

RECOMMENDATIONS FOR MUNICIPALITIES: MANDATORY BUILDING PERFORMANCE STANDARDS

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Prepared by:



Canadian
Environmental Law
Association
EQUITY. JUSTICE. HEALTH.

Submitted to:



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The Atmospheric Fund (TAF) is a regional climate agency that invests in low-carbon solutions for the Greater Toronto and Hamilton Area and helps scale them up for broad implementation. TAF collaborates with stakeholders in the private, public and non-profit sectors who have ideas and opportunities for reducing carbon emissions. TAF advances the most promising concepts by investing, providing grants, influencing policies and running programs.

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Executive Summary

To achieve national climate goals, improving energy efficiency and reducing greenhouse gas (GHG) emissions from existing buildings is crucial. These buildings contribute significantly to Canada's environmental footprint, accounting for 13% of direct GHG emissions, rising to 18% when considering electricity consumption.[1] Given that there are far more existing buildings than new constructions, addressing this challenge within the existing building stock is of paramount importance.[2]

Better-performing buildings can also promote equity by reducing health problems associated with poor indoor environments, which disproportionately affect low-income, vulnerable and disadvantaged communities.[3]

In response to these challenges, Mandatory Building Performance Standards (MBPS) have emerged as a promising solution. MBPS aim to reduce energy consumption and GHG emissions in the existing building stock by requiring building owners to meet specific performance criteria within defined timeframes or in response to triggering events, such as substantial renovations or changes in tenancy or ownership.[4]

Through the implementation of MBPS, municipalities can drive major enhancements in the performance of existing buildings, ultimately paving the way for more sustainable, equitable, and environmentally conscious communities.

This report was created to equip Ontario municipalities with the necessary knowledge and tools for effective MBPS adoption. It offers a thorough exploration of the rationale, legal authority, and potential challenges associated with the implementation of MBPS. The report also includes a model by-law, designed to serve as a practical and adaptable resource for local governments and municipal staff, streamlining the process of implementing MBPS and facilitating the transition toward more environmentally responsible building practices.

PART I. Introduction

1.0 | The Rationale for Mandatory Building Performance Standards

1.1 | What Are Mandatory Building Performance Standards?

Mandatory Building Performance Standards (MBPS) are outcome-based policies and laws aimed at reducing the greenhouse gas (GHG) impact of the built environment by requiring existing buildings to meet energy and/or GHG emissions-based performance targets.^[5] This policy mechanism compels the least efficient segment of the building stock to attain specified performance benchmarks either by a pre-determined date or in response to certain trigger events, such as significant renovations, changes in occupancy, or alterations in ownership.^[6]

MBPS are typically embedded within a comprehensive framework that includes financial aid, practical assistance, and social protections for vulnerable populations.^[7]

Several Canadian municipalities have already identified MBPS as a leading policy instrument for decarbonizing their existing building stock. In 2021, the City of Toronto outlined its intent to develop an emission-based MBPS in its Net Zero Existing Buildings Strategy.^[8] That same year, the City of Montreal introduced a by-law that requires owners of large buildings to disclose the sources and amounts of energy their buildings use.^[9] In 2022, the City of Vancouver similarly implemented mandatory annual energy/emissions reporting for commercial and multi-family buildings, along with mandatory carbon emissions limits for commercial buildings.^[10]

1.2 | Benefits of Mandatory Building Performance Standards



ENVIRONMENTAL BENEFITS

MBPS can play a crucial role in addressing climate change by reducing GHG emissions, improving energy efficiency, and encouraging the use of renewable energy sources in existing buildings. These standards also promote healthier indoor environments and contribute to sustainability by reducing water consumption and waste generation.



ECONOMIC BENEFITS

Investing in energy-efficient buildings can enhance their market value and attractiveness to potential buyers or tenants. The focus on energy efficiency, cost reduction, and environmental sustainability measures can lead to appreciable increases in property values, benefiting both building owners and the broader real estate market.



EQUITY BENEFITS

Adverse conditions within buildings, such as extreme temperatures, mold, and dampness, have been linked to serious health issues, including cardiovascular problems, strokes, respiratory diseases, and premature deaths.^[11] Vulnerable communities, including lower-income groups, racial minorities, and Indigenous Peoples, suffer disproportionately due to limited healthcare access and disparities in building quality.^[12] MBPS provide a mechanism for addressing these critical equity issues.



ALIGNMENT WITH GLOBAL BEST PRACTICES

The adoption of MBPS aligns with global best practices in environmental stewardship. Many regions around the world have already recognized the transformative potential of these standards and have implemented them as part of their climate and equity objectives. Notable examples include major cities and states in the United States, such as New York City, Washington, D.C., and Washington State.^[13] Countries like Australia, New Zealand, the United Kingdom, and numerous European Union Member States have also embraced MBPS to drive sustainable building practices.^[14]



Photo Credit: taka4332 from Getty Images

PART II. Legal Authority

This section briefly reviews the legal authority of Ontario municipalities to implement MBPS. The authors caution that the following commentary should not be referred to, nor relied upon, as a formal legal opinion regarding such issues. In the event that a municipality elects to proceed with the MBPS options outlined in this report, it is recommended that the municipality's solicitors undertake a more detailed legal analysis to ensure that any new or expanded MBPS initiatives fall properly within the scope of the municipality's legal powers.

1.0 | The Municipal Act

The *Municipal Act, 2001*, SO 2001, c. 25 (the "Municipal Act") is the primary piece of legislation applicable to municipalities and sets out the roles and responsibilities of municipal governments in Ontario.^[15] The Act outlines a broad and deferential approach to municipal powers:

8 (1) "The powers of a municipality under this or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues"^[16]

The Municipal Act also provides the ability for a municipality to pass by-laws respecting various matters, including to address climate change and environmental well-being. For example, sections 10(2) and 11(2) of the Act provide^[17]:

10 (2) A single-tier municipality may pass by-laws respecting the following matters:
[...]
5. Economic, social and environmental well-being of the municipality, including respecting climate change.
[...]

6. Health, safety and well-being of persons.

[...]

8. Protection of persons and property, including consumer protection.

9. Animals.

10. Structures, including fences and signs.

[...]

11 (2) A lower-tier municipality and an upper-tier municipality may pass by-laws, subject to the rules set out in subsection (4), respecting the following matters:

[...]

5. Economic, social and environmental well-being of the municipality, including respecting climate change.

[...]

6. Health, safety and well-being of persons.

[...]

8. Protection of persons and property, including consumer protection.

The Municipal Act further allows municipalities to participate in long-term energy planning for their community:

147 (1) Without limiting sections 9, 10 and 11, a municipality may provide for or participate in long-term energy planning in the municipality.

Interpretation

(2) Long-term energy planning referred to in subsection (1) may include consideration of energy conservation, climate change, and green energy.^[18]

2.0 | The Ontario Building Code

The *Ontario Building Code Act, 1992*, S.O. 1992, c. 23^[19] (the "OBCA") and O. Reg. 332/12^[20] (the "Building Code") lay out the legislative framework governing the construction, renovation, demolition and change of use of buildings in Ontario. Municipalities are responsible for the enforcement of the OBCA and the Building Code within their jurisdiction. There is no restrictive wording in either which would prevent a municipality from enacting a by-law with stricter standards for the maintenance and occupancy of existing building than the ones set out in the OBCA or the Building Code.

Section 15.1 of the OBCA states^[21]:

(1) “property” means a building or structure or part of a building or structure, and includes the lands and premises appurtenant thereto and all mobile homes, mobile buildings, mobile structures, outbuildings, fences and erections thereon whether heretofore or hereafter erected, and includes vacant property; (“bien”)

[...]

Standards for maintenance and occupancy

(3) The council of a municipality may pass a by-law to do the following things **if an official plan that includes provisions relating to property conditions is in effect in the municipality or if the council of the municipality has adopted a policy statement** as mentioned in subsection (2):

1. **Prescribing standards for the maintenance and occupancy of property** within the municipality or within any defined area or areas and for prohibiting the occupancy or use of such property that does not conform with the standards.
2. **Requiring property that does not conform with the standards to be repaired and maintained to conform with the standards** or the site to be cleared of all buildings, structures, debris or refuse and left in graded and levelled condition.

The only exceptions in the OBCA to this section are the following^[22]:

No distinction on the basis of relationship

(4) The authority to pass a by-law under subsection (3) does not include the authority to pass a by-law that sets out requirements, standards or prohibitions that have the effect of distinguishing between persons who are related and persons who are unrelated in respect of the occupancy or use of a property, including the occupancy or use as a single housekeeping unit.

Provision of no effect

(5) A provision in a by-law is of no effect to the extent that it contravenes the restrictions described in subsection (4).

3.0 | JURISPRUDENCE

MUNICIPALITIES HAVE BROAD POWERS TO ADDRESS ENVIRONMENTAL ISSUES

The jurisprudence has conferred broad powers on municipalities to address environmental concerns. In the leading decision of *SprayTech v Hudson*, [2001] 2 SCR 241 [*Spraytech*], the Supreme Court of Canada (SCC) upheld the jurisdiction of a Quebec municipality to pass a by-law restricting the non-essential use of pesticides.[23] The court confirmed that municipalities have the general authority to enact by-laws aimed at advancing objectives like public health and safety. The burden of proof rests on those challenging the validity of such by-laws, with a presumption that municipal by-laws are valid.[24] The SCC emphasized that courts should refrain from substituting their judgment for that of municipal councils, respecting the elected bodies' responsibility to serve their constituents.[25]

Regarding environmental powers, the SCC in *SprayTech* emphasized that protecting the environment is a major challenge that requires action from all levels of government.[26] *Spraytech* confirmed that, as the level of government closest to affected citizens, municipalities have a legitimate role in enhancing environmental protection provided by other levels of government.[27]

The precedent set by *Spraytech* has been upheld in subsequent cases. For example, in *Croplife Canada v Toronto (City)*, [2005] OJ No 1896 [*Croplife*], the Ontario Court of Appeal upheld a similar pesticide by-law enacted by the City of Toronto.[28] Although the Municipal Act did not explicitly authorize the city to pass pesticide by-laws, the court ruled that municipal powers, including general welfare powers, should be broadly and generously interpreted within the context and statutory limits to serve the legitimate interests of the municipality and its residents.[29] The SCC subsequently declined to hear *Croplife's* appeal of the Court of Appeal decision, effectively ending the legal challenge against Toronto's pesticide by-law.

The jurisprudence also includes other cases reinforcing the broad authority of municipalities. In *R v Drain*, 2006 ONCJ 186, for instance, the Ontario Court of Justice interpreted the term "well-being" in the Municipal Act to encompass concerns related to the health, living conditions, and prosperity of the municipality's residents.[30] In this particular case, the court determined that unregulated accumulation of waste and debris in neighbouring yards could negatively impact the well-being of the local community.

MUNICIPALITIES MAY APPLY NEW STANDARDS TO PRE-EXISTING BUILDINGS

The jurisprudence is clear that municipalities may legislate so that new property standards apply to existing buildings.[31] An illustrative case is *Rexlington Heights Ltd v Ontario*, [2005] OJ No 4223 [*Rexlington Heights*], where a property standards by-law provided that "all required guards and handrails shall be installed in accordance with and maintained to comply with the Ontario Building Code."[32] In this case, the court noted:

"[...] it is undisputed that the City has the right to legislate property standards for the City. As well, it is undisputed that the City can legislate so that the new property standards apply to pre-existing buildings: *George Sebok Real Estate Ltd. v. Woodstock (City)* (1978), 21 O.R. (2d) 761 (C.A.) at 762-763."[33]

However, **municipalities must use very clear language if they intend for new property standards to apply to existing buildings.** In the *Rexlington Heights* case, the court concluded that the property standards by-law, which merely referred to the entire Building Code, effectively implied that the Building Code covered all aspects of regulation in this domain.[34] Since the Building Code only mandates compliance with current standards during specific situations like renovations, major alterations, or repairs to older buildings, the by-law's provision did not obligate existing buildings to meet those standards.[35]

In instances where a municipality aims to require all buildings, regardless of their construction date, to adhere to specific standards outlined in the Building Code, the court emphasized that the language used in the by-law should be explicit and clear in referring to those standards.[36]

MUNICIPALITIES MUST AVOID CONFLICT WITH PROVINCIAL STANDARDS

Municipalities have the authority to enhance provincial standards through by-laws, but these by-laws must meet specific criteria to be valid.

Firstly, they must not conflict with higher-level regulations, such as those established by the Ontario Building Code Act (OBCA), the Building Code itself, or the Province of Ontario's Energy & Water Reporting and Benchmarking regulation (O. Reg. 506/18).[37] According to the SCC's decision in *Spraytech*, provincial legislation does not automatically override municipal authority in a particular field.[38] However, if there's an operational conflict between a municipal by-law and a provincial law, rendering them incompatible—for instance, one says “yes” while the other says “no”—the municipal by-law will be invalidated.[39] The conflict must be genuine; mere potential inconsistency is insufficient to invalidate the by-law.[40]

Secondly, municipal by-laws must avoid being merely duplicative of provincial and/or federal legislation. However, the jurisprudence is clear that, as long as the two laws do not conflict in such a way so as to result in an ‘impossibility of dual compliance’, **multiple jurisdictions can address different aspects of the same subject matter, or even the same subject matter with more stringency required by one level than the other.**

For instance, in *Peacock v Norfolk (County)*, [2006] OJ No 2585 [*Peacock*], Norfolk County enacted an interim control by-law to protect municipal wells by temporarily prohibiting intensive livestock operations.[41] Concurrently, the Province of Ontario established the *Nutrient Management Act*, which governed nutrient management province-wide.[42] The court found that the Impossibility of Dual Compliance Test did not apply in this case. Instead, if

municipal and provincial legislation addresses the same subject matter, the by-law becomes inoperative while the regulation is in force.[43] In *Peacock*, although both the by-law and provincial regulation aimed to protect against water contamination, they approached it differently, leading to the by-law being declared inoperative.[44]

This principle has also been upheld in the context of the OBCA. In *A-Major Homes (Ontario) Inc. v Caledon (Town)*, [2017] OMBD No 519, for example, a settlement was reached between parties and the following policy was approved to be included in the Official Plan Amendment for the Town of Caledon.[45]

“7.14.18.1.1 All residential homes in the Plan Area shall be designed and constructed with water and energy conservation, efficiency, and re-use systems and/or features that will reduce the rate of water and energy consumption and **exceed energy efficiency standards in the Building Code Act, 1992, S.O. 1992, c. 23**”[46]

Similarly, in *Tay Valley (Township) Zoning By-law No. 02-121 (Re)*, [2004] OMBD No 501, there was a potential conflict that arose in terms of setback from the water at a sewage disposal site, where the Township has required a setback of 15 m from water, whereas the Ontario Building Code recommended a setback of 0 m.[47] The Board determined that **in order to guarantee no conflict with the Ontario Building Code, the water setback should be the greater of the two options**.[48] In this case, the Board considered the particular planning justifications of the Township important, particularly that the environmental implications relating to the placement of sewage disposal systems justified higher standards than those set out in the Building Code.

However, it is important to note that provincial statutes may explicitly render municipal by-laws inoperable in specific circumstances. For example, section 35 (1) of the OBCA provides that the OBCA and the Building Code supersede all municipal by-laws **respecting the construction or demolition of buildings**. [49] “Construction” under the OBCA encompasses various building activities, including erection, installation, extension, or **material alteration or repair of a building**.

In developing MBPS by-laws for existing buildings, municipalities will need to be mindful of this provision. One way that municipalities might avoid conflict with this provision of the OBCA would be by incorporating alternative compliance pathways that don't require material alteration or repair of a building. For instance, they can adopt a "menu" system where building owners can meet standards by achieving GHG limits through certain energy efficiency (including renewables/storage), percent reductions over time, custom compliance plans, or by following specific energy conservation measures. As MBPS do not require a specific technology to comply, existing buildings can seek to improve their energy efficiency by all sorts of means that do not necessarily include material alteration or repair.

Overall, the jurisprudence in Ontario grants municipalities the power to take action on environmental concerns and address public welfare and well-being through the enactment of by-laws and building standards. In the opinion of the researchers, this legal framework provides a solid foundation for Ontario municipalities to to further a MBPS by-law, subject to the above and other usual legal qualifiers.

Bill 23: Reinforcing Municipal Jurisdiction to Address Environmental Issues

In 2022, the Government of Ontario passed the *More Homes Built Faster Act* (Bill 23), which garnered significant concern about its potential to strip municipalities of their authority to address energy efficiency and climate change in new buildings through local green development standards.[\[50\]](#)

In response to these concerns, the government clarified that the Act's aim was not to prevent municipalities from implementing green standards but to prevent them from imposing unnecessary visual design requirements (such as specifying exterior brick colour or finish) through site plans.[\[51\]](#)

The government went further to reinforce the role of municipalities in addressing environmental issues, noting:

Bill 23 was amended to maintain important *Planning Act* provisions related to sustainable design of landscape elements and to provide municipalities with the option to require site plan drawings to show municipal green building construction requirements that will be authorized by the Building Code and established by municipal by-law.

The government recognizes the important work being done by municipalities through green standards to encourage green-friendly development and is committed to supporting these efforts.
[\[52\]](#)

PART III. IMPLEMENTATION

1.0 | Compliance & Enforcement

In Ontario, municipalities have various enforcement mechanisms at their disposal to ensure compliance with MBPS. Here are some of the key methods municipalities can employ:

INSPECTIONS

Section 436 of the Municipal Act, 2001 provides that a municipality may pass a by-law providing that the municipality may enter on lands at any reasonable time for the purpose of carrying out an inspection to determine whether a by-law of the municipality has been complied with.^[53]

COMPLIANCE ORDERS

As per section 445.1 of the Municipal Act, if a municipality is satisfied that a contravention of a by-law of the municipality has occurred, the municipality may make an order requiring the person who contravened the by-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to do work to correct the contravention. ^[54] This order includes specific details such as the property's address, necessary repairs, timeframes for compliance, and information regarding appeals. If the order is not complied with, the municipality can undertake the required repairs or demolition at the owner's expense.

ADMINISTRATIVE MONETARY PENALTIES (AMPs)

Municipalities can impose financial penalties on individuals or entities that violate building codes or standards. AMPs are designed to incentivize compliance by imposing monetary consequences for non-compliance. The

penalty amount is typically determined by the municipality's by-laws or regulations and may vary based on the severity of the violation.

It's worth noting that AMPs are governed by specific guidelines outlined in section 434.1 of the Municipal Act. These guidelines state that the amount of an administrative penalty:

- **Shall not be punitive in nature.**
- **Shall not exceed the amount reasonably required to promote compliance with a by-law of the municipality.**[\[55\]](#)

The decision to impose administrative penalties and determine their amounts is within the purview of the municipality. However, it is crucial to adhere to these guidelines to ensure that AMPs are not excessively punitive and are proportionate to the goal of encouraging compliance.

By utilizing these enforcement mechanisms judiciously and in accordance with the law, Ontario municipalities can effectively enforce MBPS while minimizing the risk of legal challenges.

Case Study: New York City

In New York City, building owners have initiated a legal challenge against Local Law 97, a building performance standard (BPS) set to take effect in 2024.

The lawsuit presents five key arguments for why Local Law 97 should be revoked:

1. **Preemption:** The plaintiffs argue that New York State laws take precedence over the NYC law, rendering Local Law 97 unconstitutional.
2. **Due Process:** According to the lawsuit, the fines outlined in the law are excessively high.
3. **Retroactivity:** In this section, the suit contends that the penalties are retroactive because they penalize owners for decisions made prior to the law's enactment when the buildings were constructed.
4. **Ambiguity:** The plaintiffs describe the law as "impermissibly vague and ambiguous," particularly concerning details such as how emissions will be calculated and how penalties will be determined.
5. **Illegal Taxation:** The suit claims that since the State does not explicitly grant the City the authority to tax carbon emissions, the fines are improper.[\[56\]](#)

LESSONS FOR ONTARIO MUNICIPALITIES

Ontario municipalities can take important lessons from this legal challenge to avoid similar issues:

1. **Preemption:** As explained in more detail in Part 2 of this report, jurisprudence in Ontario supports municipalities in enhancing environmental protection beyond the levels set by other tiers of

government.[57]

2. **Due Process and Illegal Taxation:** Ontario municipalities have explicit authority to impose administrative penalties and determine their amounts. However, section 434.1 of the Municipal Act sets specific parameters for establishing the amount of AMPs. Specifically, the amount of an administrative penalty established by a municipality,

- (a) shall not be punitive in nature; and
- (b) shall not exceed the amount reasonably required to promote compliance with a by-law under section 15.1 or an order under subsection 15.2 (2).[58]

3. **Retroactivity:** As described in Part 2 of this report, the jurisprudence clearly provides that municipalities have the authority to legislate such that new property standards apply to existing buildings so long as they are explicit in doing so.[59]

2.0 | Other Considerations

2.1 | Equity Considerations

Low-income individuals disproportionately occupy some of the worst performing buildings. As MBPS often require the worst performing buildings to be improved first, these households, or their landlords, will be affected first. While the intent of a MBPS policy is not to create new or perpetuate existing inequities, MBPS can inadvertently lead to housing cost increases, gentrification, financial challenges for small landlords, and tenant displacement (for example, if landlords use Above Guideline Rent Increases (AGIs) to cover the costs of renovations or use disruptive and unethical construction practices to force tenants out).[60] By mandating performance standards, jurisdictions risk exacerbating the affordability crisis by imposing additional costs on building owners or displacing tenants.

To address these challenges, a proactive approach is crucial, involving:

1. **Collaboration:** Engaging stakeholders (including tenants and tenants' rights organizations) to collaboratively create policies or programs that effectively address their concerns.
2. **Support:** Providing financial, staffing, and technical assistance to support affordable and under-resourced buildings.
3. **Flexibility:** Offering compliance flexibility through extended deadlines and alternative pathways.
4. **Exemptions:** Including the ability for a building owner to apply for a temporary exemption based on financial hardship (however, note that exempting properties in equity-seeking areas altogether misses the chance to enhance housing quality, including tenant rights such as temperature control during extreme events and health and safety improvements).
5. **Fair Penalties:** Ensuring that compliance penalties are proportionate to the appraised property value to maintain fairness and equity; protecting tenants from AGIs and unethical construction practices; and preventing penalties or fines levied against landlords from being passed on to tenants.

2.2 | Scope & Application

When implementing MBPS, Ontario municipalities must carefully consider which buildings fall under the purview of these standards and which may be exempt. Drawing insights from a case study in Vancouver can shed light on this issue.

Case Study: Vancouver

In Vancouver, all Multi-Use Residential Buildings (MURBs) are exempt from their MBPS. While the City initially considered exempting only rental MURBs but including condos in these standards to address affordability concerns and protect renters from displacement, the City's legal framework prevented them from exempting buildings based on ownership type. The Vancouver Charter grants the authority to regulate heating and plumbing equipment for various building occupancies (e.g., residential, assembly, office, retail) but prohibits setting or tailoring requirements based on ownership type since it's not a characteristic of the building itself. Consequently, Vancouver decided to exempt all MURBs from the MBPS, including rental properties and condos (at least for the time being).

LESSONS FOR ONTARIO MUNICIPALITIES

Much like in Vancouver, Ontario municipalities have the authority to create bylaws to regulate the maintenance and condition of properties within their jurisdiction. However, these bylaws generally cannot distinguish between different types of building ownership, such as rental properties versus owner-occupied properties. Instead, the focus of these bylaws is on ensuring that properties meet certain minimum standards related to health, safety, and maintenance, regardless of who owns or occupies the property.

2.3 | Supportive Framework

In order to ensure MBPS can be complied with and enforced, and in order to avoid inequities, municipalities should develop a supportive framework that includes financial aid, practical assistance, and social protections for vulnerable populations.[61]

PUBLIC SUBSIDIES AND FINANCIAL INCENTIVES

To ensure the effective and equitable implementation of the MBPS, municipalities must establish a comprehensive financial framework. This framework should encompass public subsidies, financial incentives, and private finance products tailored to various building sectors and owner-occupant scenarios. It is essential to have this financial support system in place as early as possible. Furthermore, these financial mechanisms should be intricately linked to the performance criteria outlined in the MBPS. This linkage effectively combines both rewards and penalties within the policy framework, reducing the likelihood of punitive measures being necessary.

EDUCATION

In preparation for MBPS implementation, municipalities can proactively develop pre-compliance materials. These materials may include:

1. **Guidelines and Definitions:** Clear and concise guidelines and definitions should be created to help building owners and occupants understand the MBPS requirements.
2. **Resources for Compliance:** Municipalities should provide resources and support mechanisms to assist building owners in meeting the performance standards. This could include access to technical expertise, energy-efficient building solutions, and information on available incentives and subsidies.

By establishing a robust financial framework and offering educational resources early in the MBPS implementation process, municipalities can enhance compliance, promote energy-efficient renovations, and facilitate a smoother transition to the new standards for building owners and occupants.



Photo Credit: taka4332 from Getty Images

PART IV. MODEL BY-LAW

A by-law establishing greenhouse gas emission and heat energy intensity limits for buildings within [Municipality Name] in order to contribute to the reduction of local GHG emissions and enhance energy efficiency.

WHEREAS section 15.1(3) of the Ontario Building Code Act, 1992, S.O. 1992, c. 23 (the "Ontario Building Code Act, 1992") provides that a by-law may be passed by the council of a municipality which has an official plan in place that includes provisions relating to property conditions to prescribe standards for the maintenance and occupancy of property, to prohibit the occupancy or use of property that does not conform with the standards and to require property that does not conform with the standards to be repaired and maintained to conform with the standards or the site to be cleared of all buildings, structures, debris or refuse and left in a graded and levelled condition;

AND WHEREAS there is such an official plan in effect in [Municipality Name];

AND WHEREAS sections 8, 9, 10 and 11 of the Municipal Act, 2001, S.O. 2001, c.25, (the "Municipal Act, 2001") authorize a municipality to pass by-laws necessary or desirable for municipal purposes, and in particular, paragraphs 5, 6 and 8 of subsections 10(2) and 11(2) provide that a single-tier or lower-tier municipality may pass by-laws respecting the economic, social and environmental well-being of the municipality, the health, safety and well-being of persons, and the protection of persons and property;

AND WHEREAS section 147(1) of the Municipal Act, 2001 authorizes a municipality to provide for or participate in long-term energy planning in the municipality;

AND WHEREAS section 425 of the Municipal Act, 2001 authorizes a municipality to pass bylaws providing that a person who contravenes a by-law of the municipality passed under that Act is guilty of an offence;

AND WHEREAS section 436 of the Municipal Act, 2001, provides that a municipality may pass a by-law providing that the municipality may enter on lands at any reasonable time for the purpose of carrying out an inspection to determine whether a by-law of the municipality has been complied with;

AND WHEREAS sections 444 and 445 of the Municipal Act, 2001, provides that the municipality may make an order requiring the person who contravened the by-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to discontinue the contravening activity or to do work to correct the contravention;

NOW THEREFORE THE COUNCIL OF [MUNICIPALITY NAME] ENACTS AS FOLLOWS:

SECTION 1 TITLE

This by-law shall be known as the "[INSERT NAME]."

SECTION 2 DEFINITIONS

In this by-law:

1. "Building" means any structure with a gross floor area equal to or larger than _____ enclosed by a roof and walls;
2. "Existing buildings" means buildings lawfully constructed and completed under a building permit, if a building permit was required;
3. "Performance standard" means the numeric values of net direct greenhouse gas emissions OR site energy use intensity that each covered building must ultimately achieve on an annual basis in _____ and beyond;
4. "Greenhouse gas (GHG) emissions" means the greenhouse gases composed of carbon dioxide (CO₂), methane (CH₄) and nitrous oxide (N₂O) released into the atmosphere that are attributable to the building's energy consumption, including direct emissions from on-site fuel combustion and indirect emissions from the consumption of electricity, steam, hot water or chilled water from a distribution system;

5. “Gross floor area (GFA)” means the total area of each floor level of a building, above and below average grade, measured from the exterior of the main wall of each floor level, including voids at the level of each floor, such as an atrium, mezzanine, stairwell, escalator, elevator, ventilation duct or utility shaft, but excluding areas used for the purpose of parking or loading;

SECTION 3 APPLICATION

This section details which buildings will be included and excluded from the MBPS by-law. It is important for municipalities to clarify the types and sizes of buildings and if they will be phased in, along with the timeline for doing so.

In terms of reporting requirements in particular, it will be important to avoid conflict and/or duplication with the Province of Ontario’s Energy & Water Reporting and Benchmarking (EWRB) regulation (O. Reg. 506/18). The EWRB regulation has required that buildings over 100,000 square feet report energy and water use annually and will require buildings 50,000 square feet and larger to report starting in 2023. For example:

1.This by-law applies to the following buildings:

a.As of [INSERT DATE], any building with a GFA under 50,000 square feet.

SECTION 3 EXEMPTIONS

This section describes any possible exemptions from the MBPS by-law. For example:

1.A building owner can apply for an exemption from the requirements of this bylaw for ____ calendar year(s) by providing documentation demonstrating the following:

- a.The building is listed as a heritage building or is eligible for this designation;
- b.The cost of financing capital improvements necessary for strict compliance with the performance standards set out in this by-law

would result in financial hardship for the building owner;

2. Building owners must submit an application for exemption to _____ at least ____ calendar days prior to the compliance date to receive exemption approval. After the documents have been reviewed, _____ will provide written notification of approval or denial. If the application is denied, the building owner must proceed with the required actions to demonstrate compliance with the performance standards.

SECTION 4 REPORTING REQUIREMENT

Requirement to report

1. Every owner of a building, or part of a building, with a GFA equal to or exceeding ____ must submit to the City an energy and carbon report annually by [INSERT DATE].

Content of report

2. Every energy and carbon report must include, separately for each building:
 - a. descriptive information, as follows:
 - (i) building address;
 - (ii) building's primary occupancy;
 - (iii) other occupancies;
 - (iv) gross floor area for each building occupancy;
 - (v) percentage of building occupied;
 - (vi) name of person submitting the report;
 - (vii) owner(s) of the building;
 - (viii) year of construction;
 - (ix) number of storeys; and
 - (x) number of active energy meters by fuel type; and
 - (b) building performance information, as follows:
 - (i) annual site energy use for each energy/fuel type;
 - (ii) annual site energy use intensity;
 - (iii) annual weather normalized site energy use intensity;
 - (iv) annual greenhouse gas emissions;
 - (v) annual greenhouse gas emissions by energy/fuel type;

- (vi) monthly site energy use and greenhouse gas emissions by energy fuel type;
- (vii) individual monthly fuel consumption in their respective units; and
- (viii) proof of amount of energy use by fuel type.

SECTION 5 PERFORMANCE STANDARDS

This section outlines the technical performance standards.

SECTION 6 ADMINISTRATION AND ENFORCEMENT

This section provides details about alternative compliance pathways, inspections, and the consequences of violating the bylaw (e.g. compliance orders, AMPs, etc.) and the system for payment of penalties by building owners. Additionally, municipalities should outline the options for building owners who want to dispute any decisions made under the by-law.

SECTION 7 DATE OF EFFECT

1. This bylaw is to come into force and take effect on [DATE].

** This model by-law is a recommendation for municipalities to adopt. It combines various legal and other sources including: Efficiency Canada's Model Bylaw for a Mandatory Building Performance Standard, Vancouver's bylaw on annual GHG emissions and energy limits, MBPS ordinances from various U.S. jurisdictions (e.g., the State of Maryland, New York City, Washington State, and Boston, Massachusetts), Montreal's bylaw on GHG emissions disclosure and rating for large buildings, and model bylaws on Green Development Standards. This model by-law does not provide an in-depth discussion on the design of the MBPS, such as target setting, metrics selection, financing mechanisms, tools for implementing different compliance approaches, etc.*

Appendix A: Endnotes

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