

Attention: Chief Administrative Officers

June 26, 2020

Re: Proposed Amendments to the *Nova Scotia Building Code Regulations*

I am writing to give you formal notice of proposed amendments to the *Nova Scotia Building Code Regulations* pursuant to the *Building Code Act*, R.S. N.S. 1989, Chapter 46.

The proposed amendments will require all new restaurants and spaces within existing buildings that are converted to restaurants (as defined within the Food Safety Regulations made under Section 105 of the *Health Protection Act*) to be constructed completely barrier-free in accordance with the *Nova Scotia Building Code Regulations*, including an accessible path of entry from the street level into and throughout the restaurant, and accessible washroom facilities. This change would align the *Nova Scotia Building Code Regulations* with the September 6, 2018 decision by the Nova Scotia Human Rights Tribunal requiring washrooms located within restaurants to be accessible to persons in wheelchairs. This notice replaces the public notice that began on March 9, 2020 and finished on April 24, 2020. Due to the COVID-19 situation, we didn't feel that true public notice had been given.

The Office of the Fire Marshal is now engaging in a 45-day public notice period beginning June 27, 2020 and finishing on August 12, 2020.

Please find attached one copy of the proposed amendments to the Regulations, a questions and answers information document, and a copy of the notice to be published in newspapers within Nova Scotia.

The *Building Code Act* requires that the proposed amendments be circulated to each municipality and be made available to the public. The public may access the proposed regulation at: <https://novascotia.ca/building-code-regulations-consultation/>

Written comments on the proposed amendments to the regulations are welcome and should be forwarded on or before August 12, 2020 to:

Joe Rogers
Building Code Coordinator
Office of the Fire Marshal
P.O. Box 231
Halifax Central,
Halifax, Nova Scotia B3J 2M4

Questions or comments may also be sent via e-mail to ofm@novascotia.ca or by phone at 902 424 5721.

Sincerely,

Joe Rogers
Building Code Coordinator

Building Code Regulations

NOTICE is hereby given that amendments to the Nova Scotia Building Code Regulations (the Building Code) made pursuant to the Building Code Act, Chapter 46, of the Acts of 1989 are anticipated to be prescribed by the Minister of Municipal Affairs and Housing to come into effect throughout the Province of Nova Scotia on or after September 30, 2020.

The proposed amendments will require any new restaurants (as defined within the Food Safety Regulations made under Section 105 of the Health Protection Act), including spaces within existing buildings, to be completely constructed in accordance with the barrier-free requirements contained in the Nova Scotia Building Code. This would include an accessible path of entry into the restaurant from the exterior of the building and access to barrier-free washroom facilities. This will align the Nova Scotia Building Code Regulations with the decision by the Nova Scotia Human Rights Tribunal regarding accessibility within restaurants.

Written comments on the proposed amendments to the Regulations are welcome on or before August 12, 2020 and should be forwarded to:

Joe Rogers

Building Code Coordinator
Office of the Fire Marshal
P.O. Box 231
Halifax Central
Halifax, Nova Scotia B3J 2M4

Copies of the proposed amendments to the regulations are available for inspection on the Nova Scotia website at

<https://novascotia.ca/building-code-regulations-consultation/>.

Copies are also available from the Department of Municipal Affairs and Housing by writing to the above address, emailing OFM@novascotia.ca or by phoning (902) 424-5721.

Honourable Chuck Porter

Minister of Municipal Affairs and Housing

Schedule “A”

Amendment to the *Nova Scotia Building Code Regulations* made by the Minister of Municipal Affairs and Housing under Section 4 of Chapter 46 of the Revised Statutes of Nova Scotia, 1989, the *Building Code Act*

- 1** The *Nova Scotia Building Code Regulations*, N.S. Reg. 26/2017, made by the Minister of Municipal Affairs and Housing by Order dated February 28, 2017, is amended by adding immediately after Sentence 1.2.1.1.(10) the following sentences:

 - (11)** Except as provided in Sentences (8), (9), and (10), if a *building* or part thereof has a change of the *occupancy* classification in Sentence (1) or under Sentence 1.2.1.4.(2), the accessibility requirements in Section 3.8. of Schedule “C” of the regulations, including for *barrier-free* entrances, apply to the construction of the *building* or part thereof undergoing the change.
 - (12)** Where a Group A Division 2 *assembly occupancy building* or part thereof is constructed or altered for use as a restaurant, as defined in Sentence 1.2.1.4.(1), the exemptions in Sentences 3.8.2.3.(1), 3.8.2.7.(2) and 3.8.2.7.(3) under Schedule “C” of the regulations do not apply to the construction of the restaurant part of the *building*.
- 2** The regulations are amended by adding immediately after Article 1.2.1.3. the following article:

1.2.1.4. Restaurants

 - (1)** For the purposes of this Article and Sentence 1.2.1.1.(12), a restaurant means a restaurant as defined in the *Food Safety Regulations* made under Section 105 of the *Health Protection Act*.
 - (2)** If a Group A Division 2 *assembly occupancy building* or part thereof changes from a non-restaurant use to a restaurant use, the change shall be considered equivalent to a change of *occupancy* classification for the purpose of Sentences (3), or 1.2.1.1.(11).

Restaurants and proposed changes to the Building Code

Questions and Answers Guide

Why is the Building Code changing?

The Building Code is changing to align itself with the Human Rights Tribunal decision that interpreted Section 20 of the Food Safety Regulations to include that washrooms within restaurants are to be accessible to persons in wheelchairs. As the Building Code deals with construction of buildings, including spaces used as restaurants, it is important that all newly constructed spaces that include restaurants comply with this decision. This will prevent any new restaurant, or any space converted to a restaurant from any other use (even within the same occupancy classification) from not being compliant with this decision.

What is considered a restaurant?

In this context, a restaurant is not currently defined within either the Food Safety Regulations or the Building Code. Amendments to the Food Safety Regulations are required to define restaurant. The Building Code Regulations will use that definition as well. The definition will reference a food establishment that serves food to customer to be eaten on site.

It will apply to traditional restaurants, as well as fast food restaurants, cafes, delis, lunch counters, grocery stores that offer prepared foods for sale and seating on site to eat, sports facilities such as hockey rinks and bowling alleys that serve food and is eaten on site. Restaurants that do not offer space for food to be eaten on the premises will not be captured by the definition. Using the same definition is important to ensure that a restaurant under the Food Safety Regulations and subject to the Human Rights Tribunal decision, is captured in the Building Code.

What about take out restaurants?

If there is no seating on the premises to eat and the expectation is to pay, pick up your food and take it with you to eat at another location, it would not be considered a restaurant under the proposed definition.

If I want to build a new restaurant what would I need to do?

The new restaurant would be required to comply with the current Nova Scotia Building Code. This would include providing a barrier-free path of travel from the exterior of the building, into the building and throughout the public portion of the restaurant including a washroom facility. This would apply to new construction or a renovated portion of an existing building where the use is a restaurant. This would make some locations unsuitable for restaurants such as a historic building that has steps to enter the building and no ramp or other barrier-free access into the building, or a basement or 2nd storey locations within a building that is accessible on the entrance storey, but doesn't have a

lift or elevator within a building to allow for barrier-free access to those floor levels above or below the entrance storey.

When do these requirements start?

The expected in effect date for these requirements is on or after September 30, 2020.

What about existing restaurants?

The Building Code applies to the design, construction, and occupancy of new buildings, and the alteration, reconstruction, removal, relocation, occupancy and change of occupancy classification of existing buildings. As explained above, where a space within an existing building is converted for use as a restaurant, the new requirements within the Building Code would be applicable to the construction of that restaurant.

Office of the Fire Marshal March 9, 2020

- (3) The exemptions set out in Sentences 3.8.2.3.(1), 3.8.2.7.(2), and 3.8.2.7.(3) under Schedule “C” of the regulations, do not apply to a *building* or part thereof with a change of *occupancy* classification under Sentence (2).