

TO: MAYOR & COUNCILLORS
FROM: GENERAL MANAGER PLANNING AND DEVELOPMENT
SUBJECT: **DEVELOPMENT LEGISLATION UPDATE – BILL 16-2024 HOUSING STATUTES AMENDMENT ACT, 2024**
PURPOSE: To provide Council with an update on recent changes to the Community Charter and Local Government Act in respect to housing and development.

RECOMMENDATION

THAT the report titled “Development Legislation Update – Bill 16-2024 Housing Statutes Amendment Act, 2024”, dated July 22, 2024 be received for information.

EXECUTIVE SUMMARY

This report provides a summary of proposed changes to the BC *Community Charter* and *Local Government Act* by way of Bill 16-2024 *Housing Statutes Amendment Act, 2024* (Bill 16) which was granted Royal Assent on April 25, 2024. Changes to legislation relate to the following subjects:

- Tenant Protection
- Density Benefit Zoning
- Zoning for Affordable/Special Needs Housing
- Works and Services Bylaws
- Transportation Demand Management

The subject legislation builds upon changes to the *Local Government Act* enacted in the fall of 2023 for Land Use Policy (Official Community Plan and Housing Needs Report), Small Scale Multi-Unit Housing, Transit Oriented Area Developments, and Development Financing under Bills 44, 46, 47 and associated regulations and guidance. For the most part, Bill 16 is enabling legislation, which is voluntary, rather than prescriptive legislation to which municipalities must comply. The exception are the amendments to the density bonus provisions, which will require changes to the City’s density bonusing bylaw provisions by a date to be established by the Province (anticipated to be June 30, 2025). Since Burnaby currently has bylaws and policies related to the legislative changes in Bill 16, future implementation will require new bylaws or amendments to current bylaws to be adopted in accordance with the new legislation.

1.0 POLICY SECTION

The following report aligns with provincial and municipal, laws, bylaws and policies, including:

- *BC Local Government Act* (2015);
- *BC Community Charter* (2003);
- Corporate Strategic Plan (2022);
- Burnaby Official Community Plan (1998);
- Burnaby Rental Use Zoning Policy (2020);

- Burnaby Tenant Assistance Policy (2022); and
- Burnaby Zoning Bylaw (1965).

2.0 BACKGROUND

On November 30, 2023 the Province of BC granted Royal Assent to Bills 44, 46 and 47.

Bill 44 – (Residential Development) related to the following subjects:

- Prohibition on public hearings for applications that are predominantly residential;
- Alignment between housing needs reports, Official Community Plans and Zoning Bylaws; and
- Small Scale Multi-Unit Housing (3-6 units) on single and two family dwelling residential lots.

Bill 46 – (Development Financing) related to the following subjects:

- New amenity cost charge (ACC); and
- Amendments to development cost charges (DCC).

Bill 47 – (Transit-Oriented Areas):

- Mandates specific densities and building heights through regulation to be accommodated within specific distances of transit-oriented areas designated by the Province.

In response, the City has adopted amendments to the Burnaby Zoning Bylaw to create the R1 Small Scale Multi-Unit District (June 10, 2024); adopted a new ACC bylaw and updated DCC bylaw (June 24, 2024); and are well under way on updates to the Housing Needs Report, Official Community Plan (OCP) and Zoning Bylaw.

On April 25, 2024 the Province granted Royal Assent to Bill 16 related to the following subjects:

- Tenant Protection
- Density Benefit Zoning
- Zoning for Affordable/Special Needs Housing
- Works and Services Requirements
- Transportation Demand Management

3.0 GENERAL INFORMATION

The following report provides a general outline of the legislative changes to the *Community Charter* and *Local Government Act* introduced in Bill 16, as well as provides general information on the requirements of the legislative changes, and how Burnaby is positioned to address the changes. To address the contextual nature of the legislative changes, they have been grouped into the following subjects:

- Tenant Protection
- Density Benefit Zoning
- Zoning for Affordable/Special Needs Housing
- Works and Services Requirements
- Transportation Demand Management

3.1 Tenant Protection

3.1.1 Summary of Legislative Changes

Section 63 of the *Community Charter* has been amended and sections 63.1 to 63.3 added to enable local governments to pass bylaws to protect renters from the impacts of displacement due to redevelopment. Under the legislative changes, “redevelopment” is defined to mean either:

- demolishing residential property with one or more rental units in order to construct a new building on the property; or
- partially demolishing residential property so that one or more rental units are completely and irreversibly destroyed.

The legislative changes give Council the authority to establish bylaws (e.g. Tenant Protection Bylaw) to require property owners to give tenants one or more of the following:

- notices of information with respect to a redevelopment or proposed redevelopment;
- financial compensation for the termination of tenancy agreements;
- financial or other assistance to find and relocate to comparable replacement units; and
- the opportunity to exercise rights to enter into new rental agreements for comparable units in the new development or other property in which the owner has an interest.

Further, the bylaws may do one or more of the following:

- provide for the nature and extent of compensation and assistance, the manner in which it is determined, the manner in which it is given to tenants and the period in which it must be given;
- define the characteristics of comparable replacement units; and
- require owners who have, or will have after redevelopment, new units available for rent to offer to rent those units to tenants on a priority basis, and at a rental rate that is less than the rate set out under an applicable zoning bylaw or housing agreement.

Limitations on Tenant Protection Bylaws include:

- specific classes of property to be prescribed by the Province will not be subject to these bylaws;
- if a tenant is entitled to compensation under the Residential Tenancy Act, the amount must be deducted from any financial compensation or financial assistance required by a Tenant Protection Bylaw;
- other requirements, prohibitions, conditions and limitations that the Province may establish by regulation.

At this time, the Province has not yet released any regulations relating to the tenant protection authorities under Bill 16.

3.1.2 Implications for Burnaby

Burnaby has a Council-adopted Tenant Assistance Policy (TAP). The TAP is a rezoning policy that only applies in the circumstance that an owner/applicant advances development through a rezoning process. The Bill 16 legislative changes enable tenant

protection outside of a rezoning, including through a Development Permit or Building Permit process.

The Bill 16 legislative changes, in principle, address the fundamental elements of the current TAP insofar that it enables Council to establish conditions to which a tenant is compensated (e.g. rent top-ups or lump sum payments), provides for assistance to tenants for relocation costs (e.g. moving expenses), and the opportunity for tenants to relocate into replacement units on a priority basis.

As such, the intent is to update the current TAP and transition the policy requirements to a Tenant Protection Bylaw so that these requirements can be applied to other development processes (e.g. Development Permits or Building permits), in addition to rezoning applications. The Province has indicated it will be providing further guidance in Fall 2024. Any advancement of a Tenant Protection Bylaw would be undertaken once that guidance information is released.

3.2 Density Benefit Zoning

3.2.1 Summary of Legislative Changes

Section 482 of the *Local Government Act* has been amended, with Sections 482.1 to 482.6 added to expand the options and conditions for obtaining amenities and/ affordable and special needs housing through a density benefits zoning bylaw (e.g. density bonusing). As a restriction, density benefit zoning bylaws must not establish a conditional density equal to or less than the densities and corresponding height in Transit Oriented Areas (TOA) as established by the recent amendments to the *Local Government Act* and related regulations. Further, Bill 16 requires all current Zoning Bylaws with density bonus provisions to be amended to comply with the updated density bonus zoning bylaw requirements included in Bill 16 by a date to be established by the Province. It is anticipated that this deadline will be in June 2025.

The legislative changes relating to density bonusing for the provision of amenities or affordable and special needs housing are summarized below. Some conditions, including payment in lieu, consultation, financial analysis, in-stream protection and annual reporting requirements apply equally to density bonusing for both the provision of amenities, and affordable and special needs housing.

With respect to amendments related to density bonusing for affordable and special needs housing, the bylaw must include conditions with respect to the ownership and management of the housing units, and the number of bedrooms contained in the units. In addition, the bylaw must impose conditions relating to:

- the required portion of affordable and special needs housing units in a development;
- the form and tenure of the affordable and special needs housing units;
- the affordability of the units, including the sales price or rental rate of the units; and
- the length of time that the units are subject to the conditions.

The portion of the affordable and special needs housing must be specified in the zoning bylaw as a proportion of all the housing units in a development, or a percentage of the gross floor area of the residential component of a development.

The Bill 16 changes allow local governments, by bylaw, to enter into an agreement to provide all or a portion of the affordable and special needs housing units required on one or more other parcels of land (e.g. construction of the units on a site other than the development site). If a local government allows for such an agreement, the agreement must specify the following:

- the parcels of land on which the affordable and special needs housing will be located;
- who is to provide the affordable and special needs housing units on each parcel of land;
- when the affordable and special needs housing units are to be provided on each parcel of land;
- how the provision of affordable and special needs housing units will meet or exceed the bylaw; and
- any other information prescribed by the Province.

Bill 16 also includes a number of legislative changes to the density bonus provisions that apply equally to density bonus for the provision of amenities as well as density bonus for the provision of affordable or special needs housing, including the following:

- consultation is required during the development of a density benefits zoning bylaw for those considered affected by the bylaw;
- analysis of the financial feasibility is required in adopting or amending a density benefits bylaw, which must take into account such things as the conditions of the local housing market, the cost of residential construction and the amount of density required to ensure the feasibility of the project;
- authority to include payment of money in-lieu of providing amenities or housing in a density benefits zoning bylaw, exercisable at the option of the developer, and requirement to establish a statutory reserve fund for money in-lieu received, limitations on how funds may be used, and requirement for expenditures to be authorized by bylaw;
- protection for in-stream applications in accordance with Section 568 of the *Local Government Act*, and
- preparation of annual reports on or before June 30 of each year on the amenities and affordable and special needs housing units required per year, the amount of funds for amenities and housing received per year, the expenditures on amenities and housing per year, and the balance of funds available in the reserve each year.

3.2.2 Implications to Burnaby

Burnaby has utilized the provisions of Section 482 of the *Local Government Act*, and its predecessor legislation since 1997, through the inclusion of Section 6.22 Density Bonus within the Burnaby Zoning Bylaw and related density bonus provisions in the RM1 to RM5 Multiple Family Zoning Districts. Through these density bonus provisions, the City has successfully obtained the provision of on-site amenities, and affordable and special needs housing, as well as received payments in-lieu towards community benefit bonus

and affordable housing reserves for use across the City. For the most part, the Bill 16 legislative changes are in line with the density bonus program the City has been employing for decades. A critical change is with respect to the Bill 16 requirement that payment-in-lieu of amenities or affordable or special needs housing is to be determined on the basis of the capital costs directly related to providing the amenity or housing units, and the method for determining the estimated capital costs must be included in the density bonus provisions in the Zoning Bylaw. Currently, section 6.22 of the City's bylaw requires the value of the amenity or housing units, or payment-in-lieu, to be based on the value of the additional residential floor area attributable to the additional density permitted by the density bonus (i.e. determined on a per buildable area (pba) rate). Staff will review the legislative changes and upcoming regulations and Provincial guidance, and expect to be able to continue obtaining necessary community-based amenities and affordable and special needs housing to offset the impacts of development density.

Through the Zoning Bylaw Rewrite Project, amended density bonus provisions and policies will be developed for Council's consideration, and will be advanced at a future date. It is anticipated that the Provincial deadline for local governments to comply with the density bonus provisions under Bill 16 would be June 30, 2025.

3.3 Zoning for Affordable/Special Needs Housing (Inclusionary Zoning)

3.3.1 Summary of Legislative Changes

Sections 482.7 to 482.95 have been added to the *Local Government Act* to enable local governments to require by bylaw that a portion of residential units within a development be provided as affordable and/or special needs housing. This is commonly referred to as inclusionary zoning.

The conditions for the required affordable and/or special needs housing units are similar to those relating to housing units under density bonusing, except that the provision of units under density bonus is voluntary, while inclusionary zoning results in the housing units being provided in a development are on a compulsory basis. Furthermore, the additional density to be allowed by way of density bonus must exceed the minimum densities and heights for developments in Transit Oriented Areas (TOA), as per *Local Government Act* changes and related regulations; whereas, the housing units to be provided by way of inclusionary zoning, if utilized, can be within the minimum densities and heights for TOAs and is based on the proportion relative to all residential units or densities within a development.

Similar to density bonus for amenities and affordable and/or special needs housing, Bill 16 includes the following with respect to the inclusionary zoning tool:

- required consultation;
- required financial analysis;
- conditions related to payment in-lieu option;
- providing housing units outside the development site;
- protection for in-stream applications; and
- annual reporting requirements.

The following entities are exempt from inclusionary zoning requirements and may be the recipient of funds received as payment-in-lieu of affordable and/or special needs housing units required by inclusionary zoning:

- a corporation incorporated by the City or regional district for the purpose of providing affordable housing (i.e. municipal corporation);
- a society, other than a member-funded society under Section 190 of the Societies Act;
- a board established under the Health Authorities Act;
- an agent of the Provincial or federal government;
- a registered charity as defined in Section 248(1) of the Income Tax Act; and
- an entity as prescribed by Provincial regulation.

Any funds the City receives from a payment-in-lieu of providing inclusionary housing units must be placed in a statutory reserve fund and expenditures must be authorized by bylaw.

3.3.2 Implications to Burnaby

Burnaby has had an inclusionary zoning policy, the Rental Use Zoning Policy (RUZP), since 2019. The rental use zoning policy has four streams:

1. Rental Replacement
2. Inclusionary Rental
3. Voluntary Rental (Rental Housing in Commercial Districts)
4. Protectionary Rental

The inclusionary zoning authority under Bill 16 only pertains to Stream 2 (Inclusionary Rental), while Stream 1 (Rental Replacement) would need to be addressed through the aforementioned future Tenant Protection Bylaw, and Streams 3 and 4 addressed through provisions in the Zoning Bylaw, as they are today. Through the Zoning Bylaw Re-write Project, inclusionary zoning will be included for specific residential districts, and will be forwarded for Council's consideration through a future report.

3.4 Development Works and Services Requirements

3.4.1 Summary of Legislative Changes

Section 506 of the *Local Government Act* has been repealed and replaced, and sections 506.01 to 506.03 added, to give further authority to local governments to regulate and require the provision of works and services in respect to the development of land. The legislative changes effectively equalize the ability to require works and services, including road dedications, through a building permit application, and not restricted to a subdivision application. With respect to permitted road dedications, the new Bill 16 provisions permit a further 5m of dedication from a property, in addition to a road right-of-way of 20m, to achieve alternative transportation such as walking, cycling, transit or other forms of alternative transportation. The additional 5m dedication cannot be used to expand the road for motor vehicles.

3.4.2 Implications to Burnaby

Burnaby has had a Subdivision Control Bylaw in place since 1971 to set standards and requirements for works and services as part of a subdivision application. Based on the provisions permitted by the *Local Government Act*, including recent changes under Bill 16, Council authorized amending the Subdivision Control Bylaw at its regular meeting of May 27, 2024 to expand works and services requirements to building permit applications effective September 30, 2024. Further to this interim amendment, a new Works and Services Bylaw has also been proposed for advancement prior to 2026 to reflect the further *Local Government Act* changes under Bill 16.

3.5 Transportation Demand Management

3.5.1 Summary of Legislative Changes

A new Section 527.1 was added to the *Local Government Act* to enable local governments to require the provision of transportation demand management (TDM) measures as part of a development. TDM measures are to be outlined within a bylaw, and may include various measures to help improve and influence movement of people and goods to reduce motor vehicle dependence and increase sustainable transportation, including electrical vehicle charging station, end-of-trip facilities, secure bicycle parking facilities and scooter parking facilities, or other measures prescribed by Provincial regulation. The TDM bylaw may require owners or occupiers of land to provide TDM measures, establish design standards for TDM measures, or as an alternative to complying with requirements to provide TDM measures, at the option of the owner or occupier, make a payment in-lieu of providing TDM measures. Payment in lieu is not a required option and would only be available if identified within the bylaw. If payment in lieu is an available option, the payment in-lieu amount must be set out in the bylaw and all funds received are required to be placed in a statutory reserve fund for the purposes of providing new and existing TDM measures. Funds within the reserve and its interest may only be used to pay the capital costs, or the principal and interest on debt to install TDM measures, and all expenditures must be authorized by bylaw. Before June 30 of each year, local governments are required to prepare and consider a report on the amounts received and expenditures made in the previous year, the balance of the reserve, and the projected timeline for future projects to be funded from the TDM statutory reserve. This annual report must be made available for public viewing and comment.

3.5.2 Implications to Burnaby

Burnaby has an established TDM policy in place, which has been updated and is being advanced for Council's approval elsewhere on Council's Open Agenda of July 22, 2024 under separate cover. The TDM policy, like Rental Use Zoning and Tenant Assistance policies, have been implemented as part of rezoning applications. The current TDM policy applies to specifically TOAs; however, TDM can benefit modal shift and climate action across the City. As such, the intent is to transition the TDM policy to TDM requirements within the Zoning Bylaw and be able to apply TDM requirements more broadly and as part of different types of development applications.

4.0 SUMMARY

On April 25, 2024 the Province granted Royal Assent to Bill 16-2024 Housing Statutes Amendment Act, 2024 related to the following subjects:

- Tenant Protection
- Density Benefit Zoning
- Zoning for Affordable/Special Needs Housing
- Works and Services Requirements
- Transportation Demand Management

The City has active policies and bylaws which pertain to the five subject matters noted above. Staff are actively working on updating policies related to the above for Council's consideration, and will bring forward new bylaws or amendments to current bylaws to implement the legislative authorities under Bill. Some of the updates will be by way of the Zoning Bylaw Re-Write Project.

5.0 COMMUNICATION AND COMMUNITY ENGAGEMENT

The legislative authorities outlined in Bill 16 require implementation by way of a bylaw adopted by Council, which must be a public process. Furthermore, Bill 16 requires consultation on density benefit bonus zoning and zoning for affordable and special needs housing.

Staff will be bringing forward the changes for density benefit bonus zoning, zoning for affordable and special needs housing and transportation demand management through the Zoning Bylaw Rewrite Project. This project will have a consultation and engagement process with the public and interested parties. Any new Tenant Protection Bylaw and Works and Services Bylaw would have a separate communication and engagement process determined at the time of bringing that work forward to Council.

6.0 FINANCIAL CONSIDERATIONS

Financial considerations related to tenant protection, density benefit bonus zoning, zoning for affordable and special needs housing, works and services bylaw, and transportation demand management are being reviewed at this time, and will be reported on separately to Council, prior to advancing the necessary new bylaws, bylaw amendments and policy changes, and if necessary, establishment of the required statutory reserve funds.

Respectfully submitted,

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ATTACHMENTS

No attachments

REPORT CONTRIBUTORS

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