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LOCAL GOVERNMENT AND THE PROVINCIAL HOUSING

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LOCAL GOVERNMENT AND THE PROVINCIAL HOUSING AGENDA

I. INTRODUCTION

The provincial government's April 2023 "Homes for People" housing strategy identified 9 separate actions, most of which (highlighted below) directly engage the priorities and practices of local governments.

> Focused on four priorities – unlocking more homes faster; delivering better, more affordable homes; helping those with the greatest housing need; and creating a housing market for people, not speculators – the actions in Homes for People include:
>
> - delivering more middle-income small-scale, multi-unit housing that people can afford, including town homes, duplexes and triplexes through zoning changes and proactive partnerships;
> - offering forgivable loans for homeowners to build and rent secondary suites below market rates to increase affordable rental supply quickly;
> - building thousands more affordable homes for renters, Indigenous Peoples on and off reserve, women and children leaving violence, and building thousands more on-campus student housing units;
> - delivering thousands of new homes near public transit, and launching BC Builds to use public land to deliver affordable homes for people;
> - introducing a flipping tax to discourage short-term speculation;
> - providing an annual income-tested tax credit of up to $400 per year for renters;
> - providing more homes and supports for people experiencing or at risk of homelessness;
> - streamlining and modernizing permitting to reduce costs and speed up approvals to get homes built faster; …

This fall the government introduced Bill 35, the *Short-Term Rental Accommodations Act*, Bill 44, the *Housing Statutes (Residential Development) Amendment Act*, 2023, and the *Housing Statutes (Transit-Oriented Development) Amendment Act*, 2023 (Bill 47), which implement several aspects of the provincial housing strategy; more legislation is expected in the 2024 session. This paper examines aspects of the Province's strategy that particularly affect local

governments and takes a preliminary look at Bills 35, 44 and 47. Together with the *Housing Statutes (Development Financing) Amendment Act*, 2023 (Bill 46) (which isn't addressed in this paper), Bills 44 and 47 make the most substantial amendments to the planning and land use management authorities of local government since Part 14 of the *Local Government Act* was revised in 1985. (Bills 44, 46 and 47 make as many equivalent changes to Vancouver's land use management powers under the *Vancouver Charter* as are practical, given the fact that the Charter doesn't contemplate an official community plan.)

II. MANDATORY ZONING CHANGES FOR CERTAIN HOUSING TYPES

The most aggressive aspect of the provincial housing strategy is the extension of provincial housing policy into local land use regulation. To put it bluntly, the government is no longer content to leave the zoning authority entirely with local governments, insofar as small-scale multi-unit housing is concerned. Local governments' authority to rule out that kind of housing is curtailed under Bill 44. A much more modest initiative of this nature occurred many years ago in relation to small-scale community care facilities, which local governments may not prohibit in low-density residential areas (*Community Care and Assisted Living Act*, s. 20),[1] and many years earlier in relation to agricultural land uses in the Agricultural Land Reserve (*Agricultural Land Commission Act*, s. 46), which similarly cannot be prohibited in the ALR by local zoning regulations. The government's housing initiative parallels steps that have recently been taken by the national government in New Zealand and the state government in Oregon, and are also under consideration in Washington State. In each case senior government zoning and development standards are, in effect, substituted for local bylaw standards to enable builders to increase housing supply without going through a local zoning approval process. The "affordable" aspect of this element of our provincial government's housing strategy is premised entirely on the assumption (questioned by some) that any increase in housing supply will produce a reduction in the cost of housing (or, at least, a reduction in the rate of cost increase).

Bill 44 contains three major initiatives designed to advance the provincial housing strategy. They build on the requirements for local government housing needs reports that were enacted several years ago, and that until now local governments were merely required to "consider" when enacting an OCP or amending the policies in an OCP that deal with housing. All BC local governments were required to have their first housing needs report completed by May of 2021 and some have since had their reports updated. These reports must generally be prepared in a format and level of detail that is prescribed in the Housing Needs Report Regulation B.C. Reg. 90/2019, and updated at a minimum of 5-year intervals. In retrospect, the legislation that required housing needs reports seems to have established the foundation for Bill 44 years before the government indicated any intention to retrieve an important aspect of the zoning

[1] The hostile reception that a larger-scale child day-care facility received from its potential Port Coquitlam neighbours in the fall of 2023 had some observers speculating that the provincial government should now be considering allowing even larger child care facilities to be established notwithstanding local zoning restrictions.

power. Under Bill 44, local governments must use an "interim housing needs report", prepared by a date that is to be prescribed by regulation, for the purposes of the official community plan and zoning bylaw amendments described below. Those amendments must be completed by December 31 of the year in which the interim housing needs report is received.

A. Housing Needs Reports and Official Community Plans

Bill 44 amends the *Local Government Act* to require statements and map designations in municipal official community plans to cover the anticipated demand for housing for at least 20 years (instead of the 5 years mandated since 1985), and for the first time to require municipalities and designated regional districts to adopt official community plans (which are currently optional, though virtually all municipalities have one). Bill 44 strengthens the linkage between housing needs reports and municipal OCPs by requiring the OCP statements and map designations for residential development to accommodate the 20-year housing demand documented in the most recent housing needs report. Housing policies to address each class of housing needs addressed in that report in accordance with B.C. Reg. 90/2019 must also be included, in both regional district and municipal OCPs.

B. Housing Needs Reports and Zoning Bylaws

Further, Bill 44 requires municipalities in their zoning bylaws to permit the use and density of use required to accommodate, at a minimum, the 20-year housing demand documented in the most recent housing needs assessment and now reflected in the OCP. Again, the zoning bylaw must subsequently be updated in consequence of each update to the housing needs report. Density permitted to accommodate the 20-year housing demand cannot take the form of a density bonus, which Bill 44 refers to as a "conditional density rule". Because elsewhere in Bill 44 there is a prohibition on holding public hearings for zoning amendments that are consistent with an OCP and whose sole purpose is to permit residential development, most such amendments will be adopted without a public hearing, though if enacted concurrently with OCP amendments to reflect a housing needs report or update there would be a public hearing on the OCP amendment.

C. Zoning Amendments for Small-Scale Multi-Unit Development

Local governments are also obliged by new Part 14 provisions to amend their zoning bylaws by June 30, 2024 to permit additional development on parcels of land that are currently limited to a single dwelling unit. If provincial regulations are made addressing building siting, size, dimensions, location or type of housing unit required to be permitted, the zoning bylaw must include those regulations. While development permit guidelines and conditions may not "unreasonably prohibit or restrict" the additional development, it appears that it will still be possible to address building form and character issues for multi-family or intensive residential development in these areas, and in doing so to vary development standards in the zoning bylaw that are based on provincial regulations. In amending their bylaws, local governments must consider any provincial policy guidelines for small-scale multi-family housing issued by the

Minister of Housing in respect of either the process of developing and adopting the bylaw amendments, or the content of the amendments. A 95-page guidelines document that deals in considerable detail with the content of zoning regulations was issued on December 7, 2023. No public hearing on these bylaws is permitted, and the bylaws must be adopted despite any inconsistency with an official community plan. The Minister of Housing is given authority (subject to Cabinet approval) to amend any local zoning bylaw by ministerial order if the local government has not amended it by the deadline set by Bill 44. Local governments may not exercise their authority under s. 525 of the *Local Government Act* to require off-street parking spaces for additional units other than secondary suites and dwelling units in accessory buildings. Exempt from these bylaw requirements are parcels that are protected by heritage designation bylaws, parcels that aren't connected to municipal water and sewer, and parcels larger than one acre in area or in a zone with a minimum subdivision parcel area of 1 acre or more. There are provisions in Bill 44 for the Minister to extend the deadline (to not later than December 31, 2030) on application by the local government, to accommodate infrastructure upgrade scheduling or other "extraordinary circumstances". The required amendments are as follows:

- Under s. 481.3(3) of the *Local Government Act* as amended by Bill 44, local governments must amend their zoning bylaws in respect of zones that permit only single-family dwellings, to also permit one or both of a secondary suite in the principal residential building and another dwelling unit in an accessory building.

- Further, under s. 481.3(4) and the Local Government Zoning Bylaw Regulation B.C. Reg. 262/2023, at least 3 housing units must be permitted on smaller lots (280 square metres or less) and 4 units on larger lots (over 280 square metres). This applies within urban containment boundaries established in a regional growth strategy and within municipalities of at least 5000 population in the most recent federal census.

- Even greater densification is required under s. 481.3(5) and the Zoning Bylaw Regulation for parcels of specified size within a prescribed distance from a bus stop. On parcels of at least 280 square metres, at least 6 housing units are required instead of 4, if the parcel is within 400 metres of a bus stop served by a bus route with scheduled daytime service at least every 15 minutes.

As with housing that must be permitted to accommodate the anticipated 20-year demand, local governments may not treat the additional housing units permitted by their amended bylaw pursuant to ss. 481.3(4) or (5) as density bonuses requiring the provision of amenities. The provincial guidelines for small-scale multi-unit housing include site standards that must be taken into consideration in amending local bylaws; generally, the standards are intended to

support financially viable developments given the mandated density entitlements. The standards address lot line setbacks, building height, lot coverage and off-street parking requirements in four regulatory "packages" corresponding to the number of housing units permitted on the lot.

Meanwhile, the *Housing Supply Act*, Bill 43 of 2022, is already in effect and the Minister of Housing has issued housing target orders for Abbotsford, Delta, Kamloops, North Vancouver District, Oak Bay, Port Moody, Saanich, Vancouver, Victoria and West Vancouver. Included are recommendations on the composition of the new housing supply by unit size (one-bedroom, two-bedroom, three-bedroom), rental versus ownership units, below-market rental units and units with on-site supports. Here the reliance on supply alone to create not only more housing, but more affordable housing, is at least notionally supplemented with more direct attempts to get at the price and tenure of new supply. Presumably, provincially-mandated zoning for multi-unit housing and transit-oriented areas will make it easier for municipalities to meet these targets, though in the background is the government's authority under sections 11 and 12 of the *Housing Supply Act* to enact bylaws and issue permits to achieve the housing targets upon the local government's failure to do so. If provincial targets aren't met the government will be able to amend local bylaws and issue development and building permits by Cabinet order. Because the authority of the Cabinet to take those measures applies despite the *Local Government Act*, it would seem that the bylaw amendments would be valid despite any public hearing requirement and despite any inconsistency with the applicable OCP (though the Cabinet could also order companion amendments to the OCP), and such development permits would be valid despite any failure to comply with applicable permit guidelines.

III. UNAVOIDABLE ZONING AMENDMENTS FOR TRANSIT-ORIENTED DEVELOPMENT (BILL 47)

Amendments to the *Local Government Act* and *Vancouver Charter* via the *Housing Statutes (Transit-Oriented Areas) Amendment Act, 2023* (Bill 47), together with the Local Government Transit-Oriented Areas Regulation B.C. Reg. 263/2023, create further minimum density entitlements that apply in the vicinity of transportation facilities, and that displace any entitlements mandated by Bill 44 where there is overlap. Where owners seek zoning amendments for residential properties in "transit-oriented areas", local governments may not exercise the zoning power to permit less density than is prescribed in the Regulation. The OCP consistency rule is inapplicable to such zoning amendments until December 31, 2025. Prescribed densities range from a floor area ratio (FAR) of 3.0 to 5.0 and building heights range from 8 to 20 storeys, for transit-oriented areas associated with a transit station in the lower mainland. Prescribed densities range from an FAR of 1.5 to 4.0 and heights from 4 to 12 storeys for transit-oriented areas associated with a bus exchange or the West Coast Express. The usual development permit requirements will continue to apply. Since heritage designations and s. 219 covenants that limit development rights will also continue to apply, rezoning applications would not likely be made for affected properties unless the owner also intends to attempt to remove those limitations.

Further, as with extra housing units required by the new section 481.3(5) of the *Local Government Act*, when zoning for permitted residential density in transit-oriented areas local governments may not require off-street parking spaces to be provided other than for disabled persons, though the provincial government may do so. Local government bylaw standards for the design of such spaces, whether provided voluntarily or pursuant to provincial requirements, will still apply.

To operationalize these new minimum density entitlements for transit-oriented areas, local governments must by June 30, 2024 define the areas by bylaw, which could but need not be a bylaw amending an official community plan or zoning bylaw, and in doing so must consider applicable provincial guidelines. The 34-page Provincial Policy Manual: Transit-Oriented Areas was issued on December 7, 2023. Transit-oriented areas must include the area within 800 metres of a transit station and within 400 metres of a bus exchange. These areas must be divided into "tiers" based on distance from the transit facility, for which the TOA Regulation prescribes minimum FAR and building height entitlements. The government has identified in the Designation of Transit-Oriented Areas Regulation B.C. Reg. 266/2023 52 transit stations in municipalities whose official plans are considered transit-supportive; these interim designations support immediate application of the minimum density entitlements in Bill 47 if rezoning applications are made. These areas, and others coming within the criteria established in Bill 47, must be designated by local bylaw by June 30, 2024.

IV. SECONDARY SUITES

As noted above, Bill 44 requires local governments enacting a zoning bylaw on or after June 30, 2024 to permit, in former single-family residential zones, one or both of a secondary suite and an accessory dwelling unit in a separate building. This requirement applies only in respect of zones that restrict permitted residential use to detached single-family dwellings; not many of these zones remain in existence as we approach the end of 2023. The local government must not hold a public hearing in respect of any such bylaw, but must publish a notice before considering first reading (in the same manner as currently required if the local government decides not to hold a public hearing).

The government has established and funded a homeowner loan program for secondary suites and detached accessory dwelling units. Applicants must have a building permit authorizing the construction of their suite or laneway home in order to receive a loan. The loan of up to $40,000 and up to 50% of the total cost of creating the suite is forgivable at the rate of 20% per year provided that the suite is rented at below market rates. The maximum rent for the program is set by BC Housing and for 2023 ranges from $600 for a one-bedroom suite in Quesnel to $1500 for the same suite in Vancouver.

"Homes for People" was cited in a recent Surrey bylaw enforcement case (*Surrey (City) v. Sidhu* 2023 BCSC 1837), by a property owner resisting a City application to the BC Supreme Court for an order to demolish a building addition and accessory dwelling (containing 2 new rental suites) that the owner had constructed without permits, and in contravention of zoning bylaw density

and siting rules. The Court wasn't persuaded that the government's "Homes for People" initiative was intended to "encourage the unlawful construction of dwellings in the province as part of the solution" to the housing supply crisis, and ordered the owner to demolish the units.

V. BUILDING AFFORDABLE HOMES, USING PUBLIC LANDS TO DELIVER AFFORDABLE HOMES, PROVIDING MORE HOMES FOR HOMELESS PEOPLE

Through the BC Housing Management Commission (BC Housing), the provincial government is active as a housing developer and redeveloper, with more than 20 subsidized housing projects currently profiled on the BC Housing website. Presumably these three elements of the housing strategy will be implemented through BC Housing, including partnerships with non-governmental organizations. In that regard it should be kept in mind that BC Housing is immune from local zoning regulations by virtue of s. 14(2) of the *Interpretation Act*. Further, under the BC Supreme Court's decision in *Buechler v. Island Crisis Care Society* 2019 BCSC 1899, the immunity may extend to a third party providing affordable housing "at the behest of" BC Housing and the government. As regards the reference to "public lands", one might take note of the Ontario government's recent initiative (Bill 98, 2023) to take control of school board land not immediately required for the construction or expansion of schools, for use for affordable housing. It may be unlikely that the BC government's drive to increase housing supply will limit its definition of "public lands" to lands held by the Province itself.

VI. DELIVERING NEW HOMES NEAR TRANSIT

As noted above, Bill 44 mandates the amendment of local zoning bylaws to permit additional small-scale multi-unit residential development on parcels served by bus stops. Bill 47 mandates specified minimum densities where land is being rezoned in the vicinity of transit stations and bus exchanges (but local governments need not adopt zoning except in response to an application, in which case the authority to reject the application is curtailed). The provincial housing strategy extends, though, to acting as a developer of market housing. Like local governments, the Province is aware that the provision of supportive infrastructure such as transit services adds to the value of adjacent land, and shares the notion that at least a portion of the incremental value should accrue to the government that provided the infrastructure. As an alternative to levying a provincial development cost charge, the government has enabled the BC Transportation Financing Authority (BCTFA) to itself undertake all types of development in the vicinity of transit stations, thereby directly capturing incremental land values associated with transportation infrastructure. Amendments to the *Transportation Act* in 2022 added to the statutory purposes of the BCTFA the authority to acquire, construct, hold, improve or operate "transit-oriented developments", defined as development, including commercial, industrial, institutional, recreational or residential development, that is intended to support use of public transit, and located within a prescribed distance from a transit station or bus exchange; the prescribed distance is 800 metres (Transportation Act Regulation, s. 7). As an agent of the government, the Authority is eligible for the immunity from local zoning regulations afforded by s. 14(2) of the *Interpretation Act*, though it may choose to go through local approval procedures voluntarily (especially for developments for which Bill 44 would prohibit a public hearing).

The South Coast British Columbia Transportation Authority (TransLink), which is governed by a board appointed by the government, has also entered the for-profit real estate development industry as a means of recovering the cost of transit services. While it wouldn't be unusual to see a transit authority developing mixed-use projects on its own transit station sites, TransLink has recently embarked with a private sector partner on a 30-storey mixed-use project across the street from the terminus station on its new Broadway Extension of the Millennium Line.[2] While TransLink is already collecting development cost charges to assist with the cost of transit projects, the government may be planning to implement part of its "new homes near transit" strategy via TransLink real estate development activities. Unlike the BCTFA, TransLink is not an agent of the government, and these types of projects will have to comply with local zoning.

VII. MODERNIZING PERMIT PROCESSES

The government's Development Application Process Review (DAPR) identified application processing times as a contributor to increasing housing costs, via development project interest charges accumulating during the application review process. In other jurisdictions such as Ontario the same concern has resulted in the enactment of statutory processing time limits, with related penalties for failing to meet the processing deadline (in Ontario, the mandatory refund of application fees). Not surprisingly, local governments found ways to skirt the legislation to enable the thorough consideration of applications, for example by setting up preliminary application processes. In BC, the government has focused on encouraging more streamlined review and approval processes, by:

- Setting an example with its own Single Housing Application Process for any and all provincial government approvals required for housing projects;
- Providing $61 million in funding over 3 years to support local government application processing improvements;
- Funding the Planning Institute of BC Peer Learning Network, a $500,000 commitment enabling PIBC to support the sharing within the planning profession of improved application processing practices.

A. Delegated Development Variance Permits

Previous government initiatives inspired by DAPR include authority to delegate the issuance of development variance permits (DVPs). The issuance of DVPs may only be delegated to an officer or employee, must be restricted to "minor" variances as defined in the delegation bylaw, is subject to reconsideration by the council or board on the applicant's request, and may be delegated only in respect of a sub-set of bylaws for which the council or board may permit a variance. An interesting feature of the delegation scenario is that the delegate is not required

[2] https://dailyhive.com/vancouver/arbutus-station-translink-pci-development-2096-west-broadway-vancouver

to give notice to affected property owners and tenants of an intention to consider issuing a permit, as the council or board would be. A decision on whether to issue a DVP is potentially subject to judicial review. Under the Supreme Court of Canada's *Vavilov* decision, such review would apply a reasonableness standard. For a council or regional board decision, the record under review would include staff reports to the decision-maker, which would be reviewed to assess the reasoning process that led to the decision. Delegates of the council or board should ensure that the same type of record is created to potentially support the decision on judicial review, whether in the form of internal staff reports and recommendations provided to the delegate or an analysis prepared by the decision-maker themselves.

B. Proceeding without a Public Hearing

The *Local Government Act* has for many years permitted local governments to "waive" a public hearing for a zoning bylaw that's consistent with an OCP, subject to publishing a notice of waiver of hearing containing information very similar to what would be included in a notice of hearing. Also in response to the DAPR, that regime was replaced (Bill 26 of 2021) by authority to proceed without a public hearing in the same circumstances, but subject to publishing a notice of intention to proceed in that manner prior to giving first reading of the bylaw. Contrary to some provincial government descriptions of this new regime, proceeding without a public hearing is not the new "default" procedure. The council or board must still make a decision to proceed in this manner, in open meeting, in respect of any particular bylaw, so holding a public hearing remains the default procedure. We have observed that some local governments proceeding without a public hearing are doing so only tentatively, by indicating in their published notices that interested persons are welcome to attend the meeting where first reading of the bylaw is scheduled, and appear as delegations in the usual manner permitted by the procedure bylaw. As well as raising some difficult issues about procedural fairness, this approach seems largely to defeat the purpose of this minor amendment to the Part 14 public hearing requirements, perhaps indicating the persistence of the notion that even minor zoning changes ought to be tested in the crucible of public opinion.

C. Public Hearing Process Improvements

As for the public hearing process itself, the government has initiated a deep review of the process in partnership with the Simon Fraser University Centre for Dialogue[3] and the BC Law Institute. BCLI has published a background paper on public hearings in BC land use management,[4] and is continuing to study the matter with a view to making recommendations for legal reform, including "ways to integrate Indigenous considerations into law-reform approaches for public hearings so that any recommended legislative changes can function in a legally plural context". Renovation of the public hearing process may be worthwhile for reasons unrelated to the housing supply crisis, such as inability (due to statutory restrictions) of local

[3] https://www.renovatethepublichearing.ca/
[4] https://www.bcli.org/wp-content/uploads/13-Study-Paper-on-Public-Hearings.pdf.

governments to alter proposed bylaws to take into account the submissions received at a public hearing and the inaccessibility of the hearing process to some members of affected communities, but the portions of Bill 44 that deal with public hearings suggest that it's the land use management system itself, rather than the public hearing process, that will be undergoing renovation.

D. Prohibition of Public Hearings

The government's approach to small-scale multi-family housing in Bill 44 steps around the public hearing process entirely, by prohibiting local governments from holding public hearings in respect of either of the following:

- Bylaw amendments enacted to comply with the mandates in Bill 44 to amend zoning bylaws to permit small-scale multi-family housing;
- One-off bylaw amendments for residential development or mixed-use (at least 50% residential) development that is consistent with an official community plan.

As is the case where the council or board has exercised its powers to proceed without a hearing, Bill 44 requires the local government to give notice of first reading of a bylaw that is being adopted without a hearing. (Presumably, the notice may state that no hearing is being held because a provincial prohibition applies.)

E. Some Additional Suggestions

Our own exposure as legal counsel to local government development approval procedures over the years suggests some approaches that could improve processing times somewhat.

- There's a tendency of individual decision-makers in complex development applications to take it on themselves to be the "one-stop" approval authority, rather than restricting their decision to the aspect over which they actually have jurisdiction and leaving it to other authorities having jurisdiction to do their work. We have seen many lists of subdivision approval and development permit conditions that unnecessarily cross-reference compliance with a host of provincial and federal regulations that the applicant will eventually be addressing in any event. Similarly, these approvals frequently reference downstream requirements (such as works and services) that will be applicable when a subsequent approval is issued. This approach slows down the approval process and can give applicants the impression that the approval they are obtaining is more all-inclusive than it really is or can be. While a wish to be helpful to the applicant might lie at the core of such "one-stop" approaches, these superfluous conditions are very often worded too vaguely to be of any practical value to the applicant.

- There's a tendency of councils and boards to use Part 14 development approval processes as leverage to achieve a host of policy objectives that have little or nothing to do with land use management. While objectives like GHG emissions reduction, protection of species at risk, reconciliation with Indigenous peoples and protection of residential tenants from rent increases and eviction are all meritorious, elected officials should be aware of the cumulative impact on development processing times of pursuing them via development approval process. The list of "referrals" that are undertaken in relation to each type of development application could be edited to ensure that the referral is actually relevant to the statutory basis on which the decision in question is going to be made.

- Development permit area guidelines for overlapping DP areas (for example, environmental protection and protection of development from natural hazards) could be considerably pared and better coordinated, rather than leaving the guidelines for each type of area to apply as if there was no overlap. In many cases some of these guidelines are duplicative, and in others they're at cross-purposes. Deeper consideration could be given to the use of exemptions, for example for subdivision in a DP area for which the guidelines have no plausible relevance to the subdivision phase of development.

- Planners seem reluctant to allow statutory tools like land use permits, phased development agreements and heritage revitalization agreements to do the work they were designed to do, preferring to buttress them with statutory covenants that add no legal certainty while taking time and money to draft and register on title prior to approvals being issued. Looking ahead to the time when properties that are subject to these "belt and suspenders" covenants are being redeveloped, future applicants will likewise be obliged to endure the delay that will doubtless be incurred as planners and their lawyers review covenants to determine whether they may safely be discharged or modified. There are a few types of conditions and requirements that actually need to be secured by covenant because they lie outside the scope of a statutory tool like a land use permit, but where that is the case there's no sound reason to expand the scope of the covenant to include a host of matters that are already addressed by the statutory tool.

VIII. ENFORCING RULES ON SHORT-TERM RENTALS

Most local governments have, by now, addressed short-term vacation rental (STVR) uses in their zoning and, a bit less commonly, business regulation bylaws. Zoning bylaws typically distinguish STVR uses of residential dwellings from residential uses, and regulate STVR uses in terms of location and, in some cases, seasonal restriction of the use and operational details such as off-street parking requirements. Business regulation bylaws may require business licenses for STVR uses. Historically, the local rationale for regulating these uses has focused on

the problem of unfair competition with commercial tourist accommodation businesses, and nuisance issues. Less prominent has been a concern with the erosion of long-term rental housing stock and the burdening of local infrastructure, though those issues have recently been coming onto council and board tables. Enforcement of local STVR restrictions has suffered from several constraints, most prominently the difficulty of identifying offenders and offences with the certainty required for the issuance of tickets or prosecution in Provincial Court. Where offences can be proven, local governments whose bylaws were enacted only recently have been faced with successful lawful non-conforming use defenses; STVR uses are of relatively recent origin, and many older bylaws did not clearly distinguish them from ordinary residential use of the dwelling unit. Provable offences dealt with by municipal tickets attracted only a maximum $1000 fine, while the operator's STVR revenues can easily exceed that amount in a single weekend.

The provincial housing strategy supports the enforcement of local STVR regulations in several ways, via Bill 35, the *Short-Term Rental Accommodations Act* (STRAA):

- Ticket fines are being increased to a maximum of $3,000;
- STVR operators and platform service providers such as AirBnB and VRBO will be required to register with the provincial government;
- STVR listings must include details of provincial registration and any required business license;
- In specified areas of the province, STVR uses are permitted only in the principal residence of the operator or an accessory dwelling unit; local governments may request adjustment of the area to which this limitation applies;
- Platform service providers must enable posting of business licensing and provincial registration information with each STVR listing;
- Platform service providers must comply with any request from a local government to remove a specific listing that fails to comply with a business license requirement;
- The government may share personal information collected under the Act with local governments, to support the enforcement of local government bylaws;
- Regional districts may adopt business licensing regulations, and regional districts and municipalities may establish intermunicipal business licensing arrangements;
- Non-conforming use defenses will be unavailable for STVR uses that contravene a zoning bylaw, regardless of how long the use has been in operation.

We note that STVR enforcement initiatives undertaken in New York City earlier this year reportedly resulted in STVR activity migrating from the established platforms (AirBnB, etc.) to other platforms such as Craigslist. Under the STRAA, such alternative platforms may meet the definition of "platform service provider" such that provincial registration would equally be required, and the business license requirements in STVR listings would equally apply.

Clearly, this part of the provincial housing strategy will produce results only if local governments continue and in fact ramp up the enforcement of local bylaws. While many illegal STVR operations will be contravening both local bylaws and the STRAA, the government may be no more likely to actively enforce the new statute than it has been in the past to enforce statutes like the *Agricultural Land Commission Act* that overlap with local government regulations.

NOTES