



Summary of New Climate Change Legislation that Affects Local Governments

October 2008

Bill 10: the *Housing Statutes Amendment Act, 2008*

Bill 27: the *Local Government (Green Communities) Statutes Amendment Act, 2008*

The provincial government enacted new legislation in the spring 2008 legislative session enabling local governments to address climate change and energy efficiency measures. This summary outlines the provisions in the two relevant bills enacted in 2007 and 2008 that relate to local governments and climate change. The term “local government” means both municipalities and regional districts.

Bill 10: the *Housing Statutes Amendment Act, 2008*

On March 31, 2008 the provincial government enacted Bill 10, the *Housing Statutes Amendment Act, 2008*. It enables local governments to enact regulatory bylaws for the purpose of addressing energy and water efficiency, and for reducing greenhouse gas emissions.

Energy Efficiency Standards for Buildings

Bill 10 augments jurisdiction for buildings by allowing local governments to enact bylaws regulating buildings for the purposes of:¹

- The provision of access to a building or other structure, or to part of a building or other structure, for a person with disabilities;
- The conservation of energy or water; and
- The reduction of greenhouse gas emissions.

This adds to the existing purpose of buildings regulations for the health, safety or protection of persons or property.

It is important to note that this power is subject to the *Community Charter's* concurrent jurisdiction section.² Concurrent jurisdiction requires that, because local governments have no

¹ At section 6, amending *Local Government Act* s.694.

² *Local Government Act* s.693.1(2). Concurrent jurisdiction or authority is found in s.9 of the *Community Charter*, S.B.C. 2003, c.26.

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independent jurisdiction in relation to buildings, any bylaw dealing with building regulation must be approved by the Minister, enacted under a regulation, or enabled by agreement.

There is currently a regulation in place, under concurrent jurisdiction, that establishes parameters for local governments to enact building regulations. This is the Buildings and Other Structures Bylaws Regulation,³ which allows local governments to regulate buildings by bylaws that establish standards for the construction, alteration, repair or demolition of buildings or structures that:

- Are listed in sentence 1.1.1.1(2) of Division A of the BC Building Code (the Code)⁴ [structures to which the Code does not apply such as public infrastructure located in a street, utility towers, hydro electric dams and accessory buildings less than 10 square metres], or
- Are not “buildings” as defined in the Code.

For buildings or structures not referred to above, a council may adopt a bylaw that establishes standards for construction, alteration, repair or demolition of a building or structure subject to the restrictions that the bylaw must not:

- Establish standards that are additional to or different from the standards established by the Code,
- Extend or change the application of scope of the Code as specified in articles
 - 1.3.2.1 [the application of the Parts 1, 2, and 3 of Division A of the Code to all buildings covered by the Code],
 - 1.3.3.1 [the application of Parts 1, 7, and 8 of Division B of the Code to all buildings covered by the Code],
 - 1.3.3.2 or 1.3.3.3 [the application of specific part of the Codes to different types of buildings] of Division A of the Code,
 - or subsection 2.2.7 [professional design and review] of Division C of the Code, or
- Change the form of a letter that is set out in a schedule to subsection 2.2.7 [professional design and review] of Division C of the Code.

Therefore, for most buildings any local government bylaw purporting to regulate buildings cannot establish standards that are additional to or different from the standards established by the Code. This is important where a local government wants to require a particular energy efficiency standard that can be met without supplementing the Code. Under the Buildings and Other Structures Bylaws Regulation, a building bylaw cannot set standards that are different from the Code.

³ BC Reg 86/2004.

⁴ British Columbia Building Code Regulation BC Reg. 216/2006

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While the amendments under Bill 10 will be a powerful tool if the Legislature enacts a regulation allowing local governments to enact specific green building bylaws, many local governments will avoid enacting bylaws that require approval from the Minister.

Section 55 of the *Community Charter* is also amended by Bill 10. This section is not subject to the provisions relating to concurrent jurisdiction noted above. Municipal councils are now authorized to require applicants for building permits, in circumstances specified in the municipal bylaws, to provide the municipality with a certification that the plans submitted with the permit application comply with the applicable enactments. This certification must be done by a professional engineer, professional geoscientist or architect who is certified as a specialist in a particular area of their profession. Bill 10 further allows the architecture and engineering professions to set standards and certify green building specialties.

Bill 27: the *Local Government (Green Communities) Statutes Amendment Act, 2008*

The provincial government enacted Bill 27, the *Local Government (Green Communities) Statutes Amendment Act, 2008* on May 29, 2008. It enables several additional land use powers under the *Local Government Act* that have implications for energy efficiency and sustainable communities. It also amends the *Community Charter*, *Vancouver Charter*, the *Greater Vancouver Sewerage and Drainage District Act* and the *Greater Vancouver Water District Act* in order to provide local governments with broader authority in relation to reduction of greenhouse gas emissions, conservation of energy and overall sustainability of communities.

Bill 27 amends the *Local Government Act* to include a definition of the term “greenhouse gas” to mean any or all of carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulphur hexafluoride and any other substance prescribed by regulation.⁵

Official Community Plan Policies

New provisions under Bill 27 require local governments to include targets for the reduction of greenhouse gas emissions and policies and actions of the local government to achieve those targets.⁶ All subsequent bylaws must be consistent with these targets; however, they are not enforceable against a local government unless a court finds that local government action is in direct conflict with the targets.⁷ These provisions apply equally to Official Development Plans under the *Vancouver Charter*.

⁵ At section 11, amending *Local Government Act* s.5.

⁶ At section 20, amending *Local Government Act* s.877.

⁷ *Local Government Act*, s.884; *Rogers v. Saanich* (1983), 22 M.P.L.R. 1 (B.C.S.C.) and *Brooks v. Courtenay (City)* (1991), 78 D.L.R. (4th) 662 (B.C.C.A.).

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Regional Growth Strategies

Like Official Community Plans, Regional Growth Strategies (RGSs) will also now be required to include targets for reducing greenhouse gas emissions and proposed policies and actions for achieving those targets.⁸

Bill 27 has made additional amendments to the *Local Government Act* regarding the adoption and revision processes for an RGS.⁹ The amendments allow local governments to unilaterally decide if an RGS or amendments to an RGS merit a public hearing. The purported object of these changes is to ensure adoption and revision processes for RGSs are more flexible. Under the previous regime, a public hearing was mandatory. Bill 27 has also created the category of 'minor amendments' to RGSs, which can be made through a new 'streamlined' process. This amendment limits public input and alters the strong public consultation feature of the original RGS regime.

Development Permit Areas

Bill 27 enables the designation of development permit areas for the:¹⁰

- Establishment of objectives to promote energy conservation;
- Establishment of objectives to promote water conservation;
- Establishment of objectives to promote the reduction of greenhouse gas emissions.

If an Official Community Plan designates land for these purposes, a development permit or an exemption from a development permit *must* be obtained before that land can be subdivided, construction or alteration of a building can be started, or the land or a structure on it can be altered.¹¹

In order to provide for energy and water conservation and the reduction of greenhouse gas emissions, a development permit area designated for these purposes may include requirements respecting:¹²

- Landscaping, including restrictions on the type and placement of trees and other vegetation in proximity to the buildings and other structures;
- Siting of buildings and other structures;
- Form and exterior design of buildings and other structures;
- Specific features in the development; and
- Machinery, equipment and systems external to buildings and other structures

⁸ At section 14, amending *Local Government Act* s.850.

⁹ At sections 16, 17 and 18, amending *Local Government Act* ss. 855 and 857; adding s. 857.1; and repealing s.855(4).

¹⁰ At section 23, amending *Local Government Act* s.919.1(1).

¹¹ At section 24, amending *Local Government Act* s.920.

¹² At section 24, amending *Local Government Act* s.920.

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The new legislation specifically enables local governments to designate development permit areas for the purpose of reducing greenhouse gases and to impose conditions for siting, exterior design and form.

Development Cost Charges

Local governments have jurisdiction to impose development cost charges (DCCs) on subdivisions or a building permit for new construction to help fund the cost of sewer, water, storm drainage, road and parkland upgrades needed as a result of new growth.¹³

Local governments typically set DCCs for single detached, multifamily, and commercial/industrial uses, but rarely vary the rates depending on the location of the new development in the jurisdiction even though location is one of the most significant factors that influences the infrastructure cost associated with accommodating growth.¹⁴ Kelowna and Nanaimo are notable exceptions because their DCCs for the city centre are significantly less than residential units in suburban areas.¹⁵

Bill 27 explicitly offers further jurisdiction to take into account development that reduces greenhouse gases. It exempts small unit housing from DCCs and requires local governments to consider DCCs in relation to developments with low environmental impact. A DCC is not payable on self-contained dwelling units if, subject to certain bylaws and regulations, each unit is no larger than 29 square metres (312 square feet) and each unit is used solely for residential purposes.¹⁶ The size of a small unit eligible for a DCC exemption may be increased by a local government bylaw or a minister's regulation.

Bill 27 creates a number of categories of development for which a local government may waive or reduce DCCs, subject to certain bylaws and regulations.¹⁷ These categories are:

- Not-for-profit rental housing, including supportive living housing;
- For-profit affordable rental housing;
- A subdivision of small lots that is designed to result in low greenhouse gas emissions;
- A development that is designed to result in low environmental impact.

A local government must take into consideration how development designed to result in low environmental impact may affect the capital cost of infrastructure when setting DCCs in a bylaw.¹⁸ It must also consider whether DCC rates will discourage development designed to result in low environmental impact.

¹³ *Local Government Act*, s.933.

¹⁴ Coriolis Consulting Corp., *ibid.*

¹⁵ Coriolis Consulting Corp., *ibid.* See the chart on page 16.

¹⁶ At section 25, amending *Local Government Act* s.933.

¹⁷ At section 27, adding *Local Government Act* s.933.1.

¹⁸ At section 28, replacing *Local Government Act* s.934(4).

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Finally, Bill 27 requires local governments to produce an annual DCC report, which will include information about DCCs received, expenditures and year-end balances.¹⁹ This provision is intended to increase local government accountability and transparency.

Parking In-Lieu Fees for Alternative Transportation and Transit

Bill 27 allows parking-in-lieu fees to be used for alternative transportation infrastructure.²⁰ If a local government, by bylaw, requires owners or occupiers to provide off-street parking or pay a parking-in-lieu fee, the local government must establish a reserve fund to either provide parking spaces or transportation infrastructure that supports walking, bicycling, public transit or other alternative forms of transportation. If a local government enacts a bylaw under this section, it does not apply to land, buildings or other structures existing at the time the bylaw came into force as long as the land or buildings continue to be put to a use that does not require more off-street parking than was required for the use existing at the time the bylaw came into force.²¹

Local governments will also be required to report annually on all activity related to the off-street-parking reserve fund as well as the planned use of the reserve fund, by category, and the anticipated timeline for future projects enabled by the fund.²²

¹⁹ At section 29, adding *Local Government Act* s. 937.01(1).

²⁰ At section 22, amending *Local Government Act* s.906.

²¹ Proposed s.906(5). This reflects the current wording in s.906(6).

²² At section 22, adding *Local Government Act* s.906(9).