



## The \$10K Chimney Surprise!

'Small house' residents have already been through the experience of learning about the Natural Gas and Propane Installation Code and Ontario Regulation 212/0 – Gaseous Fuels! Their furnaces have been or have been threatened to be 'red-tagged' as their chimney is used for venting of gas furnaces / boilers or gas fireplace logs/inserts or for wood burning fireplaces...because a new house is going to be built/or has been built on their chimney side. **The 'existing' homeowners have learned that they have no recourse but to proceed with extending their chimney or replacing their gas-fueled systems at their own cost or eliminating the use of their wood burning fireplace!**

It used to be the bungalows that were affected but now the heights of the new builds is such that even the older two-storey houses are now impacted. So the problem is not going to disappear when all the bungalows are knocked down!

The Code (both Ontario and National) says "Natural (gravity) and motor induced draft type gas burning appliance chimney installed closer than 8' from the vertical wall, must extend a minimum of 2' above the roof placed over that wall." The City of Toronto's minimum required side yard setback is 1.2m (3.94') so the 8' requirement would never be met. The distance requirement is greater for wood burning fireplaces.

The maximum building heights vary across the provinces/areas but the City of Toronto's current definition is 8.8m and variances are now being granted in some wards for over 9.3m. In a common bungalow or storey-and-a-half and in some cases even an old two-storey situation, this would call for extending the chimney height from the roofline to a height which is not feasible unless bracing was installed. Some homes have actually done this! The alternative is that the furnace/boiler must be replaced with a new unit that can be direct vented through the outside wall; gas fireplace units also need to be replaced (if feasible) with direct vented models. The cost for doing this can range between \$6,000 to \$10,000....an unforeseen (and unfair) expense for the 'small house/existing' owner.

There are many more homeowners that may not even be aware that they are facing potential problems (the Building Code regulation exists for a reason) and major costs due to this issue.....they won't be aware of the problem likely until the situation is noticed by a gas provider or servicer. The gas/service provider is then obligated by virtue of their license requirements to 'red-tag'. This means that the homeowner has to 'correct' the situation within 45 days or their gas supply will be cut off.

The City of Toronto Building Department recognized this as an issue in 2007. A Staff Report to the Planning and Growth Management Committee stated "As the City of Toronto continues to develop and intensify, occurrences of infill housing construction affecting existing adjacent properties will continue. It is not acceptable for homeowners adjacent to infill housing projects to have their chimney installation be deemed unsafe, and through no fault of their own, be forced to make expensive modifications to their homes or chimneys." Council at that time endorsed a Code Request endorsing an amendment to the Ontario Building Code.



Staff Report  
Adverse Impacts-Chir



Chimney Change  
Request City of Toronto

# SAHRA



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Back in 2009, Bob Aaron (Aaron & Aaron, Barristers and Solicitors) reported on the 'Benjamin problem' and the results of the City of York appeal to the Ontario Court of Justice back in 1995. He has questioned whether Justice Dennis Lane's ruling was correct in law. If so, he has suggested that Queen's Park should amend the Building Code Act. See the December 26, 2009 article titled "Aaron: Amend code to protect innocent neighbours" (extracted/see below).

<http://www.yourhome.ca/homes/columnsblogs/article/742093--aaron-amend-code-to-protect-inn>

But this is not just a City of Toronto problem....this situation is allowed to occur because of the lack of consideration for the building-next-door in both the Ontario and National Building Codes. Any 'small house/existing' owner in this situation could be 'red-tagged' at any time.

For this reason, the issue was presented to both FoNTRA (the Federation of North Toronto Residents' Association) and CORRA (the Confederation of Resident and Ratepayer Associations) in Oct and Nov, 2011 to get their help obtaining the attention of both the Ontario and Federal governments. They agreed that an appropriate Building Code change needs to be put in place that makes the developer responsible for funding the necessary work that an adjacent property would be forced to do to comply with Code and TSSA safety regulations.

A template for an Ontario Building Code Change Request form was prepared (click below for a MS version of the document) with all the required information for the MMAH. Concerned citizens submitted a Request so the MMAH would realize that this is an important issue that needs to be dealt with under the Ontario Building Code.

## [Ontario Building Code Change Request](#)

## Updates since January, 2012

FoNTRA (represents 28 member organizations), CORRA (represents 50+ member organizations), SAHRA (represents 800 households in the South Armour area) as well as a number of other Associations and a number of members of those Associations submitted Requests to the Ontario MMAH in Jan and Feb, 2012, supporting the original Request submitted by the City of Toronto in 2007. A confirmation letter/email from Alex Antoniuk, Manager, Code Development Unit, MMAH to the submitters stated that the "code change request will be considered at the next opportunity for consultation on code changes to Ontario's Building Code. Typically there are several opportunities in each Code cycle."

Brian Abbey, a member of FoNTRA and also a member of the Building Advisory Council (BAC), was advised by the MMAH that it was never included in the Ministry's round of code consultations in 2011 because the wording in the Ontario Building Code (OBC) is exactly the same as the model National Building Code (mNBC) and would need a change to the mNBC for a change in the OBC. Alek Antoniuk of the MMAH advised FoNTRA on Jan 30, 2012 that the proposed change has been forwarded to the Canadian Codes Centre for consideration as a change to the mNBC and that the request would be considered at the next opportunity for consultation on code changes to the OBC. FoNTRA also received a phone call from Ottawa in Feb, 2012 and an electronic version of the Request was sent to them.

CORRA submitted a Request on Feb 21, 2012 with copies to The Honorable Kathleen Wynne and Ann Borooah, Chief Building Official & Executive Director, City of Toronto pointing out that this has been a longstanding issue; first brought forward by property owners on a site-by-site basis; then as an issue brought forward as a neighbourhood concern; and now it is being raised to resident and ratepayer

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associations on a city-wide basis. We need a timely resolution to this issue. CORRA asked to be kept informed on progress of this issue being reviewed/resolved.

We hoped that we would now have the attention of both the Ontario and Federal government agencies and that Building Code changes would be forthcoming but that does not appear to be so. Follow-up on March 6, 2012 to the submissions resulted in a response from Ralpa Digaetano, Code Development Advisor, MMAH advising that "at this time no new public consultations on additional proposed code changes for the next edition of the Building Code are planned." and that "This issue raises questions concerning Zoning By-laws, common law, and TSSA fuels safety enforcement, as well as the need for review of the Building Code. We are still determining how to address your concerns and whether a Building Code amendment will be the most suitable means of addressing your concerns."

FoNTRA presented the Chimney Issue and the need for a Building Code amendment to The Honourable Kathleen Wynne, then the Minister of Municipal Affairs and Housing at a Planning Reform Meeting on April 20, 2012. Documents were forwarded to her Office on May 14, 2012. The Honourable Wynne's response on Oct 25, 2012 stated "...the issue is a complex one, whose implications go beyond the purposes of the Building Code, and affect land use planning, technical standards and common law. However the Code Change Proposal submitted by your member associations during March 2012 was received too late to be considered for a potential next edition of the Building Code. That being said, consultation for potential code changes may happen in future, when this proposal could be considered."

In Nov, 2015 we received an email from the MMAH confirming that our submission was 'On File' and that it would be considered for the next edition of the Building Code. However, we were advised that once the proposal was in the system they could not provide information on its status. We did not receive a response to our follow-up email asking for the current status of our request in Nov, 2016.

## Actions Required Now

The City of Toronto started dealing with this issue in 2007...11 years ago; residents' associations and individuals have been trying to get changes in place since 2012.

It is now time to follow-up on this issue with the current Minister and Deputy Minister of the MMAH asking for action/progress as well as initiating follow-up with the Federal officials.

**We are therefore asking our Federal and Provincial Representatives to follow-up on this issue.**

We need to re-initiate the campaign for a Building Code change with the hope that we can achieve changes!

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## Also need to...

MPs and MPPS and City Councillors all need to be made aware of this situation, the impact on their constituents and our requests to the various levels of government.

In the meantime, we also need to continue to educate the unsuspecting 'existing' homeowner of this situation so that they have an opportunity to negotiate a financial arrangement with developers before the Committee of Adjustment hearing and/or before development begins. The developers/architects often say/pretend that they are not even aware of the chimney issue!

The City of Toronto currently could put a 'note' on permit drawings (that only the developer would see/not the adjacent neighbor) that states "However, please take note that once the authorized construction is completed, the subject building may be in close proximity to the existing chimney on the adjacent property. This may have a negative impact on the operational effectiveness of the said chimney. Please be advised that it is the City's position that this would be a civil matter between the owners of the two properties which does not involve the City nor fall within the City's jurisdiction. As such, it is advisable that you confer with the owner of the adjacent property prior to proceeding with the construction". The City should also state that the 'existing' homeowner could be red-tagged and have to replace/remove their boiler/gas fireplaces at a substantial cost. The existing homeowner would never see the final permit drawings but at least it does make the developer aware that he should discuss the situation with the adjacent homeowner.

SAHRA also asked Councillor Karen Stintz in Oct, 2012 to follow-up on the City including a statement on the Notice of a Committee of Adjustment hearing IF there is a chimney problem with the adjacent property, so that the adjacent homeowner as well as the developer are aware of the situation and as such can proceed with negotiating a plan for dealing with the problem and a financial agreement.

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Extracts from the December 26, 2009 article titled "Aaron: [Amend code to protect innocent neighbours](#)"

Last week's column told the story of the illegal chimney on a north Toronto bungalow owned by Ruta Benjamin and her husband.

When the house next door to the Benjamins' was torn down in 2007 and a monster home erected in its place, the couple discovered that their chimney was now lower than the roofline of the new house next door and too close to it. Suddenly their chimney became illegal. The column brought some interesting email responses.

Bernadette Celis, communications advisor with the Technical Standards and Safety Authority (TSSA), explained why the Benjamin chimney became illegal: as a result of the construction of the new house, the chimney on their bungalow was in violation of the Natural Gas and Propane Installation Code and Ontario regulation 212/0 "Gaseous Fuels". The code requires a fuel distributor to report to the TSSA when it finds a contravention or hazard. In this case, since the Benjamin chimney was less than two feet higher

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than the roof next door and less than 10 feet closer to the new house, it became a code contravention. The code required the Benjamins to make their chimney comply at their own expense. Was the city of Toronto wrong in issuing a permit, which resulted in a code violation against the house next door? Ray Hewlett, a retired chief building official, emailed to say that the Ontario Building Code applies to this situation.

He directed my attention to Section 8(2) of the Ontario Building Code Act, which states that if an application is properly submitted, a chief building official shall issue a permit to construct a building unless the proposed building...will contravene this Act, the building code or any other applicable law. To my dismay, I discovered that the city of Toronto acted according to legal precedent when it issued a permit for the new house. That was the permit that caused the Benjamin chimney to be in breach of the fuel installation code.

Prior to his retirement some years ago, Pille Hansen was the chief building official of the former city of York. He emailed me to say that it was his policy to inspect properties for problems relating to chimney clearance in connection with building permit applications. He referred me to a court case in 1995 about a property on Snider Ave. owned by Peter Alaimo. As chief building official in the city of York, Hansen had refused Alaimo a building permit due to the proximity of the chimney on an adjacent property. Alaimo appealed to the Building Code Commission, which ruled that the building code requirement that a new permit cannot create a contravention of the act only applies to a contravention on the site under consideration, and not a property next door. The city of York appealed the Commission decision to the Ontario Court of Justice, and lost. Justice Dennis Lane ruled that Hansen, as chief building official, could not refuse to issue a permit simply because it would create a hazard or violation with respect to the functioning of the neighbour's chimney. The judge wrote that the provisions of the Building Code do not regulate adjacent buildings and ordered York to issue Alaimo a building permit.

If Lane's decision is correct in law (and I have my doubts), then there is an urgent need for Queen's Park to amend the Building Code Act to prevent innocent neighbours like the Benjamins from being placed in an unsafe and dangerous condition a result of construction on neighbouring properties.