the safety of building officials during the COVID-19 crisis:

- Keep current practices, but better protect staff.
- Curtail current practices to improve safety.
- Abandon current practices and forego inspections altogether.

Keep current practices, but better protect staff.

Some local governments are using this approach to inspect new construction while reducing inspections of occupied buildings. We recommend local governments implement measures to protect building officials at all construction sites. For example, when a builder calls for an inspection, the building official should advise the builder that all construction personnel must vacate the site prior to the inspection. If a builder's representative is required to accompany the building official during the inspection, only one person should escort the building official. The builder's representative and building official should maintain a two-metre separation from each other at all times. Rather than use the builder's documents on site, building officials should bring their own copies of documents or use electronic documents wherever possible.

The BC Government and the BC Public Health Officer have released [guidance¹](#) on construction site safety during COVID-19. We recommend sending a copy of the recommendations to the owner or builder and seeking a declaration from them that the guidelines are being followed on the site. The building official should refuse to attend any site where the builder has not undertaken to comply with the provincial guidance.

For occupied buildings that are under permit for renovations, additions, or repairs, we recommend extra protections for building officials. Here, you might employ a curtailed approach, as discussed in the next section. Alternatively, your building official should be equipped with the appropriate personal protective equipment and must exercise optimal hygiene.

If you instruct building officials to enter occupied buildings, you should consult the Ministry of Health, the CDC, and WorkSafeBC for advice on how building officials can keep themselves safe and what personal protection equipment is needed. Engage all of your building department staff in this discussion and ensure that they are comfortable with the approach. Local governments should ensure they keep the head of human resources and the union updated and provide them with the opportunity to give feedback.

Curtail current practices to improve safety.

A local government has the discretion to employ whatever practices it likes for the enforcement of the building code and the building bylaw. This includes limiting the scope of your inspections and relying on the builder or registered professionals to provide written declarations, photographs, or video confirming compliance.

The key to protecting your local government from potential liability associated with a more limited approach to building inspections is threefold.

First, any limits a local government wishes to place on the functions of the building official should be entrenched in a policy. The policy decision does not have to be made by your council or board. Although it is better if your council/board ratifies the policy, senior management can also make policy decisions, particularly in unusual circumstances such as these. Decisions such as refraining from inspecting roofs or using photos in lieu of inspections should be documented in a policy. This will mitigate increased liability exposure.

Second, it is important to document the change in policy and to make the owner, builder, and registered professionals aware of the change. There should be a department record establishing when a particular policy or protocol took effect and when it ended. We recommend ensuring that all staff are aware of the change and that they implement it consistently, beginning on and ending on the same date.

Third, review your building bylaw to ensure that you are not varying practices that are mandatory. Look for terms in your bylaw like “must” or “shall” as opposed to “may”. If your bylaw indicates that you must do something, then in order to vary or abandon that requirement, you should amend your bylaw. If you have any uncertainty about whether your new policy contradicts your existing bylaw, consult your municipal solicitor.

Abandon current practices, forego inspections altogether.

Lastly, you can decide to forego inspections altogether. Unless you can devise an alternative approval process without inspections, putting a stop to inspections could create a significant hardship on building owners, who might have a pending real estate transaction or financing deadline. As a result, if foregoing inspections or postponing approvals for an extended period of time, you might find yourself facing a lawsuit, a judicial review, or a significant amount of political pressure. For part 3 buildings, consider relying entirely on the letters of assurance from the registered professionals of record in lieu of performing inspections. For part 9 buildings, where you do not have a full contingent of professionals, it is more difficult to establish reliance.

As outlined in the previous section, we recommend that you review your building bylaw to ensure that you are not deviating from the mandatory obligations set out in the bylaw.

Transitions

When implementing modifications to your building inspection service delivery, you should be mindful of how to manage transitions. A project that commenced under your regular bylaw might continue after you have made changes to your approach. That same permit file might still be open in several months when you return to normal operations. Furthermore, as the pandemic develops, you might choose to restrict your practices further. Ensure your building officials clearly document the regulatory model that is in place each time they take action on a file.

Lastly, once your local government develops a policy to govern when to use remote inspections or to rely on professionals in lieu of inspections, we recommend that you ask your municipal solicitor to review the policy in conjunction with your building bylaw. This will ensure that you are complying with mandatory aspects of the existing building bylaw.

1. PHO Guidance Link: <https://news.gov.bc.ca/releases/2020EMBC0002-000542>

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