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Incentive Zoning By-laws: A New Urban Planning Tool

Bill 16, the *Act to amend the Act respecting land use planning and development and other provisions* (2023, c. 12) was assented to on June 1, 2023. Although the *Act respecting land use planning and development* (ALPD) has been amended many times over the years, this latest amendment is one of the most significant since the act was passed in 1979.

Among others, the amendment added sections 145.35.1 to 145.35.4, giving municipalities incentive zoning powers similar to those in other Canadian provinces and American states.

Incentive zoning is primarily meant to allow municipalities to stimulate development according to their priorities and planning policies, while giving developers greater freedom when it comes to the design and use of their buildings. To that end, they may adopt by-laws providing for more permissive standards than those in their zoning by-laws if an applicant for a construction permit or certificate of authorization agrees to provide additional consideration (called a “prestation” in the ALPD). The applicant may, of course, decide not to enter into an agreement and carry out the project in accordance with the standards in the zoning by-law.

Incentive standards in a by-law may apply in certain zones or be based on the nature and characteristics of the project. They may address all zoning matters (for example, standards for density, dimensions, or layout) except uses.

However, a municipality may only require the considerations listed in section 145.35.2:

1. Integration of affordable, social, or family housing units into the project (examples: ensuring that at least 10% of housing units are affordable housing, adding a minimum number of housing units with at least three bedrooms)
2. Compliance with any project-related conditions that enable environmental performance objectives to be achieved (examples: installing a green rainwater collection and management system, meeting higher energy efficiency standards, obtaining a Novoclimat Big Multiple-Unit Building certification or an LEED green building certificate)

3. Implementing or establishing developments or equipment of public interest on or near the site (examples: adding meeting rooms, daycares, bike infrastructure, or a public park)

4. Preserving or restoring an immovable with heritage value

The by-law may specify the criteria under which a specific consideration may be required. However, it may also leave the choice of considerations up to the municipal council.

Lastly, the by-law must specify the financial guarantees that may be required from an applicant for a building permit or certificate of authorization.

The adoption of an incentive zoning by-law must follow the standard preliminary procedure for urban planning by-laws, i.e., notice of motion, draft by-law, public consultation meeting. In addition, according to ALPD section 123, paragraph 4, subparagraph 2, the by-law must be subject to referendum approval if it includes a replacement standard for a matter listed in section 113, paragraph 2, subparagraphs 1–5, 6, and 17–23 or paragraph 3 of that section.

Before authorizing the conclusion of the agreement, the council must submit a draft to the advisory planning committee.

The council may also decide to submit the draft agreement to public consultation in accordance with ALPD sections 125 to 127, with the necessary modifications.

Finally, the resolution authorizing the agreement must specify the replacement standards that apply to the applicant's project, and contain a detailed description of the considerations to be made.