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# Newsletter

## Real Estate

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M<sup>re</sup> Daniel J. Martin

*This newsletter was written in collaboration with Catherine Dion, articling student.*

## By-law for a Diverse Metropolis: What is the Impact for Real Estate Promoters?

On October 22, 2019 was held the public consultation on the *Règlement visant à améliorer l'offre en matière de logement social, abordable et familial*,<sup>1</sup> also known as the "By-law for a Diverse Metropolis" or "By-law 20/20/20", which was adopted by the Municipal Council of the City of Montreal pursuant to its newly enlarged powers under the *Act respecting land use planning and development*.<sup>2</sup> The City of Montreal's goal is to bring new private residential construction projects to contribute 20% in social housing, 20% in affordable housing and 20% in family housing. However, the By-law, itself, is less onerous, with requirements of 22/15/5 at their highest, as explained in the following paragraphs. Promoters can comply with these new obligations by building mixt residential projects, transferring land to the City of Montreal or making a financial contribution to the Fund contributing to the Inclusion Strategy.

The By-law applies to the entire City of Montreal and its boroughs. For its purposes, the City is divided in sectors regrouping downtown, the inner neighbourhoods, the peripheral neighbourhoods and the outskirts. The present newsletter details the By-law, its application, and its impact on promoters and their future construction projects.

### 1. Application

The By-law falls under the Inclusion Strategy for Affordable Housing in New Residential Projects (adopted in 2005 by the City of Montreal), which already provided that a private residential project composed of more than one hundred units, substantially derogating from urban planning rules in force, had to include 15% of social housing and 15% of affordable housing.<sup>3</sup> The By-law will replace the Inclusion Strategy of 2005, increasing the inclusion standards in the City of Montreal.

New constructions and conversions of commercial buildings into residential ones are subject to the By-law; the renovation of buildings, without the addition of units, is not.<sup>4</sup> Indeed, all private residential projects of 450 m<sup>2</sup> or more, the equivalent of five units or more, will have to comply with the requirements of social housing.<sup>5</sup> In addition, all projects of fifty units or more will have to comply with the requirements of affordable housing and family housing.<sup>6</sup>

### 2. Necessity to Negotiate an Agreement with the City of Montreal

Owners whose projects are subject to the By-law will have to negotiate with the City of Montreal an agreement governing each phase of the project before they are able to obtain a construction permit.<sup>7</sup> Such agreement shall include the affidavit of an expert describing the residential project and its location, the owner's undertakings to comply with the By-law, and the terms securing those undertakings.<sup>8</sup> The agreement must be attached to the construction permit request.<sup>9</sup>

The agreement has to follow the requirements of social, affordable, and family housing by either building a mixt project corresponding to the definitions in the By-law, making a financial contribution to the Fund contributing to the Inclusion Strategy or assigning a land or a building to the City of Montreal. Requirements vary depending on the sector of the City; the financial requirements are more onerous close to downtown while the construction requirements are more onerous outside downtown.

### 3. Requirements for Social Housing for Projects of 450 m<sup>2</sup> or More (Five Units or More)

The By-law defines social housing as housing admissible to a municipal subsidy program. A residential project can comply with the requirements for social housing by assigning vacant land or land upon which social housing is built to the City of Montreal, making a financial contribution or a combination of both.<sup>10</sup>

When a residential project and the building or land assigned are located downtown, the assigned property's surface must be 20% of that of the residential project.<sup>11</sup> As compensation, the owner will receive \$552 per m<sup>2</sup> of residential surface assigned.<sup>12</sup>

When a residential project is located outside downtown and the social housing building or land assigned is less than two kilometers away from the residential project, the surface of the assigned property must be 20% of that of the residential project. If the assigned property is rather located more than two kilometers away from the private project, its surface must be 22% of that of the residential project.<sup>13</sup> As compensation, the owner will receive between \$213 and \$463 per m<sup>2</sup> of residential surface assigned, depending on how far it is from downtown.<sup>14</sup>

Instead of assigning a building or land, an owner can make a financial contribution to the Fund contributing to the Inclusion Strategy, which varies between \$23 and \$118 per m<sup>2</sup> according to the surface, as determined by the By-law, and depending on the sector of the City.<sup>15</sup>

### 4. Requirements for Affordable Housing for Projects of More than Fifty Units

Affordable housing must be sold or leased at the rates provided in the By-law in order to qualify as such under the By-law. A residential project can comply with the affordable housing requirements in three ways: (i) by building social housing priced in accordance with the By-law, (ii) by building social housing benefiting from a governmental or municipal program reducing the down payment to less than 5% of the sale price, or (iii) by making a financial contribution.

Downtown, a residential project will have to include either 15% of affordable housing, 10% of affordable housing benefiting from a program reducing the down payment or a financial contribution of \$25,000 per affordable housing unit required.<sup>16</sup>

On the periphery of downtown and on the outskirts of the City, a residential project will have to provide for the construction of either 20% of social housing, 15% of social housing benefiting from a program reducing the down payment or a financial contribution varying from \$7,500 to \$25,000 per affordable housing unit required depending on the sector.<sup>17</sup>

### 5. Requirements for Affordable Family Housing for Projects of More than Fifty Units

In order to be compliant with the By-law, affordable family housing must have three bedrooms or more and have a minimal surface area of 86 m<sup>2</sup> downtown and 96 m<sup>2</sup> on the periphery of downtown and on the outskirts of the City. Prices are determined in the By-law.

A residential project located downtown must provide for either 5% of affordable family housing, 5% of affordable family housing under a program reducing the down payment to less than 5% of the sale price or a financial contribution of \$45,000 per affordable family housing unit required.<sup>18</sup>

A residential project located on the periphery of downtown or on the outskirts of the City shall answer to the same criteria regarding affordable family housing as that pertaining to projects located downtown, or contribute \$13,500 to \$45,000 per affordable family housing unit required depending on the sector.<sup>19</sup>

It is worth mentioning that, in order to maximize the space dedicated to affordable housing, the proportion of affordable family housing is included in the proportion of affordable housing as described in Section 4 of this newsletter. Nevertheless, the proportion of social housing described in the above Section 3 must be considered on its own.

### 6. Indexation

Amounts fixed by the By-law for compensations, financial contributions, and sale and rental prices shall be indexed to a maximum of 2% per year following the entry into force of the By-law.<sup>20</sup> Affordable housing units that are leased will have their rents increased by no more than 2% per year for the five years after the date on which the building will be ready for use and they will not be subject to determination by the court.<sup>21</sup>

### 7. Impacts on the Market

Different real estate actors do not agree on the consequences that the By-law may have on the Montreal market. Professor Mario Polèse writes that there may be a risk that the global housing offer will diminish and that the prices will increase.<sup>22</sup> A study by the City of Montreal predicts that the increase in prices will be limited to 0% to 4%<sup>23</sup> while a study by The Altus Group, requested by the Urban Development Institute (UDI) and the *Association des professionnels de la construction et de l'habitation du Québec* (APHQ), predicts an increase as high as 16% downtown.<sup>24</sup> Furthermore, some promoters may be concerned about obtaining fair compensation when assigning land or a building to the City.

The fact remains that the By-law has the benefit of stating predictable inclusion norms for residential projects by being uniformly applicable to all the boroughs of the City.

## 8. Adoption of the By-law and Next Steps

The By-law, which will come into force on January 1, 2021,<sup>25</sup> will be analyzed further by the *Office de consultation publique de Montréal* in the fall of 2019 before its final adoption anticipated for early 2020. Nonetheless, some agreements that were concluded with the City of Montreal before June 17, 2019 in accordance with the Inclusion Strategy of 2005 that did not include an assignment, a financial contribution nor a surety in favour of the City of Montreal will have to comply with the By-law.<sup>26</sup> Subsequent project phases that were not subject to an agreement before June 17, 2019 will also have to comply with the By-law.

It is important to note that, depending on the results of the public consultation held on October 22, 2019, the By-law may be modified before its adoption. We invite our readers to keep an eye out for our upcoming newsletters to be informed of any changes.

23. City of Montreal, *Règlement pour une métropole mixte : Document explicatif, supra*, note 6, p. 30.
24. Sylvie LEMIEUX, « Règlement sur l'inclusion: sans compensation, la rentabilité des projets immobiliers est en jeu », *Blogue de l'Institut de Développement Urbain*, March 11, 2019, [online], <https://idu.quebec/fr/blogue/reglement-sur-l-inclusion-sans-compensation-la-rentabilite-des-projets-immobiliers-est-en-jeu>.
25. By-law, s. 30.
26. *Ibid.*, s. 31.

**The content of this newsletter is intended to provide general commentary only and should not be relied upon as legal advice.**

**For more information, please contact:**

**Daniel J. Martin**

514 925-6365

[daniel.martin@lrm.com](mailto:daniel.martin@lrm.com)

1. Hereinafter, the "By-law".
2. CQLR c A-19.1, as modified in 2017 by *An Act mainly to recognize that municipalities are local governments and to increase their autonomy and powers*, SQ 2017, c 13 (Bill 122).
3. City of Montreal, *Stratégie d'inclusion de logements abordables dans les nouveaux projets résidentiels (adoptée en 2005)*, p. 15, [online], [http://ville.montreal.qc.ca/pls/portal/docs/PAGE/HABITATION\\_FR/MEDIA/DOCUMENTS/STRATEGIE\\_INCLUSION.PDF](http://ville.montreal.qc.ca/pls/portal/docs/PAGE/HABITATION_FR/MEDIA/DOCUMENTS/STRATEGIE_INCLUSION.PDF) (hereinafter, the "Inclusion Strategy of 2005").
4. City of Montreal, *Règlement pour une métropole mixte : Document explicatif*, p. 14, [online], [http://ville.montreal.qc.ca/pls/portal/docs/page/habitation\\_fr/media/documents/reglement\\_metrople\\_mixte-document\\_explicatif.pdf](http://ville.montreal.qc.ca/pls/portal/docs/page/habitation_fr/media/documents/reglement_metrople_mixte-document_explicatif.pdf).
5. By-law, s. 9.
6. *Ibid.*, s. 19.
7. By-law, s. 4 and 5.
8. *Ibid.*, s. 28.
9. *Ibid.*, s. 29, modifying the *By-law concerning the construction and conversion of buildings (11-018)*.
10. *Ibid.*, s. 9 and 10; City of Montreal, *Règlement pour une métropole mixte : Document explicatif, supra*, note 6, p. 17.
11. By-law, s. 11 and 14(1)(1).
12. *Ibid.*, s. 15.
13. *Ibid.*, s. 11 and 14(1)(2).
14. *Ibid.*, s. 15.
15. *Ibid.*, s. 16.
16. *Ibid.*, s. 19(1)(1).
17. *Ibid.*, s. 19(1)(2).
18. *Ibid.*, s. 19(1)(1).
19. *Ibid.*, s. 19(1)(2).
20. *Ibid.*, s. 8.
21. *Ibid.*, s. 23.
22. Mario POLÈSE, « Opinion : Logements abordables à Montréal : Les effets pervers d'un règlement », *La Presse*, March 18, 2019, [online], [http://plus.lapresse.ca/screens/ae2ad73a-2c6a-4bc5-b872-8cd26beac198\\_\\_7C\\_\\_0.html?utm\\_medium=Ulink&utm\\_campaign=Internal%20Share&utm\\_content=Screen&fbclid=IwAR2mpGpLPoN6LFSPDPi5cYoWIOzGPT7Jg9EtB5KkaalPkE7oQlyrYNTu0RA](http://plus.lapresse.ca/screens/ae2ad73a-2c6a-4bc5-b872-8cd26beac198__7C__0.html?utm_medium=Ulink&utm_campaign=Internal%20Share&utm_content=Screen&fbclid=IwAR2mpGpLPoN6LFSPDPi5cYoWIOzGPT7Jg9EtB5KkaalPkE7oQlyrYNTu0RA).