

HOW NEW AMENDMENTS TO THE *LOCAL GOVERNMENT ACT* CAN AFFECT DEVELOPERS AND CONTRACTORS: AN OVERVIEW OF THE *HOUSING STATUTES AMENDMENT ACT, 2024*, SBC 2024, C 11

INTRODUCTION

In addition to the slew of changes made to the *Local Government Act*¹ and *Community Charter*² last year and earlier this year³, the Province of British Columbia's recently-enacted *Housing Statutes Amendment Act, 2024* (the "**Housing Act**")⁴ came into force on April 25, 2024,⁵ further changing the *Local Government Act* and *Community Charter* by expanding local government powers and providing local governments with increased ability to implement density bonus conditions and to regulate affordable and special needs housing, works and services, and sustainable transportation measures. Accordingly, developers and contractors should be aware of potential changes coming to their municipality or regional district that may affect future building projects.

AFFORDABLE AND SPECIAL NEEDS HOUSING

DENSITY BONUS

Prior to the enactment of the *Housing Act*, local governments were able to, in a zoning bylaw, establish different density rules for a zone, where, upon certain

conditions in the zoning bylaw being met (such as the provision of amenities), a developer of a zone could build to a greater density within that zone.⁶ These conditions are often referred to as density bonus conditions.

While the rules for density bonus conditions have generally not changed, the *Local Government Act*, as amended by the *Housing Act*, now requires local governments to, when imposing conditions in respect of providing affordable and special needs housing, specify conditions regarding the required portion of affordable and special needs housing units, the form of tenure, the affordability of units (including sales price of units or rent to be charged), and the length of time during which the units will be subject to those conditions.⁷

Alternatively, where a developer is required to provide affordable and special needs housing units on a parcel of land, a local government may, by bylaw and in accordance with Section 482.4 of the *Local Government Act*, enter into an agreement to permit the developer to provide such units on one or more other parcels of land owned by the developer.⁸

In addition, where the condition imposed relates to the provision of amenities or of affordable and special needs housing, a local government's zoning bylaw may permit a developer, at the developer's option, to instead pay money to the local government in an amount equal to the estimated capital costs that a developer would incur to meet that condition.⁹ Such funds are payable when the building permit is issued,¹⁰ and are to be deposited into a "density benefits reserve fund", which is a reserve fund to be established by the local government and to be only used for providing amenities or affordable and special needs housing if certain conditions are met.¹¹

The *Housing Act* also amends the *Local Government Act* to make an exception for "precursor applications" to a building permit that is "in-stream" on the date a density bonus zoning bylaw is adopted. A "precursor application" to a building permit may be an application for building permit issuance, an application for development permit issuance, or an application for a zoning amendment bylaw, provided that certain conditions are met. An "in-stream" application is one that is not "determined, rejected or withdrawn".¹²

This exception for precursor applications provides that a density bonus zoning bylaw that "would be otherwise applicable to the construction, alteration or extension of a building or structure has no effect with respect to that construction, alteration or extension if a precursor application to that building permit is in-stream on the date the [density bonus zoning] bylaw is adopted."¹³

ZONING FOR AFFORDABLE AND SPECIAL NEEDS HOUSING

A local government now has the ability to, in a zoning bylaw (referred to in the *Local Government Act* as an "affordable and special needs housing zoning bylaw"¹⁴), require developments in a zone that are, in whole or in part, residential developments to do one or more of the

following: (i) include affordable and special needs housing units as a proportion of all housing units in a development, (ii) establish requirements relating to affordable and special needs housing units, or (iii) provide higher density to developments subject to the foregoing requirements.¹⁵ The local government may also allow developers to, at the developer's option, provide payment-in-lieu,¹⁶ which payment is to be deposited in an "affordable and special needs housing reserve fund".¹⁷ However, an affordable and special needs housing zoning bylaw does not apply to a development in which all of the housing units are owned by certain entities, such as a housing cooperative or a charity.¹⁸

WORKS AND SERVICES

Previously, a local government was, pursuant to Section 506 of the *Local Government Act*, permitted to, by bylaw, regulate and require the provision of works and services in respect of the subdivision of land.¹⁹ Following enactment of the *Housing Act*, a local government may, by bylaw, regulate and require the provision of works and services in respect of the *development* of land.²⁰ Based on the text of the amended legislation, it is unclear the extent to which a local government's authority has been expanded—the *Local Government Act* states that a local government may impose various works and services requirements as a condition of subdivision or building permit issuance,²¹ while the Union of BC Municipalities has provided an analysis stating that the changes under the *Housing Act* provide the ability to "[set] developer requirements at development permit and building permit stages."²² We expect further information on the *Housing Act* to be published in the coming months to clarify the intent behind the amendment to Section 506.

The requirement to provide of certain works and services relating to water, sewage, highways, amenities,

transportation infrastructure and sustainable design features cannot apply to a subdivision under the *Strata Property Act*, SBC 1998, c 43.²³

Following the *Housing Act's* amendment of the *Local Government Act*, subject to any regulations made, a works and services bylaw can now require the following to be provided in respect of the development of land: (i) amenities including benches, bollards, bicycle parking facilities, directional signage, parklets, street lamps, street signs, transit shelters and waste disposal and recycling containers; (ii) transportation infrastructure that supports walking, bicycling, public transit or other forms of transportation including traffic calming; (iii) sustainable design features for energy and water conservation, reduction of greenhouse gas emissions and climate resilience; and (iv) anything else prescribed by regulation.²⁴

Furthermore, whereas previously, an approving officer could only require, at its discretion, an owner of land being subdivided to dedicate a portion of it for highway use,²⁵ this power has been expanded to allow an approving officer to require an owner to also provide a portion of land for the purposes of construction and installing sustainable design features and transportation infrastructure that supports walking, bicycling, public transit or other alternative forms of transportation.²⁶

This capability to require the provision of highway and/or sustainable design features and transportation infrastructure has also been given to servicing officers of local governments as a condition of issuing a building permit.²⁷ A "servicing officer" is a role introduced by the *Housing Act*— a local government may, by bylaw, designate as a servicing officer a person within a class of persons prescribed by regulation.²⁸ As of the date of this article, regulations have not been made prescribing the class of persons who may be a servicing officer; accordingly, it appears that a local government cannot

yet require the provision of highway and/or sustainable design features and transportation infrastructure as a condition of building permit issuance until such regulations have been made.

TRANSPORTATION DEMAND MANAGEMENT

With the *Housing Act* in force, a local government may now, by bylaw "advance transportation demand management in respect of the development of land...",²⁹ and for that purpose may do one or more of the following by bylaw: (i) require owners and occupiers of land, or of any building or other structure, to provide one or more transportation demand measures; (ii) establish design standards for transportation demand management measures required under the foregoing; or (iii) permit payment in lieu of providing the required measures to allow the local government to use such funds for providing transportation demand management measures.³⁰ "Transportation demand management" is defined as "improving the movement of people and goods, reducing motor vehicle dependence and increasing sustainable transportation,"³¹ whereas "transportation demand management measures" is defined as including EV charging stations, end-of-trip facilities, secure bicycle and scooter parking facilities, and other measures that may be prescribed by legislation.³²

CONCLUSION

These changes will likely not affect developers and contractors immediately, as the *Housing Act* generally permits local governments to *adopt* bylaws that impose the above-noted requirements. However, as local governments turn their minds to taking advantage of these amendments to the *Local Government Act*, developers and their contractors should take notice.

While there are some outstanding questions, developers and contractors should be aware of the expansion to the

statutory powers of local governments, allowing for a broader scope of what developers may be required to provide at different stages of a development; for example, works and services requirements that previously could only apply to the subdivision of land now applies to the development of land generally. Developers and contractors should therefore anticipate being required to provide works, services and/or amenities (including amenities that previously could not be required by bylaw, such as sustainable design features and transportation infrastructure) at those different stages of development.

May, 2024

Kai Hsieh

Footnotes:

1. RSBC 2015, c 1.
2. SBC 2003, c 26.
3. See *Housing Statutes (Residential Development) Amendment Act, 2023*, SBC 2023, c 45; see also *Housing Statutes (Development Financing) Amendment Act, 2023*, SBC 2023, c 46; see also *Housing Statutes (Transit-Oriented Areas) Amendment Act, 2023*, SBC 2023, c 48.
4. SBC 2024, c 11.
5. See *ibid*, s 42; see also British Columbia, *Draft Report of Debates of the Legislative Assembly (Hansard Blues)*, 42nd Parl, 5th Sess (25 April 2024) at Draft Segment 050 (S Seo).
6. See *Local Government Act*, *supra* note 1, s 482.
7. See *ibid*, ss 482(2), (2.2).
8. See *ibid*, s 482.4.
9. See *ibid*, ss 482(2.4), 482.3.
10. See *ibid*, s 482.3(4).
11. *Ibid*, ss 482.3(6), (8).
12. See *ibid*, s 568(1).
13. *Ibid*, s 482.5.
14. *Ibid*, s 478.1.
15. See *ibid*, ss 482.7(1)(a)-(c).
16. See *ibid*, s 482.7(1)(d).
17. *Ibid*, ss 482.91(4)-(5).
18. See *ibid*, s 482.7(7).
19. See *ibid*, s 506(1).
20. See *ibid*, s 506.
21. *Ibid*, ss 506.03(1)-(2).
22. "New legislative changes aimed at supporting pre-zoning implementation" (10 April 2024), online: *UBCM* <www.ubcm.ca>.
23. See *ibid*, s 506(6).
24. See *ibid*, ss 506(1)(c)(i)-(v).
25. See *ibid*, s 513.
26. See *ibid*, s 513.1.
27. See *ibid*, ss 513.2, 513.3.
28. See *ibid*, s 513.2(4).
29. *Ibid*, s 527.1(2).
30. See *ibid*, s 527.1(2).
31. *Ibid*, s 527.1(1).
32. See *ibid*.



KAI HSIEH

604.358.7014

KAI@CIVICLEGAL.CA

Kai is an associate lawyer of the firm and maintains a general municipal law practice with a focus on real estate development. In particular, he regularly drafts section 219 covenants, statutory rights of ways and other legal agreements for real estate projects, and he has provided assistance during various stages of the development process, from rezoning and development permit issuance to air space parcel subdivision and occupancy permit issuance. He has also assisted with other local government matters, ranging from procurement to regulatory issues.

Kai obtained his Juris Doctor from the Peter A. Allard School of Law at The University of British Columbia, articulated with a provincial organization, and was called to the Bar of British Columbia in May 2022. He was heavily involved in law school through activities such as presenting legal topics to high school students through Legal Education Outreach; singing and dancing in the school's annual comedy sketch show; working as the Centre for Business Law's Operations Officer; participating in the Corporate Counsel Externship; competing in the 2021 Adam F. Fanaki Competition Law Moot where he and his moot partner were awarded "Best Factum – Appellant"; volunteering as a clinician with the Law Students' Legal Advice Program; and volunteering with A2JBC through Pro Bono Students Canada where Kai had the opportunity to discuss access to justice issues with advocates throughout the province and was co-recipient of the 2021 Honourable Donna J. Martinson Access to Justice Award.

Prior to law school, Kai obtained his Bachelor of Applied Science in Mechanical Engineering with Distinction from The University of British Columbia. Upon graduating, he was employed as a Process Improvement Specialist at an architectural glass fabrication company for several years, where he designed and implemented a new laminated glass line as well as numerous mechanical and organizational process improvements.

Outside of the office, Kai has participated in the CBABC Law Student Mentorship Program as a mentor, and you can find him rehearsing for and performing in shows as part of a local community musical theatre group.

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