

No. BA16-01  
March 16, 2016

## Building Act: Update for Local Governments

---

This bulletin is intended to provide local governments with preliminary information about:

- Upcoming changes under section 5 of the *Building Act*;
- Amending or repealing building requirements in bylaws;
- Other aspects of the implementation of the *Building Act*, and
- The updated timeline for building official qualifications.

### 1. Section 5 of the *Building Act*

One of the key objectives of the *Building Act* is to bring greater consistency to building requirements across the province. Section 5 is intended to achieve this objective.

Under section 5, only the Province can establish enforceable “building requirements”; that is, technical requirements for construction methods, materials, etc. for buildings that are being constructed, altered, repaired or demolished. Most provincial building requirements are found in Division B of the BC Building Code, but they can also be found in other provincial building regulations such as the [Solar Hot Water Ready Regulation](#).

Section 5 changes the authority local governments had prior to the *Building Act* to set local building requirements within their jurisdictions. Section 5 makes local building requirements enacted in bylaws of no legal force when those requirements regulate a “matter”; that is, a subject, theme, or topic regulated in the Building Code. For example, accessibility is a subject for which the Building Code has established requirements; therefore, under section 5, local governments cannot enact enforceable requirements for accessibility in or about a building.

However, section 5 of the Act also allows the Province to designate “unrestricted matters” for which local governments can still make local building requirements in bylaws. Unrestricted matters are explained further in sections 4 to 6 of this bulletin.

Section 5 restrictions take effect after a two-year transition period that started December 15, 2015 and ends December 15, 2017.

## 2. When Section 5 Does Not Apply

The section 5 restrictions do not apply if:

- **It is not a building requirement:** As identified above, only *technical* requirements such as those found in Division B of the Building Code are captured by the section 5 restrictions. Administrative and professional requirements are not affected. For example, a bylaw requirement for professional design of complex Part 9 projects is unaffected by the *Building Act* as this requirement is considered administrative in nature. Likewise, properly authorized requirements in relation to flood plain areas that are made under *Local Government Act* section 524 are not affected.
- **It is not enacted in a bylaw:** Section 5 will not affect requirements that are part of an incentive program or *Land Title Act* section 219 covenants. Only technical building requirements enacted in bylaws are affected.
- **It regulates a matter that is not regulated in the Building Code and is not on a restricted list under section 5(3) (b) of the *Building Act*:** Certain matters are not regulated by the Building Code or any other provincial building regulation. For example, electric vehicle charging stations are not currently regulated by the Province; therefore, local governments can establish their own requirements for such matters if they have authority to do so under other statutes and the matter has not been restricted by the Province.
- **It is enacted under the authority of an act other than those listed in section 5(2) of the *Building Act*:** Section 5(2) identifies those Acts under which most building requirements are authorized, but does not capture all existing legislation. For example, at this time the *Environmental Management Act* is not listed, which provides authority for local governments to establish requirements in regard to grease interceptors in commercial facilities. Local governments can continue to regulate such matters.

In summary, the section 5 restrictions apply to technical building requirements, enacted by bylaw, that regulate a matter already regulated by the Province in a provincial building regulation.

### 3. Flexibility to Meet Local Needs

The Province recognizes that greater consistency needs to be balanced against reasonable flexibility for local governments to meet local needs. Under the *Building Act*, local governments have three options for doing so.

- Option 1 – Local governments can set requirements for **unrestricted matters** as explained further below.
- Option 2 – Local governments can request a local variation to the Building Code as permitted under section 7 of the Act. If a compelling case can be made and the request is successful, the variation would apply in the jurisdiction(s) making the request and would be enacted in a provincial building regulation.
- Option 3 – Local governments can propose a change to the BC Building Code; this option is appropriate if a local government believes a requirement is broadly applicable to communities across B.C. The proposal may be referred to the national code development process for consideration and possible inclusion in the National Building Code of Canada, prior to its adoption in B.C.

### 4. Matters that are Unrestricted

Section 5 of the *Building Act* will render most building requirements in local government bylaws of no legal force after the two-year transition period ends. However, local governments will still be able to set building requirements in bylaws for matters that the Province has **unrestricted** (per section 5(4) of the Act).

Unrestricted matters are matters that are regulated in the Building Code (or in other provincial building regulations) for which local governments will continue to have authority to set their own requirements in bylaws. However, any requirements local governments enact cannot contradict or conflict with provincial building requirements.

A matter will be unrestricted for one of three reasons.

#### 1. Specific Physical Location or Local Circumstance

The Building Code is not able to specify requirements for the matter because it relates to a specific physical location or unique local circumstance.

## **2. Other Statutory Authorities to Achieve a non-Building Code Objective**

These are matters for which a local government aims to achieve a non-Building Code objective using an existing statutory authority and the enacted building requirement is necessary to achieve that objective.

## **3. Temporary Unrestriction Pending Development of Provincial Building Requirements**

These are matters that are or could be slated for future Building Code development or could be the subject of a local authority variation request. Temporary unrestricted of these matters ensures that there is no gap in regulation while the Province develops new Code requirements or determines the final outcome of a variation request, even if this process is not completed by the end of the transition period in December 2017. Once a consistent set of provincial requirements has been developed for a matter, the matter will be removed from the unrestricted list.

## **5. Potential Unrestricted Matters**

The Province is developing a list of unrestricted matters that will be enacted through a regulation. The following are some of the matters the Province is considering including in this list.

### **1. Fire Access Route Design**

Fire access route design refers to requirements that ensure access by emergency response vehicles (such as fire trucks) using a roadway or yard to reach a building. The Building Code provides requirements for fire access route design for both Part 3 (complex) buildings and Part 9 (small residential and commercial) buildings. The Part 3 requirements (found in article 3.2.5.6 of Division B of the Building Code) include the width of the roadway, turning radius, overhead clearance, gradient, surfacing, load bearing, and connection to public thoroughfares. The requirements for Part 9 (found in article 9.10.20.3) provide guidance only.

By unrestricting fire access route design, local governments will be able to meet the specific needs of local fire departments by differing from or exceeding the prescriptive requirements in Part 3 of the Code or providing specifics in relation to Part 9 buildings.

### **2. Matters that Fall under Local Governments' Land Use and Planning Authority**

The following unrestricted matters fall within Part 14 (RS2015) of the *Local Government Act*, which provides authority for local governments to develop a land use vision for their communities, identifying specific objectives and using zoning and

other bylaws to achieve that vision. In limited instances, building requirements may be explicitly or implicitly authorized and necessary to achieve those objectives. The *Building Act* does not intend to prevent such bylaws.

- I. **Parking spaces for use by disabled persons** – Per the authority set out in section 525 of the *Local Government Act* (RS2015), local governments can determine all aspects of the building requirements for parking spaces for disabled persons, including standards respecting the size, surfacing, lighting and number of the spaces.
  
- II. **Development permit areas** – When a local government designates a development permit area (DPA) (under the authority in Division 7 - Development Permits of the *Local Government Act*) for one of the purposes identified below, it may enact building requirements in relation to these purposes as follows:

DPA Purpose	Building Requirements that are Unrestricted
Revitalization of an area in which commercial use is permitted (s.488(1)(d)).  Establishment of objectives for the form and character of intensive residential development (s.488(1)(e)).  In relation to an area in a resort region, establishment of objectives for form and character of development in the resort region (s.488(1)(g)).	Character of the development including form, exterior design and finish of buildings and other structures.
Establishment of objectives to promote: <ul style="list-style-type: none"> <li>• energy conservation (s.488(1)(h));</li> <li>• water conservation (s.488(1)(i)); or</li> <li>• the reduction of greenhouse gas emissions (s.488(1)(j)).</li> </ul>	Form and exterior design of buildings and other structures; machinery, equipment and systems external to buildings and other structures (This includes the necessary requirements to facilitate hook-up to District Energy systems).

NOTE: The authority under LGA section 488(1)(f) for designating a DPA for commercial, industrial, or multi-family residential purposes is not included above because section 491(8) limits the requirements to general character of the development only and not to particulars of the exterior design and finish of buildings and other structures.

## **6. Potential Temporarily Unrestricted Matters**

The following are some of the matters the Province is considering for temporary unrestricted.

### **1. Noise Abatement in Residential Buildings**

The Building Code has requirements to minimize sound transfer between spaces within a building but does not address sound coming from external sources such as airports, other transportation corridors or industrial uses. If residential development occurs near such areas, noise abatement requirements may be necessary to ensure occupant health and comfort. As this is a matter that could be slated for future Code development, or the subject of a request for variation, the matter is temporarily unrestricted.

### **2. In-building Radio Repeaters**

In-building radio repeaters are intended to enhance radio communications within concrete and steel buildings. Some local governments have a requirement for this in their bylaws to assist the safety of first responders. The National Model Codes do not include this requirement because it does not align with Code objectives. Developing and adding a new objective and the corresponding requirement to the Building Code would be inconsistent with the other provinces and territories and contrary to the Province's commitment to harmonize with the National Model Codes.

Local governments may request a variation for in-building radio repeaters. As that process is not expected to be complete before the end of the transition period, the matter is temporarily unrestricted.

### **3. Within a Development Permit Area, Exterior Design and Finish of Buildings in Relation to Wildfire Hazard**

Local governments can establish requirements for the exterior design and finish of buildings for the objective of wildfire hazard management within a development permit area. Revisions of the Building Code to include requirements to prevent the spread of wildfire are under consideration. As this work will not be complete before the end of the transition period, the matter is temporarily unrestricted.

## 7. Amending or Repealing Building Requirements in Bylaws

Local building requirements will remain in force until the end of the two-year transition period on December 15, 2017. Local governments are encouraged to begin to review their bylaws in preparation for amending or repealing building requirements before that date.

The Province anticipates local governments will have one of three types of bylaw requirements that may need to be amended or repealed:

1. Bylaw requirements made post-*Community Charter* (that is, after January 1, 2004) with Minister's approval;
2. Bylaw requirements made post-*Community Charter* (that is, after January 1, 2004) without minister's approval; and
3. Pre-*Community Charter* bylaw requirements (that is, bylaws made before January 1, 2004).

Local governments should obtain their own legal advice on how to properly amend or repeal their bylaws. However, because strictly speaking the *Community Charter's* concurrent authority provisions remain in force until December 15, 2017, ministerial approval may be needed to amend or repeal bylaws described in (1) and (3) above, if an amendment or repeal is made on or prior to that date. If an amendment or repeal is made after December 15, 2017, ministerial approval should not be needed.

The amendment or repeal of bylaw requirements enacted under (2) above should not need ministerial approval, either before or after December 15, 2017, because such approval was not required or obtained when the bylaw was enacted.

## 8. Additional Information about the Building Act

The information in this section is intended to clarify additional matters related to the implementation of the *Building Act*.

**BC Building Code:** The Building Code is not changing because of the *Building Act*. A new edition of the Code is generally adopted every five years, with updates in between. This cycle is expected to continue under the Act.

**Enforcement of the BC Building Code:** Local governments (and other local authorities) continue to have authority (but are not obliged) to administer and enforce the Building Code. This includes authority to set administrative requirements, establish processes and fees for permits, and conduct inspections.

**Alternative Solutions:** Local governments continue to have authority to make decisions on whether or not an alternative solution is acceptable as per the BC Building Code. That process is not changing because of the *Building Act*.

**Adaptable Housing:** Adaptable housing is housing designed and built with features that can later be modified, at minimal cost, to meet the changing needs of occupants. Local governments will still be able to set requirements for the *number or percentage* of adaptable units that must be built within a development. This is not considered a local building requirement under the *Building Act*; rather, it is an instance in which local governments are using their zoning authority to decide what has to be built. Local governments will not be able to set requirements in bylaws that specify *how* such units should be built – such as the width of doors or the height of counters.

**Building and Plumbing Officials:** Building and plumbing officials will continue to work for local governments and other local authorities. The main change for building officials will be to meet the new qualification requirements once they come into force. These requirements include writing exams corresponding to the level at which they work; undertaking continuing professional development; and being listed on the registry of qualified building officials. If an official has already successfully passed Level 1, 2 or 3 exams under the voluntary certification programs of the Building Officials' Association of BC or the Plumbing Officials' Association of BC, they will not have to rewrite those exams.

**Flood Plain Construction Requirements:** Requirements that are properly authorized under section 524 of the *Local Government Act*, including those for flood plain construction levels, are not considered to be technical building requirements and so do not fall within the scope of the section 5 restrictions in the *Building Act*.

**Zoning and Other Planning Functions:** The *Building Act* does not affect local governments' authority for zoning in section 479 of the *Local Government Act* (RS2015). This includes authority to regulate the use of land, buildings and other structures; the density of the use of land, buildings and other structures; the siting, size and dimensions of buildings and other structures; and so forth.



## **9. Qualification Requirements for Building Officials**

The timeline for enacting the *Building Act's* qualification requirements for building officials has shifted. The Province now anticipates the qualification requirements will be brought into force late in 2016. The four-year transition period for building officials to meet the new qualification requirements will not start until that occurs.