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Adoption of Bill 122 and Its Impact on Real Estate Developments in Québec

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On June 15, the Québec National Assembly adopted Bill 122, *An Act mainly to recognize that municipalities are local governments and to increase their autonomy and powers* (the "Act"). The government of Québec has described this omnibus law as "the greatest decentralization of powers to the municipalities in Québec history" [translation].

The highlights of the Act, which will have a major impact on real estate development projects in Québec, are as follows:

- exemption from the approval-by-referendum process for municipalities adopting a public participation policy;
- new contribution for parks prior to issuing a building permit to carry on new activities or intensify existing activities;
- transfer of land exceeding 10% of the surface area of the site, as a contribution for parks, if the land is located within a central sector of the municipality and if all or part of such land is green space;
- a municipality's power to make the issuance of a building permit for residential units subject to an agreement with the developer to increase the supply of affordable, social or family housing;
- a municipality's power to acquire, by agreement or expropriation, an immovable whose dilapidated state entails a risk for the health and safety of persons;
- increase in the duties on transfers of immovables; and
- starting in January 1, 2018, municipalities' new general taxation power and power to charge regulatory dues.

The following is a more detailed analysis of these provisions.

Exemption from the Approval-by-Referendum Process

Municipalities will be exempt from the approval-by-referendum process in respect of their bylaws and actions if they adopt a public participation policy in compliance with the requirements that will be specified in the framework bylaw to be enacted by the government.

The Act sets out various objectives that must be met by the public participation policy, in particular ensuring that the decision-making process is transparent, that citizens are consulted before decisions are made and that citizens are given a real opportunity to influence the process.

New Category of Contributions for Parks

Municipalities may require a contribution for parks (commonly referred to as the park tax) prior to issuing a building permit relating to work that will make it possible to carry on "new activities" or "intensify" existing activities on an immovable.

Municipalities may also require the transfer of land exceeding 10% of the surface area of the site if the land that is the subject of a subdivision or building permit is located within a "central sector" of the municipality and if all or part of such land is "green space." However, the Act does not set forth a maximum surface area or compensation in that respect.

The Act further provides that, when calculating the contribution for parks, the municipalities must take into account any previous transfer of land or payment of money. This is a positive change for real estate developers, given that such a deduction was previously compulsory only in connection with a subdivision of land. This provision illustrates, however, how important it is for municipalities to set up a public register of the payments and transfers made as contribution for parks rather than placing the burden of proof on landowners.

Agreements Relating to Affordable, Social or Family Housing

Municipalities may make the issuance of a building permit for residential units subject to an agreement between the developer and the municipality to increase the supply of affordable, social or family housing. Such an agreement may require the construction of such housing units, the payment of a sum of money or the transfer of an immovable.

Acquisition of an Immovable That Is the Subject of a Notice of Deterioration

Municipalities may register in the land register a notice of deterioration of an immovable whose owner has not carried out the work required by the municipality. The municipality may acquire, by agreement or expropriation, an immovable whose dilapidated state entails a risk for the health or safety of persons.

Increase in the Duties on Transfers of Immovables

Municipalities may set a higher rate than that provided for in the *Act respecting duties on transfers of immovables* for the tax bracket exceeding \$500,000. Until now, only the City of Montréal had the power to do so. The Act provides that this additional rate may not exceed 3%, except in the case of the City of Montréal.

In addition, each tax bracket will be increased annually on the basis of changes in the all-items Consumer Price Index for the Province of Québec.

The Municipalities' General Taxation Power and the Power to Charge Regulatory Dues

Starting in January 1, 2018, each municipality may, by bylaw, impose new municipal taxes in its territory (provided that they are direct taxes) and charge regulatory dues.

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