



# Secondary Suites Progress Report

## Existing Local Government Powers for Managing Secondary Suites:

### Provincial Progress Report

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Ministry of Municipal Affairs and Housing

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## Introduction

In response to local government requests for assistance in planning and regulating secondary suites, the provincial government amended the BC Building Code to provide alternative, more practical standards for secondary suites and produced an information report documenting how local governments in British Columbia currently manage suites. In addition, the province is preparing a guide of the existing powers and authorities available to local government.

The purpose of this paper is provide an overview of existing local government powers with respect to planning and regulating secondary suites. The information in this paper will form the foundation for a "Guide to Planning and Regulating Secondary Suites" that is being prepared for distribution later this year.

## Secondary Suites: Existing Powers

Existing local government secondary suite planning and regulatory authorities are discussed under five headings: planning policies; regulations; financial powers; penalties and enforcement; and, additional powers by regulation.

## Planning Policies

Several local governments have identified secondary suites as a valuable component of affordable housing stock in the community and have developed policies that encourage their provision. Local governments can establish secondary suite policies in Official Community Plans (OCPs), Neighbourhood Plans and other planning documents. The *Municipal Act* requires local government to include policies addressing

affordable housing, rental housing and special needs housing in their Official Community Plans and a policy regarding secondary suites would contribute to meeting this requirement.

## Regulations

Local government can use a variety of bylaws and regulations to manage secondary suites.

**Land Use Designation.** Through the existing zoning provisions of the *Municipal Act*, section 963, local governments can regulate land use, density, siting and size, and location of uses on the land and within the structures. This provision includes secondary suites.

Zoning bylaws can establish where suites may exist and under what conditions. Although conditions vary considerably from one community to another, some of the most common conditions include:

- limit of one suite per lot;
- provisions respecting size of the suite (gross floor area, size relative to primary dwelling, minimum lot size);
- specifying the geographic areas where suites are, or are not acceptable;
- provisions respecting parking; and,
- not permitting suites where other uses are being carried on in the house such as a home-based business, day care, or group home.

**Density Bonuses.** Section 963.1 of the *Municipal Act* allows zoning bylaws to establish different density regulations for a zone and to establish conditions which would entitle an owner to a higher density. Subsection (2) specifies what type of conditions may be included. Within subsection (2) are conditions relating to amenities, conditions relating to the provisions of affordable and special needs housing and a condition that the owner enter into an Housing Agreement.

This authority makes it possible for a municipality to structure a zoning bylaw to offer additional density if a secondary suite is provided. The additional density (the floor area of the suite) could be excluded from the floor area calculations. In new developments, additional density could be available for purpose-built secondary suites.

**Housing Agreements.** Section 963.2 of the *Municipal Act* enables local governments to enter into agreements with property owners. These agreements can include conditions relating to the form of tenure and the availability of housing units to classes of persons identified in the agreement or bylaw. This section of the Act also allows conditions relating to the administration and management of the housing units and rents that may be charged. Although there is no specific authority for residency requirements, or owner occupancy requirements for secondary suites, there appears to be broad enough authority in the *Municipal Act* through this section to apply such conditions to secondary suites.

**Covenants.** Local governments have the ability to establish land use through a covenant. A covenant registrable under section 215 of the *Land Title Act* may be of a negative or positive nature and may include provisions concerning the use of land; the use of a building on, or to be erected on, land; building on or the subdivision of the land; and amenities. Therefore, a local government could agree, for example, with one or a number of property owners to permit secondary suites by covenant.

**Development Permits.** Section 945 and section 976 of the *Municipal Act* outline local government authority for development permits. Community plans may designate areas for several purposes, including the "(e) establishment of objectives and the provision of guidelines for the form and character of commercial, industrial or multi-family residential development." However, section 976 (7) specifies that where land has been designated under section 945 (e), the character of development and landscaping can only be addressed in general terms. The ability to regulate detailed landscaping or exterior design and finishing of buildings and structures is not provided for to the extent many municipalities want in order to regulate secondary suites.

Several local governments consider homes with secondary suites to be a two-family dwelling or 'duplex'. In some legal opinions, a duplex fits into the multi-family residential development category, and therefore development permits can be used to require design and landscaping details. However, other legal opinions suggest duplexes are not multi-family residential developments.

**Building Code.** The primary tool for regulating physical conditions of residential premises is the BC Building Code. The building code was amended in 1995 to add a section that applies specifically to secondary suites. In practice, the amendment means ceiling heights can be lower than for a duplex unit; sound control between dwelling units is not mandatory; handrails, exterior landings and exits can be similar to those required in a house; other similar amendments (for window location, corridor widths, etc.) which set a reasonable standard that facilitate the development of secondary suites. The amendments also provide safe and economical alternatives to existing fire safety provisions in the building code.

In the revised code, a suite is defined as a smaller dwelling unit located within a house designed for single family occupancy. Buildings other than houses (such as apartments) cannot have secondary suites. A house can have only one secondary suite and it cannot be strata titled. A secondary suites must occupy less than 40 per cent of the habitable floor space of the house, to a maximum area of 90 m<sup>2</sup> (968 sq. ft.).

**Licensing.** Part 11 of the *Municipal Act* outlines the licensing powers of municipalities. Section 498 provides the authority for a licensing bylaw which is intended for licensing businesses in the community. Licensing is essentially a monitoring tool for ensuring a building is used for its intended use, a business is consistent with zoning requirements and is carried on within community standards. Fees for licensing are based on the principle of cost recovery. Licensing was not intended to be a revenue generating tool, nor as a method for municipalities to establish conditions, such as owner occupancy, or require statutory declarations concerning familial relationships.

Section 504 gives authority to a council to classify businesses according to type and other factors, including the number of rental units maintained. A rental apartment building, for example, must have a business license. Section 512 outlines a series of exemptions, including one for the business of letting or renting rooms where not more than two rooms are available for letting or renting.

Due to the ambiguous wording of this exemption, some municipalities believe secondary suites are excluded from a licensing requirement because suites are not more than two rooms, or that the exemption refers to a room and board situation. Other municipalities have adopted the practice of requiring a business license for a secondary suite on the understanding that it qualifies as a rental unit.

**Conversion Control.** Under section 9 of the *Condominium Act*, local governments have the authority to

approve conversion of rental units into strata units. It must consider the priority of rental accommodation over privately owned housing in the area, the proposals of the owner for relocating the existing tenants, and the projected major increases in maintenance costs due to the condition of the building. It may also consider any other matters that, in its opinion, are relevant. As secondary suites are significant contributors to the affordable rental housing stock, local governments may wish to ensure that secondary suites are not strata titled.

**Landscaping.** Under section 968 in the *Municipal Act*, local governments may by bylaw, require, set standards for and regulate the provision of screening or landscaping to mask or separate uses. There are provisions under section 976 of that Act that do allow conditions relating to the general character of development and landscaping, but specifically prevent detailed requirements for landscaping or exterior design and finish of buildings and structures.

**Maintenance of Property.** Since 1994, local governments have had the authority to establish standards of maintenance bylaws for rental accommodation. Section 734 of the *Municipal Act* authorizes a council for reasons of health, safety and protection of persons and property, to require the maintenance of residential premises as defined in the *Residential Tenancy Act*.

With section 932 of the *Municipal Act* (Nuisances and Disturbances), local government councils may prohibit owners or occupiers of real property from allowing their property to become or remain unsightly. In order to remedy unsightliness, council may require owners or occupiers to remove accumulations of filth, discarded materials, rubbish or graffiti. If, after a certain amount of time, the owner fails to comply, the municipality may remove the refuse and charge the costs to the owner's property taxes.

In addition, section 1025 of the *Municipal Act* provides the possibility of broader powers for regulating the condition of rental properties that have heritage significance. There are also provisions under the *Health Act* and *Fire Services Act* that allow municipalities to regulate specific aspects of rental accommodation.

## Financial Powers

Local governments have two tools to ensure that home owners with secondary suites are paying their fair share of municipal services.

**User Fees.** Local governments have authority through the *Municipal Act* to levy user charges in exchange for providing a specific benefit to a property, such as water supply and garbage collection. Parts 13 and 14 of the *Municipal Act* set out the parameters for municipalities with respect to public works and utilities. Section 612 provides authority for council to impose charges related to sewers or drains. Section 614 deals with waste removal charges. Section 641 authorizes charges related to municipal utilities, including water.

**Property Taxes.** In situations where a suite has been added to an existing home, the property is reassessed for property tax purposes by the BC Assessment Authority. The investment in a suite almost always translates into an increase in the market value assessment of the property, leading to a likely increase in municipal, regional and school taxes.

## Penalties and Enforcement Powers

There are a number of penalties that can be imposed or enforcement tools which a municipality may use to address situations where a secondary suite property owner fails to comply with its bylaws and regulations.

**The Offence Act.** Municipalities have the ability to prosecute the property owner in court for contravening a bylaw. The maximum penalty currently allowed under the *Offence Act* is \$2000. Some municipalities feel this is not a very efficient use of staff time and resources, and prefer other methods.

**Municipal Tickets.** As an alternative to seeking a summary conviction and penalties under the *Offence Act*, the municipality may want to consider implementing a "Municipal Ticket Information Authorization Bylaw" and deal with offences to its bylaws by ticketing. The authority to use ticketing as a means of enforcing bylaws and the fines that can be charged are found in section 934.1 through 934.3 of the *Municipal Act*, and the Municipal Regulation 352/89 sets out the categories of bylaws for which tickets can be issued, such as zoning, business licensing and landscape screening.

**Licence Remedies.** If the property owner has a business licence to rent accommodation under section 498 of the *Municipal Act*, the municipality may want to consider suspending the licence under section 513 of the *Municipal Act*, if the owner has been convicted of an offence. Another remedy under section 513 is revocation of the licence. This remedy is only available after a show cause hearing under section 513(3).

**Notice on Title.** A council or board may also, by resolution, decide to file a notice in the land titles office against the title of a property that does not comply with the building bylaw and any other laws related to the construction or safety of buildings. This notice serves as a warning to future purchasers of the property and may serve as an immediate incentive to the current owner to comply. The process that local government must follow is detailed in section 750.1 of the *Municipal Act*.

Local governments have used this to ensure that when new owners review the land title, they are made aware that the structure is in contravention of a bylaw or regulation. In the case of a secondary suite, the notice would state the suite does not conform to building code standards.

**Bylaw Contravention Notice.** Section 735 of the *Municipal Act* enables local government, by bylaw, to require that a building be brought up to a standard specified in a bylaw where the building contravenes a bylaw. If this part of the Act is being used, the council must provide 30 days written notice to the owner, tenant or occupier of the real property. The owner, tenant or occupier of the real property has 10 days to make an appeal which would be heard in court where an order will be made.

**Local Government Remedial Action.** Section 299 of the *Municipal Act* gives council general authority to enforce requirements it may have imposed by taking remedial action if those requirements are not met. Council may also recover the expenses, costs and interest incurred through this action by adding them to municipal taxes payable on that property.

## Additional Powers by Regulation

Municipalities and regional districts may apply for additional powers by regulation under sections 290.1 and 790.1, respectively, of the *Municipal Act*. The Lieutenant Governor in Council may grant a power, or provide an exception or modification of a requirement within certain parameters outlined in this section.

For example, a local government may apply for increased design and landscaping controls to regulate single-family homes with secondary suites.

## Conclusion

Local governments have a wide range of powers under existing legislation to establish and regulate secondary suites and to address many community concerns about the impact of secondary suites on single-family home neighbourhoods.

However, local government does not appear to have clear authority to require detailed landscaping and design conditions for single-family and two-family dwellings, or clear authority to require owner occupancy, or establish other residency requirements in houses with secondary suites. In addition, the authority to use licensing as a tool to regulate suites is not clear.

As next steps, the province will consider whether local government should be provided with explicit authority to address site and building design issues and make conditions regarding occupancy. Further examination of licensing as a vehicle to regulate suites will also be undertaken.

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