

## Community Charter Update: Concurrent Regulations

The *Community Charter* establishes five spheres of concurrent authority, which are areas where municipalities and the province recognize shared interests and hold concurrent jurisdiction. These spheres are set out in the *Community Charter* sec. 9(1):

- public health;
- protection of the natural environment;
- animals in relation to wildlife;
- building standards; and
- prohibiting soil removal or deposit .

The concurrent authority regulations are now complete, providing members some clarity on the remaining powers available to municipalities under these Charter spheres, and providing direction on local government proposals for authorities that will need ministerial approval.

The completion of the concurrent authority regulations will give municipalities some additional regulatory options. However, using the concurrent authority tools also brings some added requirements. As established in the Charter {sec.9}, any municipal bylaw related to the concurrent spheres must be established:

- (a) in accordance with a minister's regulation, or
- (b) in accordance with an agreement between the minister responsible and one or more municipalities, or
- (c) by approval of the minister responsible.

Below is a brief explanation of the concurrent regulations that have been developed in these areas, and an overview of the areas in which local governments are free to regulate within the spheres of concurrent authority.

### Public Health Regulation

The Public Health Bylaws Regulation (B.C. Reg. 42/2004), deposited on February 12, 2004, provides that local governments now have to deposit with the Ministry of Health Services local bylaws that deal with matters similar to those referenced under the old LGA provisions for public health. This includes bylaws in relation

to protection, promotion or preservation of the health of individuals or which relate to the maintenance of sanitary conditions in municipalities. Under the previous LGA provisions, these matters required approval of the Minister of Health Services.

Under the new regulation, bylaws that restrict or have the potential to restrict an individual's access to health services or that may affect the resources of health authorities will require the Minister's approval.

Prior to being adopted, all public health related bylaws will require consultation by the local government with the local medical health officer or the regional health board, as appropriate.

A Consultation Agreement among the Ministry of Health Services, MCAWS and UBCM to supplement the regulation is under discussion now. It is intended that the agreement will establish an effective intergovernmental mechanism to provide advice and recommendations on the ongoing content of the ministerial regulation, and will provide the framework by which the parties will monitor, review and amend the regulation over time. Given that certain matters cross the realms of health and environment, both UBCM Health and Environment Committees are likely to serve as the consulting bodies at UBCM.

The agreement will also set out the process by which bylaws under the regulation will be created, deposited/approved, and brought into force.

### Environment and Wildlife Regulation

The regulation, (B.C. Reg. 144/2004) deposited on March 26, 2004, outlines areas in which municipalities have clear authority to enact bylaws within the spheres of "Protection of the Natural Environment" and "Animals in Relation to Wildlife". (The related Definition of Wildlife Regulation, clarifies that for these purposes wildlife is as defined in the *Wildlife Act*.)

The environment and wildlife regulation has the following key provisions:

- local government can act with same authority as in the LGA regarding the sale of wildflowers [LGA sec. 722].
- similar authority as the LGA regarding the Protection of Waterways [LGA Sec. 725.1] but the LGA power to prohibit has been enhanced with the addition of the power to regulate, which gives municipalities some authority to provide terms and conditions when regulating activities affecting waterways.
- new authorities are provided in relation to regulating, prohibiting and imposing requirements with respect to:
  - the application of pesticides for 'cosmetic' use in the maintenance of outdoor plants and turf on residential or municipal properties,
  - the control of alien invasive species, which includes a Schedule listing plants, invertebrates (insects) and some vertebrate species, and
  - the control of wildlife species that are generally not recognized as threatened or endangered (i.e. municipalities can consider bylaws to control animals listed in Schedules B and C of the wildlife Designation and Exemption Regulation).

Any municipality wishing to exercise powers not provided for in the regulation will need ministerial approval.

The completed Consultation Agreement between the Ministry of Water, Land, and Air Protection, MCAWS and UBCM provides the framework for intergovernmental relations and review and amendment to the ministerial regulation. To add some certainty, the agreement clearly outlines areas in which local authority will not be provided. This list will be subject to review and amendment. Municipal requests for powers will be reviewed on an annual or more regular basis to determine if amendments to the regulation can provide municipalities with additional authorities. The volume and nature of municipal requests for powers will determine the frequency of review and whether case by case authorities are granted or the regulation is amended. The Environment Protocol Steering Committee is the consultation body identified to review and make recommendations to amend the regulation.

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### **Buildings and Other Structures Bylaws Regulation**

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**T**his regulation (B.C. Reg. 86/2004) deposited on March 11, 2004, defines matters that municipalities may deal with autonomously with respect to building standards. The regulation permits local governments to make building bylaws on any matters that are not regulated by the BC

Building Code. These matters relate to practice, including administrative and operational requirements and procedures, (e.g. inspections, building permit process). Any local government bylaw that has the effect of varying a technical standard in the BC Building Code will require provincial approval, (all existing bylaws will be 'grandfathered' and will not be subject to the regulation until or unless they are amended).

UBCM participated with industry in a Reference Group established by MCAWS to provide input on how interests could be "harmonized" with respect to building standards. On January 23, 2004, we reviewed the draft regulation provided to us by MCAWS. It was consistent with what had been agreed to, although we noted that it would need to be accompanied by explanatory notes, since the regulation itself is not self-explanatory. MCAWS has advised that they are working on these explanatory notes to accompany the regulation.

The onus is on local governments to determine if they need provincial approval of a bylaw that alters the requirements or application of the BC Building Code. So far, the Ministry has received less than a dozen bylaws for review, some of which they have already determined will not require ministerial approval. Some local governments have expressed interest in a bylaw that would vary the BC Building Code in relation to development of adaptable housing. The Ministry hopes to support a collective approach to this issue, to achieve their objective of encouraging 'consistency in variation' where the need for variation can be justified.

There is no related consultation agreement accompanying this regulation.

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### **Prohibition of Soil Removal and Deposit**

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**T**here is no regulation at this time. Municipal bylaws prohibiting soil removal or prohibiting the deposit of soil, making reference to the quality of soil or contamination will continue to require the appropriate Ministerial approval.

Please check the Ministry of Community, Aboriginal and Women's Services web site for current postings. The Ministry expects to have the complete concurrent authority materials on the website by mid-April, and plan to include a brief summary of the new concurrent regulations, electronic versions of the regulations, as well as links to the buildings explanatory notes and contact information for the other ministries responsible:

[http://www.mcaaws.gov.bc.ca/charter/opportunity/concurrent\\_regulation.htm](http://www.mcaaws.gov.bc.ca/charter/opportunity/concurrent_regulation.htm).