

# Bill 44 – Small Housing

UBCM Housing Summit  
February 14, 2024

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# Bill 44 Legal Issues

Statutory Requirements and Compliance

# Statutory Framework

- Bill 44 – 2023 *Housing Statutes (Residential Development) Amendment Act*, 2023: royal assent on November 30, 2023
  - Introduced significant amendments to the LGA
- Local Government Zoning Bylaw Regulation: Order in Council issued December 7, 2023
- The Provincial Policy Manual & Site Standards: released December 7, 2023

**Key Component:** Local governments must amend their zoning bylaws to comply with the new small-scale multi-unit housing (“SSMUH”) density requirements by June 30, 2024.

# Density Entitlements

- Applies to zones where the “*residential use* would otherwise be restricted to...” → captures mixed-use zones
- 1 additional unit (secondary suite or ADU) on single-family zones
  - Applies uniformly across jurisdictions
- Higher density requirements for lands in more urban areas
  - Applies to duplex and single-family zones (that may permit secondary suites/ADUs)
  - 3 – 6 units depending on size of parcel and proximity to bus stops

# Initial Applicability of 3 – 6 Unit Density

1. Are the lands in a "restricted zone"?

- Is the residential use otherwise restricted to:
  - single-family dwellings
  - single-family dwellings + one additional unit (ADU/secondary suite)
  - duplexes; or
  - duplexes + up to two additional units (ADUs/secondary suites)
- If yes - continue to step 2

2. Where are the lands located?

- Are the lands located:
  - (a) wholly or partly within an urban containment boundary established by a RGS
  - if (a) does not apply, within a municipality with a population > 5,000 and wholly or partly within an urban containment boundary in an OCP
  - if (a) or (b) does not apply, lands located in a municipality with a population > 5,000
- If yes - continue to step 3

3. What is the size of the lands?

- Are the lands:
  - less than 280m<sup>2</sup>: if yes = 3 units
  - greater than 280m<sup>2</sup>: if yes = 4 units
  - at least 281m<sup>2</sup> and located within 400m from a "prescribed" bus stop: if yes = 6 units AND no off-street parking requirements

## Two exemptions that apply to all the SSMUH requirements:

QP certifies that the additional density would significantly increase a hazardous condition

Land within a transit-oriented area (regulated distinctly)



## 3 – 6 unit requirement will not apply to land:

protected under  
*Heritage  
Conservation  
Act*

that was *already*  
designated under  
a heritage  
designation bylaw  
on December 7,  
2023

that is not  
connected to  
water or sewer  
services

in zones with a  
minimum lot  
size of 4050  
m<sup>2</sup>

greater than  
4050 m<sup>2</sup>

## Notice

If an exemption applies, local governments are subject to notice obligations and do not have discretion to simply exclude those lands from zoning amendments without giving proper notice to the Minister.

Notice Must Specify:

- Exempt lands
- Provision exemption is exercised

# Extensions & Enforcement

- Local governments can apply to Minister to request extension on following grounds:
  - Upgrading infrastructure
  - Compliance will increase risk to health, public safety or environment due to infrastructure constraints
  - “Extraordinary circumstances” such as natural disasters
- Extensions are discretionary and should not be relied on
- If a local government fails to comply, Minister can enact a zoning bylaw to override the local government’s own zoning



# OCP Consistency



Generally, all bylaws enacted must be consistent with the OCP



New s. 788 to the LGA – SSMUH zoning bylaws do not have to be consistent with the OCP until December 31, 2025

# Consistency with OCP

- in relation to the new rules governing
  - hearings and relevant zoning consistency with OCP, and
  - need for new SSMUH and other zoning to be consistent with OCP
- what are the rules governing zoning **consistency** with official plan?

# Consistency with OCP

*Dong v. Bowen Island Municipality*, 2016 BCSC 553 (CanLII)

- For bylaw to be prohibited as inconsistent, it must be “incompatible” with the OCP, described as “absolute and direct collision”. In *Rogers v. Saanich (District)* (1983), 146 D.L.R. (3d) 475, 22 M.P.L.R. 1 (B.C.S.C.):  
... the written efforts of planners are really objectives and unless there is an absolute and direct collision ...they should be regarded, generally speaking as statements of policy and not to be construed as would-be acts of Parliament.
- reason for the “incompatible” or “absolute and direct collision” test is OCP not a strict set of specific rules and prohibitions but document drafted by planners setting out general objectives and policies

# Consistency with OCP (continued)

*O'Shea/Oceanmount Community Association v. Gibsons (Town)*, 2020 BCSC 698,

- Court set down principles governing consistency between zoning and OCP
  - OCP is policy document, not given same level of scrutiny “as would-be acts of Parliament”
  - OCP meant to capture long-term vision or philosophy - cannot be construed with scrutiny afforded statute
  - Inconsistency with OCP only established if clear contradiction between OCP and bylaw
  - When judged on reasonableness, consistency considered holistically in conjunction with other considerations that factored into making decision
  - not exacting standard - must consider wide variety of factors identified in what is a policy document to guide planning decisions

# Zoning Bylaw Updates

Practice Advice & Approaches

# The Policy Manual

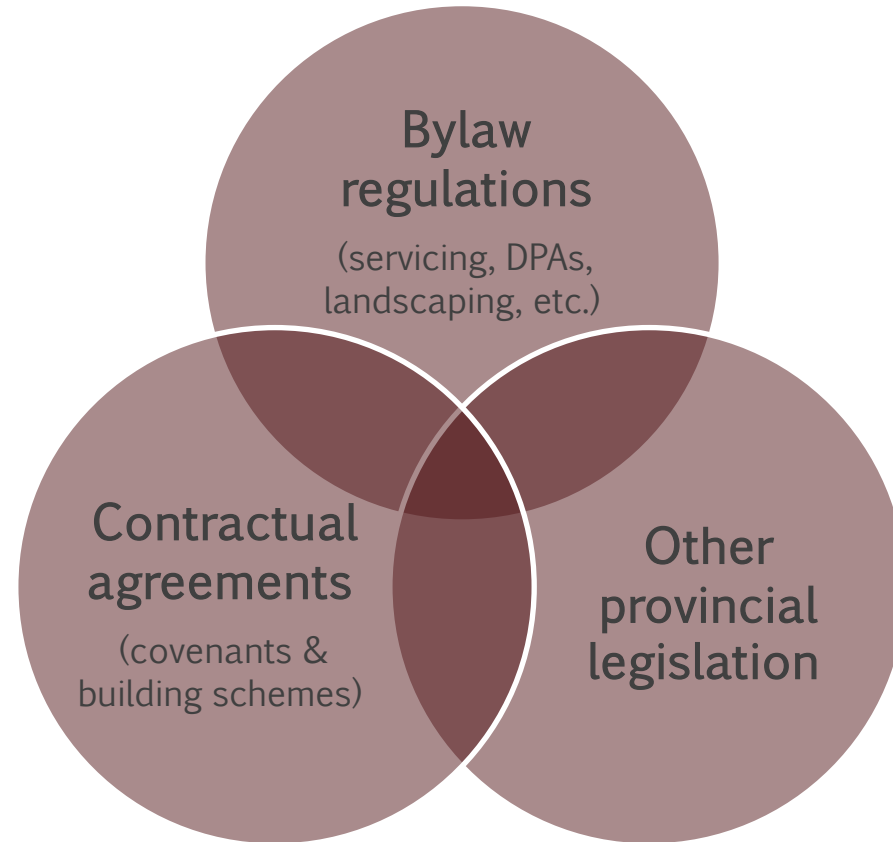
- Local governments “must consider” the Policy Manual
  - Does not require strict compliance
- Only Part 4 provides the guidelines that must be considered
- Document rationale for diverging from guidelines
  - Identify specific Policy Manual recommendation and reasons for diverging from it
  - Can be included in the accompanying staff report



# Adoption Impacts

- No automatic or immediate rights to the SSMUH density
- Density entitlements will apply when zoning bylaw is amended (by June 30, 2024)
  - Current density regulations & density bonusing schemes will continue to apply
- In-stream rezoning applications may become unnecessary
  - Advise applicant of coming changes and allow them to decide how to proceed
  - Adoption of SSMUH requirements are certain
  - May issue refunds in accordance with bylaw or by resolution (if no assistance to business issues)
    - Recommend bylaw amendments to guide refunds uniformly and avoid legal challenges

# Areas of Overlap





- Section 457.1 – local governments must not exercise the following powers in a manner that “unreasonably prohibits or restricts” the SSMUH density:
  - Permits: DPs, TUPs, DVPs, tree cutting
  - Zoning bylaws
  - Phased development agreements
  - Runoff control bylaws
  - Flood plain bylaws
  - Sign bylaws
  - Screening & landscaping bylaws
  - Heritage alteration permits
  - Heritage conservation areas

## Restriction on Regulatory Powers

An unreasonable prohibition or restriction is one that is not based on any rational analysis and that is not justified in the circumstances.

Ex:

- Rezoning entire jurisdiction industrial to avoid SSMUH requirements = unreasonable
- Setback requirement to preserve a consistent streetscape and avoid obstructing neighbouring properties = reasonable

# Other Overlapping Restrictions

- Overlapping provincial legislation will continue to apply to SSMUH developments
  - Building Code, *ALCA* and Riparian Areas Protection Regulation will continue to apply and take precedence
- Covenants and building schemes may restrict SSMUH density
  - Covenants and building schemes that conflict with the SSMUH requirements will prevail
  - Nothing in the LGA that would prevent local governments and property owners from entering into covenants to control density
  - Section 219 covenants would have to be entered into voluntarily
- Developers do not have unfettered right to the SSMUH density
  - Subject to local government regulations, other provincial legislation and covenants

# Legal Issues

This is an entirely new statutory regime that is evolving

Some of the common legal issues:

- interpretation and applicability of the requirements
- integration with Transit Areas, new financial tools, new DPs, infrastructure deficits
- drafting and reviewing new bylaws
- writing exemption and extension letters to Minister
- determining compliance with the SSMUH requirements
- mitigating impacts of SSMUH requirements
- complying with all requirements by the deadlines