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Government Passes Amendments to Municipal Government Act Section 364.2 Sets out Property Tax Incentives Bylaw

By Al Kosak, Partner & Barry Sjolie, Partner

On June 4, 2019, the Government of Alberta introduced Bill 7, the Municipal Government (Property Tax Incentives) Amendment Act, which applies amendments to the taxation provisions of the Municipal Government Act (the "MGA"). Bill 7 was given royal assent and came into force on June 28, 2019.

What Are the Key Changes to the MGA?

The primary effect of Bill 7 is to add a new provision, section 364.2, to the MGA. This section allows municipalities to grant tax exemptions and tax deferrals (collectively, "Incentives") to non-residential properties, for the purpose of encouraging the development or revitalization of these properties for the general benefit of the municipality. It gives municipalities the discretion to determine how much they wish to reduce or defer taxes for a particular non-residential property, subject only to the requirement that an Incentive last for no more than 15 years. Incentives can, however, be renewed for further terms of 15 years or fewer.

The availability of these Incentives must be governed by municipal bylaw. A bylaw under section 364.2 must set out the criteria upon which applications for an Incentive are considered, and must set out the process for such an application. It is up to each municipality to determine what criteria they will use. If an applicant meets the requisite criteria, the municipality may then grant the Incentive.

If the municipality grants an Incentive, it must do so in writing, and must specify the years to which the Incentive applies with any conditions for the Incentive to be granted. If the municipality instead refuses to grant the incentive, it must send a written notice to the applicant stating the reasons for the refusal.

If a property ceases to meet a particular criterion under the bylaw, or if any condition of the Incentive is breached, the municipality may cancel the Incentive for the taxation years in which the criterion/condition was not met, with written notice stating the reasons for the cancellation.

The municipality's council may delegate decisions to refuse or cancel Incentives. However, if the council chooses to delegate its authority, the bylaw must also allow the applicant to apply to the council for a review of a refusal or a cancellation. Regardless of whether these decisions are dealt with directly by the council or by a municipal delegate at the outset, they are subject to judicial review, as set out in section 364.3.

Bill 7 – Key Considerations for Municipalities

While the impact of this legislation cannot yet be assessed, we wish to highlight the following important points about Bill 7 and the new section 364.2 in particular.



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1. The Incentives must be generally available.

Even while acting under section 364.2, a municipality must still have a bona fide municipal purpose in granting an Incentive, and must continue to distribute its tax burden in a fair and equitable manner. Bylaws will have to be very carefully drafted in articulating the qualifying criteria for Incentives in order to avoid an inequitable result, or one in which the Incentive is uniquely available to one taxpayer. Such a result could also lead to complaints and sanctions under the New West Partnership Trade Agreement as an improper business subsidy.

2. Incentives are only available to properties that meet the criteria set out in the bylaw.

In accordance with the requirement that municipalities treat their taxpayers equitably, Incentives permitted through section 364.2 cannot be issued on an arbitrary or ad hoc basis. Once a municipality establishes its criteria by bylaw, it must follow them. It cannot refuse to consider an established criterion, or agree to consider some other criterion instead, with a view to granting an Incentive to a particular property – such practices would put the municipality offside the bylaw, the MGA, and the New West Partnership Trade Agreement. This makes a careful consideration of which criteria to include, and how to articulate these criteria, all the more essential.

3. The Incentive is no longer available if the property ceases to meet the specified criteria.

The municipality may cancel an Incentive for the time periods that the property ceases to meet a particular criterion as set out in the bylaw, or for the time periods that a condition of the Incentive is breached.

4. The most significant aspect is the length of time allowed for the Incentive.

Under section 364.2, an Incentive may last for up to 15 years, with further renewals available — this is a significant length of time for an Incentive to be in place. Previously under section 347 of the MGA, the ability to grant tax exemptions and deferrals was strictly limited to tax arrears and current taxes, not future taxes. Moreover, courts had considered the establishment of tax exemptions and deferrals in future years to be an improper fettering of a future council's discretion, as they would purport to bind future councils to a particular taxation position.

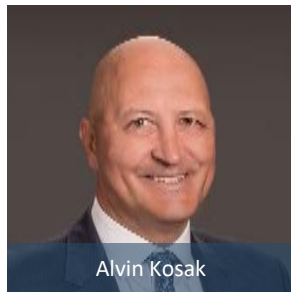
In light of the legal landscape existing prior to Bill 7, municipal councils will have to carefully consider all of the following in drafting a bylaw pursuant to section 364.2: the length of time they choose to allow exemptions and deferrals to last, the circumstances in which these time periods can be reduced or cancelled, and the means by which renewals, if any, are granted.



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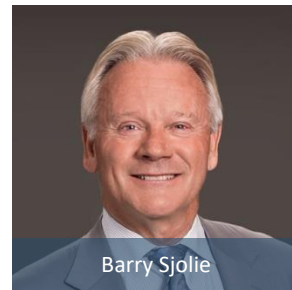
Questions?

Should you have any questions with respect to this bulletin, or if you would like more detailed information on these amendments made to the MGA, please contact the following members of the Brownlee LLP Municipal Team:



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