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December 6, 2022

**BULLETIN**

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**BILL 43 - HOUSING SUPPLY ACT**

On November 24, 2022, Bill 43 – 2022 the Housing Supply Act received Royal Assent, and will come into force by regulation. This legislation would enable the Province to set housing targets for specific municipalities, and to take certain actions if those targets are not met.

Bill 43 allows the Province to impose a number of substantive and procedural requirements upon municipalities in seeking to reach housing targets. Municipalities may be required to provide information and reports to the Province, and where they fail to meet housing targets prescribed for the municipality by the Province, the Province is enabled to take several courses of action. The first is to appoint advisors with broad jurisdiction to review municipal records, and create a report with recommendations for meeting the housing target in the future. Alternatively, or as well, the Province is enabled to intervene in a municipality's bylaw-making and permit-issuing powers. Currently, the Province is able to alter bylaws under the *Local Government Act*, but it does not presently have the authority to enact new bylaws or issue or refuse permits under the *Vancouver Charter*, *Local Government Act*, and *Community Charter*. Finally, the legislation sets out a relatively deferential statutory standard of review when a decision made under this legislation is judicially reviewed.

The first step under the legislation is for the responsible minister to issue a housing target order. A housing target order sets out for a specified municipality the housing target, a series of performance indicators, and a deadline by which the municipality's progress towards the housing target will be assessed. The minister is required to consider a number of enumerated factors in issuing such an order, and must consult the municipality and provide it an opportunity to make comments on the order before it is issued.

A housing target order will require the municipality to submit progress reports to the minister, which indicate the actions taken, progress made, and anticipated future actions towards meeting the housing target within a two-year period following the submission of the progress report. Council for the municipality must also receive the progress report at a public meeting, and make it available online.

If, upon receipt of a progress report, the minister determines that insufficient progress has been made towards a housing target, then the minister is enabled to take further steps. They can appoint an advisor for the municipality, or issue a directive. The only precondition is that the minister must inform the municipality of their intended course of action, and provide the municipality opportunity to comment upon it.

If an advisor is appointed, the advisor is tasked to review the municipality's efforts to meet the housing target. In doing so, they may enter the premises of the municipality, and inspect any of its records or systems. The only restriction on this authority is that the advisor is prohibited from reviewing content related to a closed meeting. The advisor then submits a report to the minister with recommendations for further actions that may be taken, either by the municipality or the minister, to reach the housing target.

Alternatively, or after receiving such an advisor's report, the minister may issue a directive. A directive may require a municipality to enact or amend a bylaw referred to under the existing Provincial override power in s. 584 of the *Local Government Act*, or to issue or refuse a permit that the municipality could otherwise issue or refuse under the *Community Charter*, *Local Government Act*, or *Vancouver Charter*.

The bylaw powers enumerated under s. 584 include bylaws related to official community plans, zoning bylaws, a variety of permitting regimes, and other land use regulation powers. As mentioned previously, the power to issue a directive is not entirely new, in that s. 584 already enabled the Province to alter existing bylaws by giving notice to the local government. However, s. 584 did not empower the Province to enact bylaws. As such, the power to enact or amend a bylaw by directive expands upon the provincial government's current ability to override municipal bylaws.

The ministerial power to issue or refuse a permit by directive does not currently exist within the *Local Government Act*, *Community Charter*, or *Vancouver Charter*. Municipal permitting powers are extensive, and in theory the Province could issue or refuse a broad range of municipal permits through a directive. In practice, this power is likely intended to enable the Province to issue development permits, building permits, or development variance permits for the purpose of meeting a housing target.

If the Province's decision to issue a housing target order or directive is judicially reviewed, the legislation provides that for findings of fact or law, or the exercise of discretion by the responsible minister, the standard of review is patent unreasonableness. This standard is arguably more deferential to the minister's judgment than the common law standard, which is simply reasonableness. A housing target order or directive will only be overturned where it is arbitrary, issued for an improper purpose, based on irrelevant factors or fails to take into account statutory requirements.

The exercise of these powers is subject to some minimal procedural requirements, mainly the requirement to provide a municipality with the opportunity to comment upon a directive before it is issued, but these are not substantial hurdles. In general, Bill 43 is a clear indication from the Province of its willingness to intervene in matters that have in recent history been entirely within the jurisdiction of local governments, for the purpose of achieving provincial goals in relation to housing.