



## Canada: Energy Step Code

Last Updated: April 24 2018

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On September 15, 2017, the Energy Step Code Council (the "ESCC") and Building and Safety Standards Branch released "BC Energy Step Code: A Best Practices Guide for Local Governments" (the "Guide"). The Guide's intent is to assist local governments with implementing the Energy Step Code (the "ESC") in ways that reflect local capacity. This article reviews the policy and legal tools highlighted by the Guide for implementing the ESC, as well as some of the other important considerations for local governments to take into account.

### What is the BC Energy Step Code?

The ESC is a performance-based standard for building energy efficiency that aims for all new construction across the province to be "net-zero energy ready" by 2032. The ESC builds on changes to the BC Building Code made in 2008 that, for the first time, imposed energy efficiency requirements. These changes gave designers and builders the option of choosing between performance-based and prescriptive approaches for meeting Building Code requirements. While the vast majority of buildings built since 2008 have followed a prescriptive approach (i.e. buildings met specific requirements for insulation, windows, water heaters, etc.), many of these buildings have failed to perform as well as intended.

Accordingly, the ESC uses a performance-based approach in order to give the development industry more flexibility in meeting energy efficiency goals and, along the lines of the overall intent of the Building Act, ensure greater province-wide consistency in achieving progress towards energy-efficiency development.

The ESC's performance-based approach establishes performance targets for energy efficiency that local governments can incorporate into their policies and bylaws that give the builder/developer/designer flexibility for implementation. The ESC outlines targets in a series of "steps" applied to Part 3 (large and complex buildings) and Part 9 (houses and small buildings) buildings, the first being compliance with the basic requirements of the BC Building Code and the highest (Step 5 for Part 9 and Step 4 for Part 3) being "net-zero energy ready." Compliance is measured through whole-building energy modelling (conducted by Energy Advisors) and airtightness testing.

Importantly, the ESC requirements for Part 9 buildings are applicable, if adopted by a local government, throughout BC, while those for Part 3 buildings currently only apply within Climate Zone 4 (i.e. Lower Mainland and South Vancouver Island). Application of Part 3 requirements to the rest of BC is intended to occur in the future.

As of December 15, 2017, local governments where the BC Building Code applies are legally empowered to implement aspects of the ESC, including incorporating ESC steps within their bylaws, as an "unrestricted matter" under section 5 of the Building Act.

### Policy and Legal Tools Available to Local Governments

The Guide highlights policy and legal tools available to local governments for implementing the ESC in five areas: general awareness and support, incentives, requiring compliance, removing barriers, and demonstrating leadership.

#### A. General Awareness and Support

A local government can increase industry and public awareness of its intention to support and implement the ESC by:

- including a policy statement within its Official Community Plan that indicates energy efficiency as a clear priority;

- referring to the ESC within a community energy and emissions plan (also referred to as a community energy plan or climate action plan);
- piloting a new energy efficiency policy in accordance with the ESC in one geographic area through a neighbourhood plan or local area plan;
- creating learning forums to connect industry to energy efficiency experts, products, practitioners, and tools; and/or
- incorporating a non-regulatory/voluntary "sustainability checklist" into the development application process.

## B. Incentives

A local government can encourage the voluntary uptake of the ESC by providing a variety of incentives, including:

- "greenstreaming" or fast-tracking the processing of ESC-related development applications (note: it will be important to consider the impact this may have on other applications);
- redirecting revenue from the Climate Action Revenue Incentive Program—a conditional grant provided to signatories of the BC Climate Action Charter equivalent to 100% of the carbon taxes they pay directly—to fund a program that incentivizes compliance with the ESC (e.g. a building permit or Energy Advisor rebate program);
- implementing building permit or Energy Advisor rebate programs;
- leveraging revitalization tax exemptions under section 226 of the Community Charter;
- incorporating a "sustainability fee" into building permit application fees in order to fund the above rebate programs; and/or
- using density bonuses in zoning bylaws to encourage voluntary uptake of the ESC.

## C. Require Compliance

Although it is recommended for the transition period of the ESC (i.e. 2017-2020) that local governments avoid requiring compliance with higher steps, it is nevertheless open to local governments to enforce compliance with any of the steps of the ESC. Requiring compliance with the ESC can be accomplished through:

- phased development agreements;
- building bylaws; and/or
- rezoning.

## D. Removing Barriers

Local governments can also provide a specific kind of incentive for voluntary uptake of the ESC by removing "red tape." This could involve:

- introducing design guidelines and policies that assist developers in achieving certain objectives related to the ESC;
- amending the definition of "floor space ratio" in zoning bylaws to not penalize thicker, more insulated walls (many zoning bylaws currently define floor space ratio by calculating to the exterior perimeter of buildings, thereby penalizing thicker, more insulated walls); and/or
- reviewing building bylaws to remove procedures that unintentionally inhibit compliance with the ESC (e.g. procedures related to compliance with prescriptive requirements).

## E. Demonstrating Leadership

Finally, the Guide also encourages local governments to demonstrate a leadership role in the uptake of the ESC through:

- creating a corporate policy that ensures all new civic buildings meet a particular step (e.g. make it a requirement in tenders for new facilities that they be built to an upper step of the ESC);
- encouraging other public facilities to following standard (e.g. provincial and federal government buildings); and/or
- using local government land to build local capacity for compliance with higher steps.

## Other Considerations

While reviewing the best policy and legal tools to use in implementing the ESC, local governments are also encouraged to consider a number of other factors, including:

- consulting with local stakeholders early on (the ESC Provincial Policy encourages six months before implementing lower steps and 12 months before higher steps);
- keeping the ESCC in the loop before and after implementing particular steps;
- consulting with legal counsel early on to ensure minimal risk and maximum leverage of available local government powers;

- considering how building officials will be trained in the ESC and how new inspection processes will occur; and
- designing a regular review process that measures local success at implementation and that includes, among other things, surveying whether industry and local government staff find the ESC understandable, an accounting of the marginal costs of implementing different policy tools and steps, and a review of the effect implementation has had on development processing times.

Ultimately, implementation of the ESC is intended to be an "all hands on deck" process whereby local governments, the Province, the ESCC, the public, and industry work together to implement high energy efficiency standards as smoothly and efficiently as possible.

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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