

APPLICATIONS AND IMPLICATIONS OF THE NEW *HOUSING SUPPLY ACT*

On November 24, the provincial government introduced into law the *Housing Supply Act* (the “**Act**”).¹ Though it is not expected to come into effect until the spring of 2023, we write to provide an overview for readers that may be impacted.

In brief, the Act empowers the Minister of the soon-to-be-established Ministry of Housing to issue orders setting housing targets. The targets may be for the availability or affordability of housing, and they will apply to a specific municipality. The Act also sets out escalating steps that the Province may take against municipalities to enforce the housing targets applicable to such municipalities.

HOUSING TARGET ORDER

To advance the government’s objectives under the Act, the Minister may impose a housing target order. The order must specify the municipality to which it applies and the targets for the availability or affordability of housing in that municipality. It must also specify performance indicators, timelines, and reporting periods.

The Minister must consider numerous factors in making a housing target order including housing needs reports, official community plans, official development plans, regional growth strategies, transportation investments, statistical information, housing market conditions, and economic factors. The Minister must also consult with the impacted municipality prior to making a housing target order.

It is worth noting that while the targets are determined by the Province, municipalities retain flexibility regarding how those targets will be achieved. During his press conference, Premier David Eby stated that municipalities can meet the targets by using the form, location, and density of their choosing. For example, some municipalities may choose to concentrate new housing whereas others may seek to apply it uniformly across the region.

HOUSING TARGET PROGRESS REPORT

A municipality that becomes subject to a housing target order is required to prepare

(Continued on page 2)

and submit to the Minister a housing target progress report for each reporting period. The progress report must detail actions taken by the municipality to meet the target and the progress that has been made. If the housing target has not been met, the progress report must also describe actions the municipality will take to ensure the targets will be met within two years of the report.

If the Minister, upon receiving the report, determines that the municipality has not met a target or is not making satisfactory progress toward meeting the target, the Minister may initiate compliance efforts by appointing advisors, issuing directives, or both.

ADVISORS

An initial compliance effort the Minister may take is to appoint one or more advisors who are tasked with assessing the municipality's actions, progress, policies, practices, and processes related to housing. The municipality is required to give advisors access to its offices and records, and advisors are required to report back to the Minister with recommendations.

DIRECTIVES

Another approach the Minister may take is to issue directives requiring a municipality to change its bylaws. A directive may also require a municipality to issue or refuse to issue a permit.

Before issuing a directive, the Minister is

required to consider the benefits of issuing the directive versus the status quo, and whether the directive is in the public interest. Additionally, the Minister must consider whether there is a less intrusive way to have the municipal meet its targets.

ORDER IN COUNCIL

If a municipality does not comply with a directive, the Lieutenant Governor in Council may issue an order in council requiring the municipality to change its bylaws or to issue, or refuse to issue, a permit.

The Lieutenant Governor in Council must consider the same factors that the Minister must consider before issuing a directive. The order in council may apply to the municipality for up to two years, during which the municipality cannot circumvent affected bylaws and permits.

WHAT COMES NEXT

At the time of writing, the Province had not announced the municipalities which initially will be affected by the Act; the Province has indicated that it will start with eight to ten municipalities and that its decision will be based largely on the housing needs reports.

We can expect that the province's largest municipalities, such as those in the lower mainland and southern Vancouver Island that have already demonstrated immense housing need, will be named. It is less certain whether urban centres in the north or more rural municipalities will be part of the initial roll out.

Housing target orders are likely to exert pressure on large municipalities to approve more housing faster, and potentially to yield to developer demands. Large municipalities in particular have traditionally held a strong bargaining position with developers, owing to their statutory authorities with respect to approving development projects. Under the new Act, municipalities may face significant pressure from the Province when considering development applications given the now-expansive authority of the Province to influence municipal bylaws and permit approvals if municipal housing targets are not met.

Importantly, while the Act does not affect the legal rights of builders or non-government owners, it may impact how they do business with municipalities. Builders, owners, and municipalities may need to reassess their respective rights and obligations where municipalities are subject to housing target orders, directives and orders. Lastly, as we know that the government will rely heavily on housing needs reports, owners, builders, and municipalities alike would be wise to consider these reports for insight on the potential for housing target orders to be issued in their communities.

1. Bill 43, *Housing Supply Act*, 3rd Sess, 42nd Parl, British Columbia, 2022.

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Sheldon Falk



SHELDON FALK

604.358.6648

SHELDON@CIVICLEGAL.CA

Sheldon Falk is an articled law student at Civic Legal LLP and a graduate of the Juris Doctor program at UBC's Peter A. Allard School of Law. During his time at law school, he conducted legal research for judges of the BC Provincial Court as a judicial extern. He also worked at Pacific Legal Education & Outreach Society developing legal resources for BC's non-profit sector. He was awarded the Rt. Hon. Beverley McLachlin Legal Access Award for his efforts to enhance public legal education.

Prior to law school, Sheldon earned a Bachelor of Business Administration degree with an emphasis on management at North Island College, where he received the

President's Award for graduating at the top of his class. He was deeply involved in student government, sitting on the students' union board, provincial executive, and numerous college committees. In part due to these efforts, he was awarded the Lt. Governor's Medal Award for Inclusion, Democracy, and Reconciliation.

Sheldon hopes to use his experiences and passion for democracy to provide world-class legal services to the public.

Our lawyers combine legal experience in local government, commercial real estate development, and construction law to provide legal services to local governments, owners, builders and developers on a range of projects, from concept to completion, and beyond.

710 - 900 West Hastings Street, Vancouver, BC V6C 1E5
604.639.3639 | www.civiclegal.ca |  @CivicLegal