

The *Building Act*: Consistency Sections in Force

December 15, 2015

Introduction

On December 15, 2015, the consistency sections of the *Building Act* came into force. These include sections 5, 7, 9 and 43.

This document provides information to help better understand these sections. It was prepared by the Office of Housing and Construction Standards to support the implementation of the *Building Act*. It is not legal advice and should not be relied upon for those purposes.

Section 5 – Restrictions on local authority jurisdiction

Purpose: Provides the Province with sole authority to establish requirements for the construction, alteration, repair and demolition of buildings. Any building requirements set by local governments in local government bylaws will have no legal force after a two-year transition period (established in section 43) is up.

Former Provision

- Section 693.1 (2) of the *Local Government Act* and section 9 (1) (d) of the *Community Charter* establish concurrent authority for buildings.
- Under concurrent authority, local authorities have two ways in which they may enact building requirements that differ from or exceed the building requirements in provincial building regulations such as the BC Building Code:
 - Concurrent authority requires regional districts and municipalities to obtain the minister's approval to create bylaw provisions that establish local building requirements that are or could be dealt with by the provincial building regulations.
 - They are also enabled to establish their own building requirements without the minister's approval under their authorities in other *Charter* provisions or in other Acts.
- These authorities have led to a confusing patchwork of requirements that vary from jurisdiction to jurisdiction.
- NOTE: Concurrent authority will remain in place until the end of the two-year transition period.

Description

- When the Province has already enacted building requirements in a provincial building regulation (such as the BC Building Code), section 5 ensures that these are the only requirements with legal force. This will bring more consistency to the building regulatory system and more certainty for the construction sector.
- Section 5 states that local building requirements enacted by local authorities, under:
 - their building-related authority in *Community Charter* section (8) (3) (I),
 - their other authorities in the *Community Charter*, or
 - their authorities in any of the statutes listed in section 5 (2),are of no legal force, to the extent that they relate to a matter dealt with in provincial building regulations. It also provides the minister the authority to prescribe matters for which local authorities *may* establish building requirements.

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- While placing absolute restrictions with respect to building requirements, section 5 ensures that local authorities retain the ability to adopt building bylaws that deal with administrative and regulatory matters that remain in their purview.
- Subsection (1) provides that this section does not apply to Treaty First Nations and the Nisga'a Lisims Government. Section 6 continues the existing mechanism for Treaty First Nations to establish varying building requirements.
- Subsection (2) ensures that the provisions of this section take precedence over authorities provided to local governments in other statutes that could be used to establish building requirements in bylaws.
- Subsection (3) (a) provides that a local building requirement has no legal force if the building requirement is dealt with in provincial building regulations, most notably the BC Building Code. This means if a provincial building regulation regulates the matter, local authorities cannot. If a provincial building regulation does not regulate the matter (e.g., requirements relating to fencing, erecting a free-standing sign, etc.) local authorities may determine if their other existing authorities under the *Community Charter* allow them to establish requirements.
- Subsection (3) (b) recognizes that there may be some matters that *are not* addressed in provincial building regulations that local authorities should not regulate. These matters must be prescribed in a regulation as restricted.
- Despite what subsection (3) (a) states, subsection (4) recognizes that there may be some matters that *are* addressed in provincial building regulations for which local authorities should have authority to establish additional building requirements. These matters must be prescribed in a regulation as unrestricted.
- Per section 43, even after coming into force, section 5 does *not* apply to local authorities for two years. Local authorities are advised to review their bylaws and to eliminate any existing building requirements before December 15, 2017, when those requirements will no longer have any legal force.

Section 7 – Request by local authority for variation

Purpose: Enables local authorities to request variations from provincial building regulations, such as the BC Building Code, via a structured provincial review process.

Former Provision: None.

Description

- Although the *Building Act* will create more consistent building requirements across the province, local authorities may have legitimate reasons for desiring building requirements that vary from provincial building regulations.
- Section 7 enables local authorities to approach the Province with requests for variations, that is, requirements for the construction, alteration, repair and demolition of buildings that differ from or exceed provincial building regulations and that would apply in all or part of their jurisdiction. If approved, such requests will be enacted through a provincial regulation rather than a local authority bylaw. More than one local authority can be included in a building regulation created as a result of a request for variation.

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- Subsection (1) provides that a request by a local authority for a variation that has received provincial approval will be enacted through a provincial regulation. Local authorities may also coordinate a collective request.
- Subsection (2) (a) enables the minister to establish a provincial review process for requests by a local authority for variation.
- Subsection (2) (b) enables the minister to collect a prescribed fee for the preliminary review of a request.

Section 9 – Power to engage or retain consultants or specialists

Purpose: Enables the minister to engage or retain technical experts for the review of a request for variation by a local authority or person.

Former Provision: None.

Description

- Section 7 enables local authorities to approach the Province with requests for variations, i.e., requirements for the construction, alteration, repair and demolition of buildings that differ from or exceed provincial building regulations and that would apply in all or part of their jurisdiction. The review of these proposed building requirements may or may not require technical expertise beyond that available within the ministry.
- Section 8 enables a person to approach the Province with a request for variation, i.e., building requirements that differ from provincial building regulations and that would apply to a proposal for a specific innovative building. The Province would carry out a technical review process for these singular innovative proposals. Determining the building requirements for an innovative building proposed under section 8 is likely to require technical expertise beyond that available within the ministry. (Note: Section 8 does not come into force when section 7 does, on December 15, 2015.)
- Section 9 enables the minister to hire or retain external technical experts to assist with the review of a request for variation made under sections 7 or 8.

Section 43 - Transition – restrictions on local authority jurisdiction

Purpose: Provides that section 5 will not apply until two years after it comes into force, giving local authorities time in which to eliminate local building requirements that will have no legal force.

Former Provision: None.

Description: Section 5 came into force on December 15, 2015. Per section 43, section 5 will not apply until December 15, 2017.

Local building requirements refer to requirements for the construction, alteration, repair or demolition of buildings as exist in the BC Building Code and other provincial building regulations. If local governments have any building requirements in their bylaws, those requirements will have no legal force after the two-year transition period ends on December 15, 2017. To avoid confusion for the construction sector, local governments are advised to use the two-year transition period to amend their bylaws to eliminate such requirements.