

LOWER MAINLAND LOCAL GOVERNMENT ASSOCIATION AND COMMUNITY ENERGY ASSOCIATION

LOCAL GOVERNMENT AND SUSTAINABLE: LEGAL CAPACITY AND CONSTRAINTS

Donald Lidstone, Q.C.
Lidstone, Young, Anderson

A stylized silhouette of a mountain range in shades of teal, located at the bottom right of the slide.

INTRODUCTION

- ◆ roles for municipal government in sourcing, distribution and pricing of energy
- ◆ local government powers re: green energy
- ◆ opportunities to promote sustainability, balance power, source revenues
- ◆ powers under *Community Charter* and *Local Government Act* affected by Bill 30

INTRODUCTION (Cont'd)

- ◆ local government statutory powers
- ◆ Bill 30, 2006
- ◆ opportunities in the energy sector
- ◆ opportunities for partnership

LOCAL GOVERNMENT STATUTORY POWERS

◆ *Community Charter*

- s. 8(1) natural person powers
- s. 8(2) may provide *any* service
- may provide service directly or through *any* person
- s. 8(3) regulate re: municipal services
- s. 21 Partnering agreements
 - ◆ provide assistance to business
 - ◆ tax exemption under Part 7, Division 7
- s. 22 exclusive or limited franchises – gas, electrical or other energy supply system
 - ◆ 21 year term – initial/renewal
- s. 23 agreements with public authorities

LOCAL GOVERNMENT STATUTORY POWERS (Cont'd)

- ◆ S.28 disposal of service to supply and distribute gas or electrical energy – electoral approval
- ◆ Electrical Distribution Utility – Kelowna, New Westminister etc.
- ◆ ownership and possession of highways – *Community Charter*, Division 5

LOCAL GOVERNMENT STATUTORY POWERS (Cont'd)

- ◆ *Local Government Act*
- ◆ s. 903 – zoning bylaw
 - voluntary amenity contributions – not expressly authorized – never endorsed by court – unlawful consideration – express authority for amenity zoning and PDAs – tax versus fee versus gift – recovery by donor – class action suits

LOCAL GOVERNMENT STATUTORY POWERS (cont'd)

- ◆ Regional Districts – service establishment bylaws

LOCAL GOVERNMENT STATUTORY POWERS (cont'd)

- ◆ Bill 30, 2006
 - amended *Utilities Commission Act*
 - if BCUC issues CPCN, not subject to LG bylaws
 - breached MOU between UBCM and Province
 - nothing done under *Charter* or *LGA* impairs BCUC authorization, including CPCN
 - utility project can be immune from local bylaws whether or not given a CPCN
 - Cabinet has new powers to determine if public utility exempted from CPCN requirement also exempt from LG bylaws

LOCAL GOVERNMENT STATUTORY POWERS (cont'd)

- ◆ Opportunities for LG participation in Provincial regulatory processes
- ◆ IPP applications – information gathering involves local governments
- ◆ regulatory processes require notification to local governments
- ◆ *Water Act* notice of application given to interested parties – LG may request copies
- ◆ LG may request hearing
- ◆ LG may submit written comments
- ◆ LG may be represented at project review team or hearing

LOCAL GOVERNMENT STATUTORY POWERS (cont'd)

- ◆ LG may provide advice regarding its interests – s. 10 *Water Act*
- ◆ LG may appeal decision of controller or regional water manager – s. 92 *Water Act* to Environmental Appeal Board
- ◆ *Land Act*
- ◆ decision making on land applications – LG may provide input
- ◆ same process as for a water license
- ◆ LG may appeal decision under *Land Act* – s. 64

LOCAL GOVERNMENT STATUTORY POWERS (cont'd)

- ◆ *Environmental Assessment Act*
- ◆ determine if project is reviewable
- ◆ LG may request Minister designate project as reviewable
- ◆ LG has input into *EA* – identify issues and provide input
- ◆ Federal and Provincial *EA*'s coordinated
- ◆ environmental assessment process allows LG involvement at project advisory working group level – input re: community issues, socioeconomic considerations