

- (a) the amounts received under subsection (4) in the applicable year;
  - (b) the expenditures from the reserve fund in the applicable year;
  - (c) the balance in the reserve fund at the start and at the end of the applicable year;
  - (d) the projected timeline for future projects to be funded from the reserve fund.
- (11) The local government must make a report under subsection (10) available to the public from the time it considers the report until June 30 in the following year.
- (12) The Lieutenant Governor in Council may make regulations
- (a) prescribing the local governments or classes of local governments that may make bylaws described in subsection (2), and
  - (b) prescribing the following in respect of the transportation demand measures to be provided by an owner or occupier in subsection (2) (a):
    - (i) classes of buildings or other structures;
    - (ii) design standards.

## **Division 14 — Non-conforming Use and Other Continuations**

### **Non-conforming uses: authority to continue use**

- 528** (1) Subject to this section, if, at the time a land use regulation bylaw is adopted,
- (a) land, or a building or other structure, to which that bylaw applies is lawfully used, and
  - (b) the use does not conform to the bylaw,
- the use may be continued as a non-conforming use.
- (2) If a non-conforming use authorized under subsection (1) is discontinued for a continuous period of 6 months, any subsequent use of the land, building or other structure becomes subject to the land use regulation bylaw.
- (3) The use of land, a building or other structure, for seasonal uses or for agricultural purposes, is not discontinued as a result of normal seasonal or agricultural practices, including
- (a) seasonal, market or production cycles,
  - (b) the control of disease or pests, or
  - (c) the repair, replacement or installation of equipment to meet standards for the health or safety of people or animals.
- (4) A building or other structure that is lawfully under construction at the time of the adoption of a land use regulation bylaw is deemed, for the purpose of this section,
- (a) to be a building or other structure existing at that time, and

- (b) to be then in use for its intended purpose as determined from the building permit authorizing its construction.
- (5) If subsection (1) authorizes a non-conforming use of part of a building or other structure to continue, the whole of that building or other structure may be used for that non-conforming use.

### **Non-conforming structures: restrictions on maintenance, extension and alteration**

- 529** (1) If the use and density of buildings and other structures conform to a land use regulation bylaw but
- (a) the siting, size or dimensions of a building or other structure constructed before the bylaw was adopted does not conform with the bylaw, or
  - (b) the siting, size, dimensions or number of off-street parking or loading spaces constructed or provided before the bylaw was adopted does not conform with the bylaw,

the building or other structure or spaces may be maintained, extended or altered to the extent authorized by subsection (2).

- (2) A building or other structure or spaces to which subsection (1) applies may be maintained, extended or altered only to the extent that
- (a) the repair, extension or alteration would, when completed, involve no further contravention of the bylaw than that existing at the time the repair, extension or alteration was started, and
  - (b) in the case of protected heritage property, the repair, extension or alteration is permitted or authorized in accordance with the provisions governing the heritage protection of the property.

### **Restrictions on increasing non-conforming use of land**

- 530** In relation to land, section 528 [*non-conforming uses*] does not authorize the non-conforming use of land to be continued on a scale or to an extent or degree greater than that at the time of the adoption of the land use regulation bylaw.

### **Restrictions on alteration or addition to building or other structure**

- 531** (1) Subject to this section, a structural alteration or addition must not be made in or to a building or other structure while a non-conforming use is continued in all or any part of it.
- (2) Subsection (1) does not prohibit a structural alteration or addition that is required by an enactment or is permitted by a board of variance under section 542 (1) [*authority for variance or exemption to relieve hardship*].
- (3) Subsection (1) does not apply to alterations or additions in or to a protected heritage property if the alteration or addition is authorized by a heritage alteration permit under section 617.

## Restrictions on repair or reconstruction of non-conforming structures

- 532** (1) If a building or other structure, the use of which does not conform to the provisions of a land use regulation bylaw, is damaged or destroyed to the extent of 75% or more of its value above its foundations, as determined by the building inspector, the structure must not be repaired or reconstructed except for a conforming use in accordance with the bylaw.
- (2) If the use of a building or other structure that is on land identified in a phased development agreement under Division 12 [*Phased Development Agreements*] complies with a zoning bylaw provision specified under section 516 (2) [*zoning rules for land subject to the agreement*] for the phased development agreement, subsection (1) of this section does not apply to the building or other structure while the phased development agreement is in effect, unless
- (a) the provision has been repealed or amended, and
  - (b) either
    - (i) the developer has agreed in writing under section 516 (5) that the changes to the zoning bylaw apply, or
    - (ii) the changes to the zoning bylaw apply under section 516 (6) without the written agreement of the developer.
- (3) Subsection (1) does not apply to repair or reconstruction of a protected heritage property if the repair or reconstruction is authorized by a heritage alteration permit under section 617.

## Non-conforming uses in relation to terminated land use contracts

- 533** (1) In this section:

**"contract termination date"** means, in relation to a land use contract, the date of termination under section 547 [*termination of all remaining land use contracts*] or 548 [*early termination of land use contract*], as applicable;

**"end of land use contract authority"** means, in relation to a land use contract, the later of the following:

- (a) the contract termination date;
  - (b) if an order under section 543 [*board of variance exemption to relieve hardship from early termination*] is made in respect of the land, the expiry of the period of time specified in the order.
- (2) Subject to this section, if, at the end of land use contract authority,
- (a) land, or a building or other structure, is lawfully used, and
  - (b) the use does not conform to a land use regulation bylaw that
    - (i) is in force at the end of land use contract authority, and
    - (ii) would not apply to the land, building or other structure but for the end of the land use contract authority,

the use may be continued as a non-conforming use.

- (3) If the non-conforming use authorized under subsection (2) is discontinued for a continuous period of 6 months, any subsequent use of the land, building or other structure becomes subject to the land use regulation bylaw.
- (4) The following provisions apply in relation to a use described in subsection (2):
  - (a) section 528 (3) to (5) [*non-conforming uses in relation to new land use regulation rules*];
  - (b) section 529 [*non-conforming structures*];
  - (c) section 530 [*restrictions on increasing non-conforming use of land*];
  - (d) section 531 [*restrictions on alteration or addition*];
  - (e) section 532 [*restrictions on repair or reconstruction*].
- (5) For the purposes of subsection (4), a reference in a provision referred to in that subsection to the adoption of a bylaw is to be read as a reference to the applicable end of contract authority.

### **Change in ownership, tenants or occupants in relation to use**

- 534** For the purposes of this Division, a change of owners, tenants or occupants of any land, or of a building or other structure, does not, by reason only of the change, affect the use of the land or building or other structure.

### **Non-conforming use and subdivision in relation to expropriation of land**

- 535** (1) If the use of land or the siting of existing buildings and other structures on the land ceases, as a result of expropriation of land, to conform to a land use regulation bylaw, the remainder of the property is deemed to conform.
- (2) Subsection (1) does not apply if compensation was paid to the owner or occupant of the land in an amount that is directly attributable to the loss, if any, suffered by the owner or occupant as a result of the non-conformity.
- (3) If, as a result of an expropriation,
- (a) a parcel of land could have been subdivided into 2 or more parcels under the applicable zoning bylaw in effect when the land expropriated was vested in the expropriating authority, and
  - (b) the parcel, as a result of the expropriation, can no longer be subdivided into the same number of parcels,
- the parcel is, to the extent authorized under subsection (4), deemed to conform to the applicable zoning bylaw for the purposes of the subdivision as though the expropriation had not occurred.
- (4) The deemed conformance under subsection (3) applies only to the extent that none of the parcels that would be created by the subdivision would be less than 90% of the area that would otherwise be permitted by the applicable zoning bylaw.

- (5) Subsection (3) does not apply if the owner of the parcel being subdivided has received compensation that is directly attributable to the reduction in the market value of the land that results from the inability to subdivide the parcel in the manner that would have been permitted under the applicable zoning bylaw.

### **Division 14.1 — Non-conforming Form of Tenure**

#### **Non-conforming form of tenure: authority to continue tenure**

**535.1** (1) If, at the time a zoning bylaw that limits the form of tenure to residential rental tenure is adopted, a housing unit to which the bylaw applies has a form of tenure other than residential rental tenure, the other form of tenure continues as a non-conforming form of tenure.

- (2) If, at the time a zoning bylaw that limits the form of tenure to residential rental tenure is adopted, a local government has issued a building permit or a development permit in relation to a building that will contain housing units to which the bylaw would otherwise apply, and the housing units have or may have a form of tenure other than residential rental tenure, the other form of tenure continues as a non-conforming form of tenure.

#### **Non-conforming form of tenure: repair, extension and alteration**

**535.2** (1) Subject to subsection (2), if a non-conforming form of tenure is authorized, under section 535.1, to continue in relation to a housing unit in a building and the building is maintained, extended or altered, the non-conforming form of tenure continues if the repair, extension or alteration would, when completed, involve no further contravention of the bylaw than that existing at the time the repair, extension or alteration was started.

- (2) If the repair, extension or alteration includes the construction of additional housing units, the additional housing units are subject to the zoning bylaw in relation to residential rental tenure.

#### **Change in ownership, tenants or occupants in relation to form of tenure**

**535.3** For the purposes of this Division and subject to section 535.4, a change of owners, tenants or occupants of a housing unit does not, by reason only of the change, affect the authority to continue a non-conforming form of tenure of the housing unit.

#### **Dissolution of strata corporations**

**535.4** If

- (a) a non-conforming form of tenure is authorized to continue under section 535.1 in relation to a housing unit in a building,
- (b) the building includes strata lots,
- (c) the strata corporation for the owners of the strata lots is wound up under Part 16 of the *Strata Property Act*, and

- (d) there is a disposition of all of the land and the building of that strata corporation,
- the non-conforming form of tenure is no longer authorized to continue.

### Regulation-making powers

**535.5** (1) In relation to this Division, the Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations respecting non-conforming forms of tenure, including, without limitation,

- (a) regulations prescribing circumstances in which a non-conforming form of tenure is authorized, or is no longer authorized, to continue, and
- (b) regulations in relation to when a non-conforming form of tenure is no longer authorized.

## Division 15 — Board of Variance

### Requirement for board of variance

**536** (1) A local government that has adopted a zoning bylaw must, by bylaw, establish a board of variance.

(2) A person is not eligible to be appointed to a board of variance if the person is

- (a) a member of the local government or the advisory planning commission, or
- (b) an officer or employee of the local government.

(3) Subject to subsections (4) and (5) and to the rules established under section 538 (2) (b) (i) [*rules for joint board of variance*], an appointment to a board of variance is for a 3 year period.

(4) If no successor has been appointed at the end of the 3 year period referred to in subsection (3), the appointment continues until the time that a successor is appointed.

(5) A local government may rescind an appointment to a board of variance at any time.

(6) If a member of a board of variance ceases to hold office, the person's successor is to be appointed in the same manner as the member who ceased to hold office, and, until the appointment of the successor, the remaining members constitute the board of variance.

(7) Members of a board of variance must not receive compensation for their services as members, but must be paid reasonable and necessary expenses that arise directly out of the performance of their duties.

- (8) A local government must provide in its annual budget for the necessary funds to pay for the costs of the board of variance.

### **Board of variance for municipality or regional district**

- 537** (1) If the population of a municipality is 25 000 or less, the municipal board of variance is to consist of 3 persons appointed by the council.
- (2) If the population of a municipality is more than 25 000, the municipal board of variance is to consist of 5 persons appointed by the council.
- (3) A regional district board of variance is to consist of 3 persons appointed by the board.
- (4) The board of a regional district may establish one or more boards of variance for the regional district, but, if more than one board of variance is established, the bylaw establishing them must specify the area of the regional district over which each board of variance has jurisdiction and those areas must not overlap.

### **Joint board of variance**

- 538** (1) Two or more local governments may satisfy the obligation under section 536 (1) *[requirement for board of variance]* by jointly establishing a board of variance by bylaw adopted by all participating local governments.
- (2) A bylaw under subsection (1) must
- (a) specify the area of jurisdiction for the board of variance, which may be all or part of the participating local governments, but must not overlap with the area of jurisdiction of any other board of variance, and
  - (b) establish rules for the following that apply in place of those established by sections 536 *[requirement for board of variance]* and 539 *[chair and procedures]*:
    - (i) appointment and removal of members of the board of variance;
    - (ii) appointment and removal of a chair of the board of variance.
- (3) As exceptions to section 537 *[local board of variance]*, the following apply to a board of variance established under this section:
- (a) if a municipality is one of the participating local governments, the board of variance is to consist of
    - (i) 3 persons, if the population of the area of the jurisdiction of the board of variance is 25 000 or less, and
    - (ii) 5 persons, if the population of the area of the jurisdiction of the board of variance is more than 25 000;
  - (b) if a municipality is not one of the participating local governments, the board of variance is to consist of 3 persons.

### **Chair and procedures for board of variance**

- 539** (1) The members of a board of variance must elect one of their number as chair.
- (2) The chair may appoint a member of the board of variance as acting chair to preside in the absence of the chair.
- (3) A bylaw establishing a board of variance must set out the procedures to be followed by the board of variance, including the manner in which appeals are to be brought and notices under section 541 *[notice of application for variance]* or 543 (2) *[notice of application in relation to early termination of land use contract]* are to be given.
- (4) A board of variance must maintain a record of all its decisions and must ensure that the record is available for public inspection during regular office hours.

### **Application for variance or exemption to relieve hardship**

- 540** A person may apply to a board of variance for an order under section 542 *[board powers on application]* if the person alleges that compliance with any of the following would cause the person hardship:
- (a) a bylaw respecting
    - (i) the siting, size or dimensions of a building or other structure, or
    - (ii) the siting of a manufactured home in a manufactured home park;
  - (b) a subdivision servicing requirement under section 506 (1) (b) *[works and services requirements]* in an area zoned for agricultural or industrial use;
  - (c) the prohibition of a structural alteration or addition under section 531 (1) *[restrictions on alteration or addition while non-conforming use continued]*;
  - (d) a bylaw under section 8 (3) (c) *[fundamental powers — trees]* of the [Community Charter](#), other than a bylaw that has an effect referred to in section 50 (2) *[restrictions on authority — preventing all uses]* of that Act if the council has taken action under subsection (3) of that section to compensate or mitigate the hardship that is caused to the person.

### **Notice of application for variance**

- 541** (1) If a person makes an application under section 540, the board of variance must notify all owners and tenants in occupation of
- (a) the land that is the subject of the application, and
  - (b) the land that is adjacent to land that is the subject of the application.
- (2) A notice under subsection (1) must state the following:
- (a) the subject matter of the application;
  - (b) the time and date when and, if applicable, the place where the application will be heard;



- (c) if the meeting at which the application is heard is conducted by means of electronic or other communication facilities, the way in which the meeting is to be conducted by those means.
- (3) The obligation to give notice under subsection (1) is satisfied if the board of variance made a reasonable effort to mail or otherwise deliver the notice.

### Board powers on application

**542** (1) On an application under section 540, the board of variance may order that a minor variance be permitted from the requirements of the applicable bylaw, or that the applicant be exempted from section 531 (1) [*alteration or addition while non-conforming use continued*], if the board of variance

- (a) has heard the applicant and any person notified under section 541,
  - (b) finds that undue hardship would be caused to the applicant if the bylaw or section 531 (1) is complied with, and
  - (c) is of the opinion that the variance or exemption does not do any of the following:
    - (i) result in inappropriate development of the site;
    - (ii) adversely affect the natural environment;
    - (iii) substantially affect the use and enjoyment of adjacent land;
    - (iv) vary permitted uses and densities under the applicable bylaw;
    - (v) defeat the intent of the bylaw;
    - (vi) vary the application of an applicable bylaw in relation to residential rental tenure.
- (2) The board of variance must not make an order under subsection (1) that would do any of the following:
- (a) be in conflict with a covenant registered under section 219 of the [Land Title Act](#) or section 24A of the *Land Registry Act*, R.S.B.C. 1960, c. 208;
  - (b) deal with a matter that is covered in a land use permit or covered in a land use contract;
  - (c) deal with a matter that is covered by a phased development agreement under Division 12 [*Phased Development Agreements*];
  - (d) deal with a flood plain specification under section 524 (3);
  - (e) apply to a property
    - (i) for which an authorization for alterations is required under Part 15 [*Heritage Conservation*],
    - (ii) for which a heritage revitalization agreement under section 610 is in effect, or
    - (iii) that is scheduled under section 614 (3) (b) [*protected heritage property*] or contains a feature or characteristic identified under section 614 (3) (c) [*heritage value or character*].

- (3) In relation to an order under subsection (1),
- (a) if the order sets a time within which the construction of the building, structure or manufactured home park must be completed and the construction is not completed within that time, or
  - (b) if that construction is not substantially started within 2 years after the order was made, or within a longer or shorter time period established by the order,
- the permission or exemption terminates and the bylaw or section 531 (1), as the case may be, applies.
- (4) A decision of the board of variance under subsection (1) is final.

### **Exemption to relieve hardship from early termination of land use contract**

**543** (1) The owner of land subject to a land use contract that will be terminated by a bylaw adopted under section 548 [*early termination of land use contracts*] may apply to a board of variance for an order under subsection (5) of this section if

- (a) the owner alleges that the timing of the termination of the land use contract by the bylaw would cause the owner hardship, and
- (b) the application is received by the board of variance within 6 months after the adoption of the bylaw.

(2) If an application is made under subsection (1), the board of variance must notify all owners and tenants in occupation of

- (a) the land that is the subject of the application, and
- (b) the land that is adjacent to land that is the subject of the application.

(3) A notice under subsection (2) must state the following:

- (a) the subject matter of the application;
- (b) the time and date when and, if applicable, the place where the application will be heard;
- (c) if the meeting at which the application is heard is conducted by means of electronic or other communication facilities, the way in which the meeting is to be conducted by those means.

(4) The obligation to give notice under subsection (2) must be considered satisfied if the board of variance made a reasonable effort to mail or otherwise deliver the notice.

(5) On an application under subsection (1), the board of variance may order that, despite the termination of the land use contract and despite any zoning bylaw, the provisions of that land use contract continue to apply in relation to the applicant for a specified period of time ending no later than June 30, 2024, if the board of variance

- (a) has heard the applicant, and

- (b) finds that the timing of the termination of the land use contract by the bylaw would cause undue hardship to the applicant.
- (6) An order under subsection (5) does not run with the land.
- (7) The board of variance must make a decision on an application under subsection (1) within 6 months after the application is received by the board of variance.
- (8) A decision of the board of variance under subsection (5) is final.

### **Extent of damage to non-conforming use property**

- 544** (1) A person may apply to a board of variance for an order under subsection (2) if the person alleges that the determination by a building inspector of the amount of damage under section 532 (1) [*end of non-conforming use protection if building of other structure is seriously damaged*] is in error.
- (2) On an application under subsection (1), the board of variance may set aside the determination of the building inspector and make the determination under section 532 (1) in its place.
- (3) The applicant or the local government may appeal a decision of the board of variance under subsection (2) to the Supreme Court.

## **Division 16 — Discharge and Termination of Land Use Contracts**

### **Application to land use contracts under previous legislation**

- 545** This Division applies to land use contracts within the meaning of section 702A of the *Municipal Act*, R.S.B.C. 1960, c. 255, before that section was repealed under section 13 of the *Municipal Amendment Act, 1977*.

### **Amendment and discharge of land use contract**

- 546** (1) In this section, "**amend**" means modify, vary or discharge.
- (2) Subject to subsection (4), a land use contract that is registered in a land title office may be amended as follows:
- (a) by bylaw, with the agreement of
    - (i) the local government, and
    - (ii) the owner of any parcel that is described in the bylaw as being covered by the amendment;
  - (b) subject to subsection (3), by a development permit or a development variance permit, if the amendment does not affect the permitted use or density of use of any parcel against which the contract is registered;
  - (c) in the manner specified in the land use contract.
- (3) A land use contract must not be discharged in the manner provided for in subsection (2) (b).