



Legal Considerations Related to Development Bonusing



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The Law of Bonusing

- ▶ *Municipal Act, 2001*, section 106

Assistance prohibited

106. (1) Despite any Act, a municipality shall not assist directly or indirectly any manufacturing business or other industrial or commercial enterprise through the granting of bonuses for that purpose.

Same

- (2) Without limiting subsection (1), the municipality shall not grant assistance by,
- (a) giving or lending any property of the municipality, including money;
 - (b) guaranteeing borrowing;
 - (c) leasing or selling any property of the municipality at below fair market value; or
 - (d) giving a total or partial exemption from any levy, charge or fee.

Exception

(3) Subsection (1) does not apply to a council exercising its authority under subsection 28 (6), (7) or (7.2) of the *Planning Act* or under section 365.1 of this Act.



The Law of Bonusing

▶ *Planning Act*, section 37

Increased density, etc., provision by-law

37. (1) The council of a local municipality may, in a by-law passed under section 34, authorize increases in the height and density of development otherwise permitted by the by-law that will be permitted in return for the provision of such facilities, services or matters as are set out in the by-law.

Condition

(2) A by-law shall not contain the provisions mentioned in subsection (1) unless there is an official plan in effect in the local municipality that contains provisions relating to the authorization of increases in height and density of development.

Agreements

(3) Where an owner of land elects to provide facilities, services or matters in return for an increase in the height or density of development, the municipality may require the owner to enter into one or more agreements with the municipality dealing with the facilities, services or matters.

Registration of agreement

(4) Any agreement entered into under subsection (3) may be registered against the land to which it applies and the municipality is entitled to enforce the provisions thereof against the owner and, subject to the provisions of the *Registry Act* and the *Land Titles Act*, any and all subsequent owners of the land.



The Law of Bonusing

▶ *Smart Growth for Our Communities Act, 2015 (Bill 73)*

Special account

(5) All money received by the municipality under this section shall be paid into a special account and spent only for facilities, services and other matters specified in the by-law. 2015, c. 26, s. 27.

Investments

(6) The money in the special account may be invested in securities in which the municipality is permitted to invest under the *Municipal Act, 2001* or the *City of Toronto Act, 2006*, as the case may be, and the earnings derived from the investment of the money shall be paid into the special account, and the auditor in the auditor's annual report shall report on the activities and status of the account. 2015, c. 26, s. 27.

Treasurer's statement

(7) The treasurer of the municipality shall each year, on or before the date specified by the council, give the council a financial statement relating to the special account. 2015, c. 26, s. 27.



The Law of Bonusing

▶ *Smart Growth for Our Communities Act, 2015 (Bill 73)*

Requirements

- (8) The statement shall include, for the preceding year,
- (a) statements of the opening and closing balances of the special account and of the transactions relating to the account;
 - (b) statements identifying,
 - (i) any facilities, services or other matters specified in the by-law for which funds from the special account have been spent during the year;
 - (ii) details of the amounts spent, and
 - (iii) for each facility, service or other matter mentioned in subclause (i), the manner in which any capital cost not funded from the special account was or will be funded; and
 - (c) any other information that is prescribed.

Copy to Minister

- (9) The treasurer shall give a copy of the statement to the Minister on request.

Statement available to public

- (10) The council shall ensure that the statement is made available to the public.
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Comments from the OMB

- ▶ **What bonusing is not to be:**
 - ▶ The policies are not to be arbitrarily applied
 - ▶ The benefits are not a tax tool



Comments from the OMB

- ▶ **What bonusing should be:**
 - ▶ Policies should be clear, fair, transparent
 - ▶ There should be a nexus – connection – relationship between the height/density increase and the benefit



Comments from the OMB

- ▶ **What can the benefits be?**
 - ▶ “Facilities, services or matters”
 - ▶ Conveyance of land
 - ▶ Cash-in-lieu



Questions?

- ▶ Thank you.

