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Item No. 15.1.11
Halifax Regional Council
August 20, 2024

TO: Mayor Savage and Members of Halifax Regional Council

FROM: Cathie O'Toole, Chief Administrative Officer

DATE: July 15, 2024

SUBJECT: **Collection of Construction Related Fines**

ORIGIN

October 17, 2023, Halifax Regional Council motion (Item No. 15.2.1):

MOVED by Councillor Morse, seconded by Councillor Stoddard

THAT Halifax Regional Council direct the Chief Administrative Officer (CAO) to provide a staff report recommending options with respect to by-law and legislative changes which enable HRM to withhold permits and planning approvals related to construction and development for companies with unpaid fines.

MOTION PUT AND PASSED UNANIMOUSLY

EXECUTIVE SUMMARY

This report investigates whether Halifax Regional Municipality (HRM) has the authority to withhold building permits and planning approvals for those who have outstanding fines for convictions related to construction and development, and if that authority does not exist, what by-law and/or legislative changes are necessary to gain that authority.

HRM prosecutes persons for offences under the Municipality's various general application and land-use by-laws as well as the *Halifax Regional Municipality Charter* and other enactments. On conviction, a Judge may issue a fine order, which is payable to the Court by a certain date. Although the fines are payable to the Court, once collected the revenue is owed to HRM. At the time of writing, there is approximately $250,000.00 in outstanding fines owed through the courts to HRM.

Under the *Criminal Code*, provincial and federal authorities can refuse to issue or renew a license or permit for outstanding fines. However, that authority to refuse to issue or renew licenses or permits does not extend to municipalities. As creatures of statute, municipalities rely on explicit or implicit language for authority to enact certain provisions in by-laws. Neither the *Building Code Act* nor the *Halifax Regional Municipality Charter* provide the Municipality with the authority to refuse to issue or renew building permits or planning approvals for outstanding fines. In order to gain this authority, the Municipality must seek legislative changes.

RECOMMENDATION ON PAGE 2

There are no financial implications associated with this report. A risk consideration is the practice of developers to create companies for specific developments. If there is an outstanding fine against one of

these companies, there will likely never be another building permit or development application from that company again and the incentive to clear the fine may not be pressing to company.

The recommendation is for Regional Council to direct the Mayor to write to the Minister responsible for Municipal Affairs to request legislative amendments to the *Building Code Act* and the *Halifax Regional Municipality Charter* to allow HRM to refuse to issue or renew permits or planning approvals for outstanding fines.

RECOMMENDATION

It is recommended that Halifax Regional Council direct the Mayor to write a letter to the Minister responsible for Municipal Affairs with a request to:

1. amend the *Building Code Act* to allow the Municipality to refuse to issue or renew permits to applicants and related companies for outstanding fines; and

2 amend the *Halifax Regional Municipality Charter* to allow the Municipality to refuse to issue or renew planning approvals to applicants and related companies for outstanding fines.

BACKGROUND

This report responds to a motion of Regional Council to recommend options with respect to by-law and legislative changes to enable Halifax Regional Municipality to withhold permits, including building permits, and planning approvals for construction and development companies that have unpaid fines.

The following permits are routinely considered by the Municipality under By-law B-201, the Building By-law, through its building officials appointed under the *Building Code Act* (the *Act*):

- Building permits;
- Demolition permits; and
- Occupancy permits.

The following land development requests are routinely considered by the Municipality through its Council, community councils and development officers:

- Amendments to municipal planning strategies;
- Amendments to land-use by-laws;
- Development agreements;
- Incentive or bonus zoning agreements;
- Site plan approvals;
- Variances;
- Development permits; and
- Subdivision applications.

The fines arise from a Court's power under the *Criminal Code* to impose fines on a person, both individual and organization, convicted for offences under municipal by-laws or the *Halifax Regional Municipality Charter* (the HRM *Charter*). Even though the convictions arise from municipal prosecution they are not owed to the municipality but are owed to the court. However once collected, the HRM *Charter* states that the penalty amount is to be paid to the Municipality.

There are currently a number of outstanding fines, owed by both individuals and organizations, that total around $250,000.00.

DISCUSSION

Persons, both individuals and organizations, may be prosecuted for offences under a by-law, the HRM *Charter* or other enactment the Municipality has responsibility for administering. These offences are prosecuted and not just ticketed because there may be multiple offences, or the person is a repeat offender. If convicted, the Judge may impose a fine for the breach under the authority of the *Criminal Code*, issuing a fine order. The person must sign the fine order and acknowledge the potential consequences for not paying the fine by the date set out in the order. Those consequences may include:

- the refusal of a license or permit or the renewal of a license or permit;
- having judgement entered in civil court for the fine amount and costs;
- imprisonment unless able to satisfy the Court of a reasonable excuse for failing to pay or discharge the fine.

Under the *Criminal Code*, the refusal of a license or permit or the renewal of a license or permit only applies to provincial or federal licenses or permits, depending on what level of court is involved. The ability to refuse to issue or renew a license or permit does not extend to a municipality. The Attorney General for a province can file an order in civil court for the amount of the fine and costs to be entered into a judgement. A judgement can be recorded against personal property, such as cars, appliances, bank accounts, etc., or against real property. As the fines are payable to the Court, the Municipality relies on the collection resources of the Province to pursue those with outstanding fines.

As noted, the *Criminal Code* power to refuse to issue or renew a license or permit for outstanding fines does not apply to the Municipality. If municipal authority is not found there, then we look at the legislation for building permits and planning approvals to see is authority to refuse licenses and permits exists there.

The *Act* and the HRM *Charter* prescribe the powers available to the Municipality and the extent to which these powers may be used for building permit applications and planning applications respectively. Building permit applications are considered within the framework of By-law B-201, the Building By-law and the *Act*. All planning applications are considered within a framework of one, or a combination of, the following: HRM *Charter* provisions, municipal planning strategies and land-use bylaws or the subdivision by-law directly relevant to the individual application.

The content of the Municipality's By-law B-201, the Building By-law, is required to adhere to the provisions set out in the *Act*. The content of the By-law cannot be inconsistent with the *Act* or the Nova Scotia Building Code Regulations. The *Act* also sets out limited reasons a building official may refuse to issue a permit. Building permit applications must be approved and a permit issued if the application meets the requirements set out in the by-law.

Planning applications can generally be categorized as "as of right" or "discretionary" applications. Applications for development permits and subdivision approvals are "as of right" applications, whereas applications for amendments to a municipal planning strategy, amendments to a land use by-law, developments agreements, incentive or bonus zoning agreements, site plan approvals, and variances are all “discretionary” applications.

As of right applications must be approved if the application meets the applicable requirements. For example, a development permit must be issued for a proposed development if the development meets the requirements of the land use by-law, the terms of a development agreement or an approved site plan. An application for subdivision approval must be approved if the proposed subdivision is in accordance with the enactments in effect at the time that a complete application was received by the development officer.

Discretionary applications provide the decision-maker with varying degrees of discretion in considering the planning application, however this discretion is limited by the framework of HRM *Charter* provisions, municipal planning strategies and/or land-use by-laws applicable to the application.

As currently written, neither the *Act* nor the HRM *Charter* give the Municipality the authority to amend by-laws to refuse a building permit or planning approval due to fines owing. The Municipality must seek legislative amendments from the Province to both the *Act* and the HRM *Charter* for authority to refuse building permits or development approvals respectively for outstanding fines.

FINANCIAL IMPLICATIONS

No financial implications at this time.

RISK CONSIDERATION

Development companies often incorporate a company for a specific project. If there is a successful municipal prosecution under one of the Municipality's by-laws, the HRM *Charter* or another enactment, the conviction is for the incorporated company and not the parent development company. As it was created for the specific project, it is unlikely the incorporated company will seek any new permit or development approval. If HRM is successful in getting legislative changes that allow the Municipality to refuse to issue or renew permits or development approvals, this authority may be moot if the company does not make any further applications. This will impact the Municipality's ability to recover the outstanding fines owed by the company. This risk is considered to be moderate.

COMMUNITY ENGAGEMENT

No community engagement was required.

ENVIRONMENTAL IMPLICATIONS

No environmental implications were identified.

ALTERNATIVES

Regional Council could choose to refrain from directing the Mayor to write to the Minister responsible for Municipal Affairs to amend the *Building Code Act* and the *Halifax Regional Municipality Charter*. This will result in the status quo.

LEGISLATIVE AUTHORITY

As set out in Attachment 1.

ATTACHMENTS

Attachment 1 – Legislative Authority
Section 201 of the *Halifax Regional Municipality Charter*
Parts VIII & IX of the *Halifax Regional Municipality Charter*
Sections 7, 8 & 9 of the *Building Code Act*

Part XXIII, sections 734 – 735 of the *Criminal Code*

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(7) The standards of a by-law passed pursuant to this Section shall be consistent with the standards prescribed pursuant to the *Building Code Act* and regulations. 2008, c. 39, s. 199.

Offence

200 Every person who makes a false statement in an application for a licence to be issued by the Municipality is guilty of an offence. 2008, c. 39, s. 200.

Recovery of penalties, fees or fines

201 **(1)** A penalty or licence fee imposed pursuant to this Act may, unless otherwise provided, be recovered and enforced with costs on summary conviction.

(2) A penalty for a contravention of this Act or a by-law of the Municipality made pursuant to this Act or another Act of the Legislature must, when collected, be paid to the Municipality.

(3) A penalty or fine pursuant to a by-law of the Municipality, unless otherwise provided, belongs to, and forms part of, the general revenue of the Municipality. 2008, c. 39, s. 201.

Application for injunction

202 Where

(a) a building is erected, being erected or being used in contravention of a by-law of the Municipality;

(b) land is being used in contravention of a by-law of the Municipality;

(c) a breach of a by-law is anticipated or is of a continuing nature; or

(d) a person is carrying on business, or doing any thing, without having paid the licence or permit fee required,

the Municipality may apply to a judge of the Supreme Court of Nova Scotia for an injunction or other order and the judge may make any order that the justice of the case requires. 2008, c. 39, s. 202.

No liability for damages

203 The Municipality and its officers and employees are not liable for damages caused by it in remedying or attempting to remedy a contravention unless the Municipality was grossly negligent. 2008, c. 39, s. 203.

Ministerial approval not required for by-laws

204 Subject to Section 204A and unless otherwise provided in an enactment, a by-law made by a Council pursuant to this Act or another Act of the Legislature is not subject to the approval of the Minister. 2008, c. 39, s. 204; 2022, c. 48, s. 1.

PART VIII

PLANNING AND DEVELOPMENT

Purpose of Part

208 The purpose of this Part is to

(a) enable His Majesty in right of the Province to identify and protect its interests in the use and development of land;

(b) enable the Municipality to assume the primary authority for planning within its jurisdiction, consistent with its urban or rural character, through the adoption of municipal planning strategies and land-use by-laws consistent with interests and regulations of the Province;

(ba) ensure that the Municipality develops and adopts one or more municipal planning strategies to govern planning throughout the Municipality and fulfill the minimum planning requirements;

(c) establish a consultative process to ensure the right of the public to have access to information and to participate in the formulation of planning strategies and by-laws, including the right to be notified and heard before decisions are made pursuant to this Part; and

(d) provide for the fair, reasonable and efficient administration of this Part. 2008, c. 39, s. 208; 2018, c. 39, s. 11.

Interpretation

209 In this Part and Part IX, unless the context otherwise requires

(a) "affordable housing" means housing that meets the needs of a variety of households in the low to moderate income range;

(aa) "aggrieved person" includes

(i) an individual who *bona fide* believes the decision of the Council will adversely affect the value, or reasonable enjoyment, of the person's property or the reasonable enjoyment of property occupied by the person,

(ii) an incorporated organization, the objects of which include promoting or protecting the quality of life of persons residing in the neighbourhood affected by the Council's decision, or features, structures or sites of the community affected by the Council's decision, having significant cultural, architectural or recreational value, and

(iii) an incorporated or unincorporated organization in which the majority of members are individuals referred to in subclause (i);

(ab) "Centre Plan Area" means the area delineated in the map in Schedule C to this Act, excluding the HRM by Design Downtown Plan Area;

(b) "commission" means a district planning commission continued pursuant to this Act;

(c) "development" includes the erection, construction, alteration, placement, location, replacement or relocation of, or addition to, a structure and a change or alteration in the use made of land or structures;

(d) "development officer" means the person or persons appointed by a Council to administer a land-use or subdivision by-law;

(e) "Director" means the Provincial Director of Planning appointed pursuant to the *Municipal Government Act*, and includes a person acting under the supervision and direction of the Director;

(ea) "external appearance of structures" includes the exterior design of structures, the design features of structures and the facade of structures;

(f) "former *Planning Act*" means Chapter 346 of the Revised Statutes, 1989, the *Planning Act* and any predecessor to that Act;

(fa) "HRM by Design Downtown Plan Area" means the area delineated in the map in Schedule B to this Act;

(g) "incentive or bonus zoning" means requirements that permit the relaxation of certain requirements if an applicant exceeds other requirements or undertakes other action, in the public interest, as specified in the requirements;

(ga) "minimum planning requirements" means the requirements respecting a municipal planning strategy prescribed by Section 229 and the regulations made under that Section;

(h) "municipal planning strategy" means a municipal planning strategy, intermunicipal planning strategy or secondary planning strategy;

(i) "non-conforming structure" means a structure that does not meet the applicable requirements of a land-use by-law;

(j) "non-conforming use of land" means a use of land that is not permitted in the zone;

(k) "non-conforming use in a structure" means a use in a structure that is not permitted in the zone in which the structure is located;

(l) "planning area" means the area to which a municipal or intermunicipal planning strategy applies;

(m) "planning documents" means

(i) a municipal planning strategy and a land-use by-law adopted to carry out the municipal planning strategy,

(ii) an amendment to a municipal planning strategy and a land-use by-law amendment to carry out the municipal planning strategy amendment, and

(iii) a subdivision by-law and an amendment to it;

(n) "prohibit" includes prohibit in part, limit, limit in number, control or regulate;

(o) "regulate" does not include the power to prohibit;

(p) "statement of provincial interest" means a statement of provincial interest under the *Municipal Government Act*;

(q) "structure" includes a building;

(r) "subdivision" means the division of an area of land into two or more parcels, and includes a re subdivision or a consolidation of two or more parcels;

(s) "watercourse" means a lake, river, stream, ocean or other body of water. 2008, c. 39, s. 209; 2008, c. 41, s. 2; 2013, c. 18, s. 2; 2018, c. 10, s. 2; 2018, c. 39, s. 12.

Statement of provincial interest

210 When preparing or amending a statement of provincial interest, the Minister shall seek the views of the Council if the Municipality would be affected by the proposed statement. 2008, c. 39, s. 210.

Copy and notice of adoption or amendment

211 Upon the adoption or amendment by the Governor in Council of a statement of provincial interest that applies within the Municipality, the Minister shall send a copy of the statement to the Clerk and give notice of its adoption in a newspaper circulating in the affected area. 2008, c. 39, s. 211.

Provincial activities reasonably consistent

212 The activities of His Majesty in right of the Province must be reasonably consistent with a statement of provincial interest that applies within the Municipality. 2008, c. 39, s. 212.

Requirement to consider planning document

213 A department of the Government of the Province, before carrying out or authorizing any development in the Municipality, shall consider the planning documents of the Municipality. 2008, c. 39, s. 213.

Planning documents reasonably consistent

214 (1) Planning documents adopted after the adoption of a statement of provincial interest that applies within the Municipality must be reasonably consistent with the statement.

(2) The Minister may request that the Council, within the time prescribed by the Minister, amend its planning documents to be, or adopt new planning documents that are, reasonably consistent with a statement of provincial interest that applies within the Municipality.

(3) Where

(a) the Council does not comply with a request pursuant to subsection (2); or

(b) development that is inconsistent with a statement of provincial interest that applies within the Municipality might occur and the Minister is satisfied that there are necessary and compelling reasons to establish an interim planning area to protect the provincial interest,

the Minister may, by order, establish an interim planning area for an area prescribed by the Minister.

(4) to **(7)** *repealed 2018, c. 39, s. 13.*

2008, c. 39, s. 214; 2018, c. 39, s. 13.

Planning advisory committee

215 (1) The Municipality may, by policy, establish a planning advisory committee and may establish different planning advisory committees for different parts of the Municipality.

(2) The Municipality and one or more other municipalities may, by policy, establish a joint planning advisory committee.

(3) A planning advisory committee or joint planning advisory committee must include members of the public and may include a representative appointed by a village.

(4) The purpose of a planning advisory committee or a joint planning advisory committee is to advise respecting the preparation or amendment of planning documents and respecting planning matters generally.

(5) The duties assigned, pursuant to this Part, to a planning advisory committee or a joint planning advisory committee may only be carried out by the committee.

(6) The Council shall appoint members of a planning advisory committee or a joint planning advisory committee by resolution. 2008, c. 39, s. 215.

Area advisory committee

216 (1) The Municipality may establish, by policy, one or more area planning advisory committees to advise the planning advisory committee or joint planning advisory committee on planning matters affecting a specific area.

(2) An area planning advisory committee must include members of the public.

(3) The Council shall appoint members of an area planning advisory committee by resolution. 2008, c. 39, s. 216.

Policy establishing committee

217 In the policy establishing a planning advisory committee, joint planning advisory committee or area planning advisory committee, the Council shall

(a) fix the term of appointment and any provisions for re-appointment;

(b) fix the remuneration, if any, to be paid to the chair of the committee, if the chair is not a Council member;

(c) fix the remuneration, if any, to be paid to those members of the committee who are not Council members;

(d) establish the duties and procedures of the committee; and

(e) provide for the appointment of the chair and other officers of the committee. 2008, c. 39, s. 217.

Open meetings and exceptions

218 (1) Meetings of a planning advisory committee, joint planning advisory committee or area planning advisory committee or a commission are open to the public, unless the committee or commission, by a majority vote, moves a meeting in private to discuss matters related to

(a) personnel, labour relations, contract negotiations, litigation or potential litigation or legal advice eligible for solicitor-client privilege; or

(b) a potential application for a development permit, land-use by-law amendment, development agreement or amendment to a development agreement before the applicant has applied to the Municipality or development officer.

(2) The date, time and location of committee or commission meetings must be posted in a conspicuous place in the municipal office or another conspicuous place, as determined by the committee or commission.

(3) Any person may view

(a) committee or commission minutes, other than for a meeting in private, after they are adopted; and

(b) committee or commission reports to Council, after they are submitted to the Council.

(4) A planning advisory committee, joint planning advisory committee or area planning advisory committee may hold meetings for public discussion when, and in the manner, it or the Council decides. 2008, c. 39, s. 218.

Public participation program

219 (1) The Council shall adopt a public participation program concerning the preparation of planning documents.

(2) The Council may adopt different public participation programs for different types of planning documents.

(3) The content of a public participation program is at the discretion of the Council, but it must identify opportunities and establish ways and means of seeking the opinions of the public concerning the proposed planning documents. 2008, c. 39, s. 219; 2023, c. 18, s. 2.

Engagement program

219A (1) The Council shall adopt, by policy, an engagement program for engaging with abutting municipalities when the Council is adopting or amending a municipal planning strategy.

(2) Subject to the regulations, the content of an engagement program is at the discretion of the Council.

(3) The Minister may make regulations respecting the content of an engagement program.

(4) The exercise by the Minister of the authority contained in subsection (3) is regulations within the meaning of the *Regulations Act*. 2018, c. 39, s. 14.

Trusted-partner program

219B (1) The Municipality shall create, regulate and administer a trusted-partner program by-law made in accordance with this Section, and, without limiting the generality of the foregoing, the by-law may prescribe processes and procedures for the governance or administration of residential development approvals that differ from those under Part VIII or IX or the regulations.

(2) For greater certainty, a by-law made under this Section may create and distinguish between classes of applicants based on their municipal accreditation status under the by-law and prescribe different processes and terms for dealing with the applications of various classes of applicants.

(3) The permits and approvals referred to in this Section may include

(a) subdivision approval;

(b) approvals related to municipal planning strategies and land-use by-laws and development agreements under Parts VIII and IX;

(c) building permits and approvals under the *Building Code Act*; and

(d) any other permits and approvals relating to the development and construction of housing or mixed-use development that includes residential development under any enactment.

(4) The trusted-partner program and the by-law under this Section must reflect

(a) public safety and adherence to relevant codes, standards, and best practices in planning and construction;

(b) the social and economic urgency of efficient processes and quality construction, bearing in mind any housing shortage;

(c) transparency of process;

(d) establishment of objective criteria and processes for evaluation and accreditation of the reliability of design and development professionals, developers and builders, for the purpose of applications for residential development approvals;

(e) consultation with design professionals, regulators and builders in the development of the trusted-partner program;

(f) an assumption that the work of accredited applicants is competent and meets relevant construction standards and requirements and that professional certifications and representations may be relied upon;

(g) the need to eliminate duplicative internal reviews and oversight; and

(h) that projects involving accredited design professionals and builders enrolled in the trusted-partner program will be subject to an expedited process on a priority basis, within specified times, and on other terms contained in the program.

(5) A by-law made under this Section may include provisions for the granting of development permits allowing for a development to proceed in phases.

(6) Notwithstanding Section 250, a by-law made under this Section may include provisions allowing a development officer to grant a variance to a planning document or an amendment to a development agreement for the purpose of this Section if the variance or amendment is consistent with the intent of the development planning document or development agreement, as the case may be.

(7) Sections 251 and 252 apply to any variance granted under subsection (6), including any right of appeal.

(8) A by-law made under this Section is subject to the approval of the Minister.

(9) The Municipality shall adopt a by-law under this Section by the date specified in the regulations.

(10) Where the Municipality has not adopted a by-law under this Section by the date specified by or under subsection (9), the Minister may, after consultation with the Municipality, approve a form of such by-law which, when approved by the Minister, is deemed for all purposes to be a by-law made by the Municipality under this Section.

(11) A by-law made under this Section may only be repealed or amended with the approval of the Minister.

(12) The Minister may make regulations specifying

(a) additional terms and provisions to be included in a by-law made under this Section;

(b) a date by which the Municipality shall adopt a by-law under this Section.

(13) The exercise by the Minister of the authority contained in subsection (12) is a regulation within the meaning of the *Regulations Act*. 2023, c. 18, s. 3.

Requirements for adoption of planning documents

220 (1) The Council shall adopt, by by-law, planning documents.

(2) A by-law adopting planning documents must be read twice.

(3) Before planning documents are read for a second time, the Council shall hold a public hearing.

(4) The Council shall complete the public participation program before posting notice of a public hearing, including the date the notice is posted, on the Municipality's website.

(5) The notice for the public hearing is sufficient compliance with the requirement to advertise second reading of a by-law.

(6) Second reading must not occur until the Council has considered any submissions made or received at the public hearing.

(7) Only those Council members present at the public hearing may vote on second reading of the planning documents.

(8) The Council shall adopt planning documents, at second reading, by majority vote of the maximum number of members that may be elected to the Council. 2008, c. 39, s. 220; 2022, c. 13, s. 1.

Public hearing

221 (1) Prior to holding a public hearing required pursuant to this Part, the Clerk shall post notice of the hearing on the Municipality's website at least seven days before the date of the public hearing.

(2) The notice of a public hearing posted pursuant to subsection (1) must include the date the notice is posted and remain posted on the Municipality's website until the public hearing has been completed.

(3) The notice of the public hearing must

(a) state the place where, and the hours during which, the proposed documents may be inspected by the public;

(b) state the date, time and place set for the public hearing;

(c) describe by metes and bounds, a plan, map, sketch or civic address or other description adequate to identify the area affected by the proposed documents;

(d) give a synopsis of the proposed documents, if the public hearing is with respect to an amendment to a municipal planning strategy or land-use by-law or the approval or amendment of a development agreement.

(4) Copies of the proposed documents or portions of the documents must be provided to a person, on request, upon payment of a reasonable fee set by the Council, by policy, sufficient to recover the cost of providing the copies.

(5) In addition to posting notice of the hearing on the Municipality's website, the Clerk shall provide notice of the public hearing to the clerk of every municipality that immediately abuts an area affected by the planning documents at least seven days before the date of the public hearing. 2008, c. 39, s. 221; 2022, c. 13, s. 2.

Joint public hearing

222 (1) The Council and the councils of one or more other municipalities, two or more community councils or the Council and one or more community councils may agree to hold a joint public hearing regarding the adoption or amendment of an intermunicipal planning strategy.

(1A) The Council and the council of one or more municipalities may agree to hold a joint public hearing regarding the adoption or amendment of a municipal planning strategy by the Municipality or one or more of the other municipalities if the Council and each of the councils of the other municipalities determines that its municipality may be affected by the adoption or amendment.

(2) When a proposed development is subject to a public hearing pursuant to another Act of the Legislature, the Council may provide for a single hearing process for the proposed development, if this Act is complied with. 2008, c. 39, s. 222; 2018, c. 39, s. 15.

Requirement for review by Director

223 **(1)** Planning documents are subject to review by the Director.

(2) The Clerk shall submit four certified copies of the planning documents to the Director.

(3) Where the Director determines that the planning documents

(a) appear to affect a provincial interest;

(b) may not be reasonably consistent with an applicable statement of provincial interest;

(c) appear to conflict with the law;

(ca) in the case of a municipal planning strategy, may fail to fulfill the minimum planning requirements; or

(d) in the case of a subdivision by-law, may conflict with the provincial subdivision regulations,

the planning documents are subject to the Minister's approval.

(4) Within fifteen days after receiving the planning documents, the Director shall

(a) return two copies of the planning documents to the Clerk, with a written notice affixed stating that they are not subject to the approval of the Minister; or

(b) provide written notice to the Clerk that the planning documents are subject to the approval of the Minister and include the reasons why they are so subject.

(4A) Where the Director has not advised the Clerk whether Ministerial approval is required pursuant to subsection (4) within fifteen days, on the sixteenth day the Director is deemed to have determined that no approval is required.

(5) Compliance with the procedural requirements for the adoption or amendment of planning documents is not subject to the review of the Director or the Minister.

(6) Within thirty days after the date of a written notice that planning documents are subject to the approval of the Minister, the Minister shall

(a) approve all or part of the documents;

(b) approve the documents with amendments; or

(c) refuse to approve the documents,

and return to the Clerk two copies of the planning documents as approved, amended or refused with written reasons for the decision.

(7) Where no decision is made in accordance with subsection (6), the planning documents are deemed to be approved on the thirty-first day and the Clerk shall post a notice, including the date the notice is posted, on the Municipality's website advising that the planning documents are in effect as of the date the notice is posted and stating where the documents may be inspected.

(8) The Clerk shall post a notice on the Municipality's website advising that the planning documents, or planning documents as amended by the Minister, are in effect as of the date the notice is posted and stating where the documents may be inspected and the date on which the notice is posted

(a) upon receipt of notice from the Director that the planning documents are not subject to the approval of the Minister or that the planning documents are approved by the Minister; or

(b) if the Director has been deemed to have determined that no approval is required pursuant to subsection ~~223~~(4A).

(9) A notice that planning documents are in effect is publication of a by-law for the purposes of this Act.

(10) A municipal planning strategy takes effect on the date a notice is first posted on the Municipality's website informing the public that the municipal planning strategy and its implementing land-use by-law are in effect. 2008, c. 39, s. 223; 2018, c. 39, s. 16; 2022, c. 13, s. 3.

Repeal of planning documents

224 Planning documents may be repealed and the procedure for repealing them is the same as the procedure for adopting them. 2008, c. 39, s. 224.

Amendment of land-use by-law

225 (1) An amendment to a land-use by-law that

(a) is undertaken in accordance with the municipal planning strategy; and

(b) is not required to carry out a concurrent amendment to a municipal planning strategy,

is not subject to the review of the Director or the approval of the Minister.

(2) The procedure for the adoption of an amendment to a land-use by-law referred to in subsection (1) is the same as the procedure for the adoption of planning documents, but a public participation program is at the discretion of the Council and the amendment may be adopted by a majority of votes of the Council members present at the public hearing.

(3) Upon the adoption of an amendment to a land-use by-law referred to in subsection (1), the Clerk shall post a notice on the Municipality's website, including the date the notice is posted, for a minimum of fourteen days, stating that the amendment has been adopted and setting out the right of appeal.

(3A) Upon the adoption of an amendment to the land-use by-law referred to in subsection (1) and the provisional approval of a development agreement or amendment to a development agreement pursuant to Section 240B, the Clerk shall post a notice on the Municipality's website stating

(a) the date the notice is posted;

(b) that the amendment to the land-use by-law has been adopted; and

(c) that the development agreement or amendment to the development agreement has received provisional approval and will be approved on the date that the amendment to the land-use by-law takes effect.

(3B) Upon adoption of an amendment to the land-use by-law referred to in subsection (1), the adoption of a supporting amendment to the municipal planning strategy and the provisional approval of a development agreement or amendment to a development agreement pursuant to Section 240C, the Clerk shall post a notice on the Municipality's website stating

(a) the date the notice is posted;

(b) that the amendment to the land-use by-law has been adopted;

(c) that the amendment to the municipal planning strategy has been adopted; and

(d) that the development agreement or amendment to the development agreement has received provisional approval and will be approved on the date that the land-use by-law and municipal planning strategy amendments come into effect or, if the land-use by-law and municipal planning strategy amendments come into effect on different dates, on the later of the two dates.

(4) When notice of an amendment to a land-use by-law referred to in subsection (1) is posted, the Clerk shall file a certified copy of the amending by-law with the Minister.

(5) Within seven days after a decision to refuse to amend a land-use by-law referred to in subsection (1), the Clerk shall notify the applicant in writing, giving reasons for the refusal and setting out the right of appeal.

(6) Where the Council has not, within one hundred and twenty days after receipt of a completed application to amend a land-use by-law referred to in subsection (1), commenced the procedure required for amending the land-use by-law by publishing the required notice of public hearing, the application is deemed to have been refused.

(7) Within seven days after an application to amend a land-use by-law, referred to in subsection (1), being deemed to be refused, the Clerk shall

notify the applicant in writing that the application is deemed to have been refused and setting out the right to appeal.

(8) An amendment to a land-use by-law referred to in subsection (1) is effective when

(a) the appeal period has elapsed and no appeal has been commenced; or

(b) all appeals have been abandoned or disposed of or the amendment has been affirmed by the Board. 2008, c. 39, s. 225; 2022, c. 13, s. 4.

Certain amendments by policy

226 (1) The Council may, by policy, adopt amendments to

(a) the engineering specifications in a subdivision by-law;

(b) the processing fees set out in a land-use by-law or in a subdivision by-law;

(c) a subdivision by-law resulting from an amendment to the provincial subdivision regulations.

(2) An amendment referred to in subsection (1) is not subject to the review of the Director or the approval of the Minister. 2008, c. 39, s. 226.

Municipal planning strategy

227 (1) The Council shall adopt one or more municipal planning strategies in accordance with the requirements of this Section.

(2) There may be separate municipal planning strategies for different parts of the Municipality.

(3) All land within the Municipality must be the subject of a municipal planning strategy.

(4) A municipal planning strategy must

(a) be reasonably consistent with every statement of provincial interest; and

(b) fulfill the minimum planning requirements. 2018, c. 39, s. 17.

Purpose of municipal planning strategy

228 The purpose of a municipal planning strategy is to provide statements of policy consistent with the minimum planning requirements to guide the development and management of the Municipality and, to further this purpose, to establish

(a) policies that address problems and opportunities concerning the development of land and the effects of the development;

(b) policies to provide a framework for the environmental, social and economic development within the Municipality;

(c) policies that are reasonably consistent with the intent of statements of provincial interest; and

(d) specify programs and actions necessary for implementing the municipal planning strategy. 2008, c. 39, s. 228; 2018, c. 39, s. 18.

Statements of policy in planning strategy

229 (1) A municipal planning strategy must include statements of policy respecting

(a) the objectives of the Municipality in respect of its physical, economic and social environment;

(b) the future use, management and development of lands within the Municipality;

(c) the implementation and administration of the municipal planning strategy and the periodic review of the municipal planning strategy, its implementing land-use by-law and the extent to which the objectives set out in the municipal planning strategy are achieved;

(d) the engagement by the Municipality with abutting municipalities when amending the municipal planning strategy or adopting a new municipal planning strategy to replace the existing one; and

(e) any other matter prescribed by the regulations.

(2) In addition to the statements of policy required under subsection (1), a municipal planning strategy may include statements of policy respecting any matter permitted by the regulations.

(3) A municipal planning strategy must fulfill any additional requirements prescribed by the regulations.

(4) The Minister may make regulations

(a) prescribing matters in respect of which the inclusion of statements of policy in a municipal planning strategy is either mandatory or discretionary, which may include matters respecting

(i) public health and safety,

(ii) the protection of the natural environment,

(iii) the protection of resource lands,

(iv) the identification, preservation and protection of landscape features,

(v) the division of land into zones and the permitted and prohibited uses for each zone,

(vi) infrastructure,

(vii) transportation services and networks,

(viii) the subdivision of land,

(ix) matters of a local nature,

(x) the land-use by-law that implements the municipal planning strategy,

(xi) the physical, economic and social environment of the Municipality, and

(xii) procedures, not inconsistent with the public participation program established under Section 219, to be followed when amending or reviewing the municipal planning strategy, including procedures for public consultation and notice;

(b) prescribing requirements that a municipal planning strategy must fulfill, including requirements respecting

(i) the development, content, administration, implementation and review of the municipal planning strategy and the implementing land-use by-law,

(ii) the content, development and administration of development agreements, variances, site-plan approval areas and other planning tools, and

(iii) studies to be carried out before undertaking specified developments or developments in specified areas of the Municipality.

(5) A regulation made under subsection (4) may not

(a) require or authorize a municipal planning strategy to include a statement of policy that is inconsistent with any enactment; or

(b) require a municipal planning strategy to fulfill a requirement that is contrary to any enactment.

(6) The exercise by the Minister of the authority contained in subsection (4) is regulations within the meaning of the *Regulations Act*. 2018, c. 39, s. 19.

Failure to meet minimum planning requirements

229A (1) Where a municipal planning strategy does not fulfill the minimum planning requirements, the Minister may request that the Council, within the time prescribed by the Minister, amend the municipal planning strategy to fulfill, or

adopt a new municipal planning strategy that fulfills, the minimum planning requirements.

(2) Where the Council does not comply with a request pursuant to subsection (1), the Minister may, by order, establish an interim planning area for an area prescribed by the Minister. 2018, c. 39, s. 19.

Interim planning area

229B (1) Within an interim planning area established under Section 219 or 229A, subdivision, development or certain classes of subdivision or development may be regulated or prohibited, in whole or in part, to protect the provincial interest or give effect to the minimum planning requirements.

(2) No permit or approval of any kind may be issued that is contrary to an order establishing an interim planning area or an order regulating or prohibiting subdivision or development in the interim planning area.

(3) The Minister may withhold any grant or other funding otherwise payable to the Municipality under any enactment or agreement while an order establishing an interim planning area within the Municipality is in effect.

(4) The Minister shall

(a) send a copy of an order establishing an interim planning area and any order regulating or prohibiting subdivision or development in the interim planning area to the Clerk; and

(b) give notice that an order is in effect in a newspaper circulating in the area affected.

(5) Where the Council amends its municipal planning strategy in relation to an interim planning area to be reasonably consistent with the statements of provincial interest and fulfill the minimum planning requirements, or adopts a new municipal planning strategy to do so and, where the amended or new municipal planning strategy is in effect, the Minister shall revoke the order establishing the interim planning area.

(6) The Minister may recover any costs incurred in the course of establishing an interim planning area within the Municipality or regulating or prohibiting subdivision or development in the interim planning area from any money otherwise payable to the Municipality under the *Municipal Grants Act*. 2018, c. 39, s. 19.

Healthcare facility area

229C (1) In this Section,

(a) "healthcare facility" means any healthcare use, operation, service or facility operated or to be operated by a person other than the Province, but licensed or otherwise authorized by the Province, including any related or incidental facility;

(b) "healthcare facility area" means an area within the Municipality designated as a healthcare facility area by an order made under subsection (2).

(2) The Minister may, by order, on such terms as the Minister considers necessary for accomplishing the purpose of this Section,

(a) deem as urgently required for the purpose of this Section any existing or proposed healthcare facility;

(b) identify and describe the area of land on which the healthcare facility is or will be located and designate it as a healthcare facility area for the purpose of this Section; and

(c) prescribe terms with respect to the subdivision of land within the healthcare facility area, permissible uses within the healthcare facility area or development of the healthcare facility, that the Minister considers advisable for accomplishing the purpose of this Section, which may include terms, conditions or events upon which the order ceases to be in force in whole or in part.

(3) Where the Minister has made an order under subsection (2), Parts VIII and IX of this Act and any municipal planning strategies, land-use by-laws, development agreements, policies and subdivision by-laws in force in the Municipality do not apply to the healthcare facility area or to the establishment, siting, development, operation or use of a healthcare facility within the healthcare facility area, or to the subdivision of land in connection therewith, except to the extent the Minister may specify in the order.

(4) Before making or amending an order pursuant to subsection (2), the Minister shall consult with the Municipality.

(5) A healthcare facility that is the subject of an order is deemed to hold a development permit for the purpose of the *Building Code Act* and to comply with the requirements of any other enactment identified in the order.

(6) Where the Minister is satisfied that an order is no longer required to expedite the development or availability of a healthcare facility, the Minister shall revoke the order.

(7) Notwithstanding the revocation of an order under subsection (6), a healthcare facility exempted from the application of Parts VIII and IX and the municipal planning strategies, land-use by-laws and subdivision by-laws in force in the Municipality under subsection (3) may continue without change and in accordance with any terms prescribed in the order notwithstanding any non-conforming structure, non-conforming use of land or non-conforming use in a structure.

(8) Where there is a conflict or inconsistency between this Section and another provision of this Act or between this Section and any other enactment, this Section prevails.

(9) For greater certainty, where a healthcare facility area overlaps with a special planning area created pursuant to subsection 15(1) of the *Housing in [the] Halifax Regional Municipality Act*, within the overlapping area, this Section prevails.

(10) Upon making an order under subsection (2), the Minister shall

(a) send a copy of the order to the Clerk; and

(b) give notice that the order is in effect on the Province's website.

(11) Where the Clerk receives a copy of the order under clause (10)(a), the Clerk shall cause the order to be posted on a publicly available website for the Municipality.

(12) The Minister may make such regulations as are in the Minister's opinion required to implement this Section fully and effectively.

(13) The exercise by the Minister of the authority contained in subsections (2) and (12) is a regulation within the meaning of the *Regulations Act*.

(14) The Minister may make an order under subsection (2) that has retroactive effect to a day not earlier than June 1, 2023. 2023, c. 18, s. 4.

Intermunicipal planning strategy

230 (1) The Council and the councils of one or more other municipalities may agree to adopt a mutually binding intermunicipal planning strategy.

(2) The provisions of the *Municipal Government Act* that apply to a municipal planning strategy apply to an intermunicipal planning strategy. 2008, c. 39, s. 230; 2018, c. 39, s. 20.

Secondary planning strategy

231 (1) A municipal planning strategy may provide for the preparation and adoption of a secondary planning strategy that applies, as part of the municipal planning strategy, to a specific area or areas of the Municipality.

(2) The purpose of a secondary planning strategy is to address issues with respect to a particular part of the planning area, that may not, in the opinion of the Council, be adequately addressed in the municipal planning strategy alone. 2008, c. 39, s. 231.

Planning strategy and by-law for HRM by Design Area

231A Where the Council adopts a secondary municipal planning strategy and land-use by-law for the HRM by Design Downtown Plan Area, the Council shall conduct a review of the planning documents and report on the review to the public within ten years of their adoption. 2008, c. 41, s. 3.

No action inconsistent with planning strategy

232 (1) The Municipality may not act in a manner that is inconsistent with a municipal planning strategy.

(2) The adoption of a municipal planning strategy does not commit the Council to undertake any of the projects suggested in it. 2008, c. 39, s. 232.

Acquisition of land for development

233 (1) The Municipality may

(a) acquire and assemble land for the purpose of carrying out a development consistent with the municipal planning strategy, whether the development is to be undertaken by the Municipality or not; or

(b) by agreement with the owners of the land, acquire the right to impose easements or other development restrictions on the lands as if it had acquired the title.

(2) The Municipality may subdivide, rearrange and deal with lands described in clause (1)(a) as if it were a private owner and may sell the lands subject to any building restrictions or easements that the Council requires to ensure the development is consistent with the municipal planning strategy. 2008, c. 39, s. 233.

Adoption of land-use by-law or amendment

234 (1) Where the Council adopts a municipal planning strategy or a municipal planning strategy amendment that contains policies about regulating land use and development, the Council shall, at the same time, adopt a land-use by-law or land-use by-law amendment that enables the policies to be carried out.

(2) The Council may amend a land-use by-law in accordance with policies contained in the municipal planning strategy on a motion of the Council or on application.

(3) The Council may not adopt or amend a land-use by-law except to carry out the intent of a municipal planning strategy. 2008, c. 39, s. 234.

Content of land-use by-law

235 (1) A land-use by-law must include maps that divide the planning area into zones.

(2) A land-use by-law must

(a) list permitted or prohibited uses for each zone; and

(b) include provisions that are authorized pursuant to this Act and that are needed to implement the municipal planning strategy.

(3) A land-use by-law may regulate or prohibit development, but development may not be totally prohibited, unless prohibition is permitted pursuant to this Part.

(4) A land-use by-law may

(a) regulate the dimensions for frontage and lot area for any class of use and size of structure;

(b) regulate the maximum floor area of each use to be placed upon a lot, where more than one use is permitted upon a lot;

(c) regulate the maximum area of the ground that a structure may cover;

(d) regulate the location of a structure on a lot;

(e) regulate the height of structures;

(f) regulate the percentage of land that may be built upon;

(g) regulate the size, or other requirements, relating to yards;

(h) regulate the density of dwelling units;

(i) require and regulate the establishment and location of off-street parking and loading facilities;

(j) regulate the location of developments adjacent to pits and quarries;

(k) regulate the period of time for which temporary developments may be permitted;

(l) prescribe the form of an application for a development permit, the content of a development permit, the period of time for which the permit is valid and any provisions for revoking or renewing the permit;

(m) regulate the floor area ratio of a building;

(n) prescribe the fees for an application to amend a land-use by-law or for entering into a development agreement, site plan or variance.

(5) Where a municipal planning strategy so provides, a land-use by-law may

(a) subject to the *Public Highways Act*, regulate or restrict the location, size and number of accesses from a lot to the abutting streets, as long as a lot has access to at least one street;

(b) regulate or prohibit the type, number, size and location of signs and sign structures;

(c) regulate, require or prohibit fences, walks, outdoor lighting and landscaping;

(d) in connection with a development, regulate, or require the planting or retention of, trees and vegetation for the purposes of landscaping, buffering, sedimentation or erosion control;

(e) regulate or prohibit the outdoor storage of goods, machinery, vehicles, building materials, waste materials, aggregates and other items and require outdoor storage sites to be screened by landscaping or structures;

(f) regulate the location of disposal sites for any waste material;

(g) in relation to a development, regulate or prohibit the altering of land levels, the excavation or filling in of land, the placement of fill or the removal of soil unless these matters are regulated by another enactment of the Province;

(h) regulate or prohibit the removal of topsoil;

(i) regulate the external appearance of structures;

(j) set out conditions, including performance standards, to be met by a development before a development permit may be issued;

(ja) require and regulate the establishment of a district energy system within the Cogswell District Energy Boundary;

(jb) require, where the Council considers it necessary or advisable, that a building or other structure, built within the Cogswell District Energy Boundary after the coming into force of the by-law, be connected to the district energy system;

(jc) require and regulate the provision of affordable housing within developments, including requiring that a specified percentage of affordable housing units be provided within a development;

(k) provide for incentive or bonus zoning;

(l) prescribe methods for controlling erosion and sedimentation during the construction of a development;

(m) regulate or prohibit excavation, filling in, placement of fill or reclamation of land on floodplains identified in the land-use by-law;

(n) prohibit development or certain classes of development where, in the opinion of the Council, the

(i) cost of providing municipal wastewater facilities, stormwater systems or water systems would be prohibitive,

(ii) provision of municipal wastewater facilities, stormwater systems or water systems would be premature, or

(iii) cost of maintaining municipal streets would be prohibitive;

(o) regulate or prohibit development within a specified distance of a watercourse or a municipal water-supply wellhead;

(p) prohibit development on land that

(i) is subject to flooding or subsidence,

(ii) has steep slopes,

(iii) is low-lying, marshy, or unstable,

(iv) is otherwise hazardous for development because of its soil conditions, geological conditions, undermining or topography,

(v) is known to be contaminated within the meaning of the *Environment Act*, or

(vi) is located in an area where development is prohibited by a statement of provincial interest or by an enactment of the Province;

(q) regulate or prohibit development in areas near airports with a noise exposure forecast or noise exposure projections in excess of thirty, as set out on maps produced by an airport authority, as revised from time to time, and reviewed by the Department of Transport (Canada);

(r) permit the development officer to grant variances in parking and loading spaces, ground area and height, floor area occupied by a home-based business and the height and area of a sign.

(6) Where the land-use by-law provides for incentive or bonus zoning within the Centre Plan Area, the land-use by-law must require the inclusion of affordable housing in a development in addition to any other requirements adopted by the Council, as the contribution for any incentive or bonus zoning applicable to the development. 2008, c. 39, s. 235; 2008, c. 41, s. 4; 2010, c. 16, s. 5; 2013, c. 18, s. 3; 2014, c. 16, s. 6; 2018, c. 9, s. 5; 2018, c. 10, c. 3; 2021, c. 33, s. 5.

Notification and costs

236 (1) A land-use by-law may identify the class or classes of by-law amendments, development agreements or amendments to development agreements that require

(a) notifying affected property owners who are either the assessed owners or are as otherwise defined in the land-use by-law for this purpose; and

(b) a sign to be posted on the affected property describing the requested by-law amendment, development agreement or amendment to a development agreement.

(2) The Council may by resolution provide that any person applying for a land-use by-law amendment, a development agreement or an amendment to a development agreement shall pay the Municipality the cost of

(a) any required advertising;

(b) notifying affected land owners;

(c) posting a sign. 2008, c. 39, s. 236.

No increase to development approval cost

236A (1) Notwithstanding any other provision of this Act or any other enactment, for a period of two years after this Section comes into force,

(a) no change may be made to any fee, infrastructure, capital or similar charge;

(b) no change may be made to the formula or rate used in the calculation of any fee, infrastructure, capital or similar charge;

(c) subject to subsection (3), no new fee, infrastructure, capital or similar charge may be created;

(d) no change may be made to an incentive or bonus zoning agreement; and

(e) subject to subsection (3), no new incentive or bonus zoning agreement may be created,

that would have the effect of increasing the cost to applicants for development approvals beyond the cost that would have been chargeable immediately prior to the coming into force of this Section.

(2) For greater certainty, development approvals referred to in subsection (1) include subdivision approvals, development agreement approvals, development permits, building permits, plumbing fees and any other fee or charge imposed or payable in connection with development under an enactment policy, resolution or otherwise, and includes fees and charges for water and wastewater infrastructure levied by the Halifax Water Commission.

(3) A new incentive or bonus zoning agreement, capital cost contribution agreement or local improvement charge may be created if the formulas and methods for calculating charges used in the agreement are

(a) the same as those in effect at the time this Section comes into force; or

(b) in accordance with formulas approved by the Minister.

(4) The prohibition under subsection (1) does not apply if the Minister gives written approval for the change made to a fee or charge or incentive or bonus zoning agreement. 2023, c. 18, s. 5.

Future public use

237 (1) The Council may zone privately owned land for future public use other than transportation reserves if the by-law provides for an alternative zone on the land, consistent with the municipal planning strategy.

(2) Where privately owned land is zoned for future public use, the Municipality shall, within one year of the effective date of the zoning, acquire the land or the alternative zone comes into effect. 2008, c. 39, s. 237.

Parking cash-in-lieu

238 (1) Where provided for in a municipal planning strategy, the Council may accept money instead of all or part of any required off-street parking lot or facility.

(2) The Council shall use any money received to construct or maintain municipally owned parking or transit facilities to serve the immediate area of the development with respect to which the payment was made, if the facilities are located in an area identified in the municipal planning strategy.

(3) The method used to determine the contribution for parking or transit facilities must be set out in the land-use by-law and must take into account the cost of construction of an individual parking space, including costs of land, grading and paving or any other standard determined by the Council. 2008, c. 39, s. 238.

Affordable housing cash-in-lieu

238A Where provided for in a municipal planning strategy, the Council may accept money instead of all or part of any required provision of affordable housing. 2021, c. 33, s. 6.

Transportation reserve

239 (1) Where a municipal planning strategy identifies property required for the purposes of widening, altering or diverting an existing street or pathway or for the purposes of a new street or pathway, the Council may, in a land-use by-law identify the transportation reserve and

(a) set out its intention to acquire property for the purposes of widening, altering or diverting an existing street or pathway, or for the purposes of a new street or pathway;

(b) set out the proposed right-of-way intended to be acquired;

(c) set out building setbacks for the widened, altered, diverted or new street or pathway;

(d) prohibit development in the proposed right-of-way or between the proposed right-of-way and the building setbacks.

(2) Any right-of-way and any building setbacks must be shown on a map or plan that is attached to and forms part of the land-use by-law.

(3) Where the Council adopts by-law provisions in accordance with this Section, it shall provide for an alternative zone on the property to be acquired.

(4) The alternative zone comes into effect if the Municipality does not acquire the property in the right-of-way within five years of the effective date of the provisions.

(5) Where the Council adopts provisions in accordance with this Section, an affected property owner may make a written request to the Council to acquire the property or acquire an interest in the property, at the discretion of the Council.

(6) Where the Council does not acquire the property or acquire the interest in the property within one year of the written request of an affected property owner, the alternative zone on the property comes into effect. 2008, c. 39, s. 239.

Development agreements

240 (1) The Council may consider development by development agreement where a municipal planning strategy identifies

(a) the developments that are subject to a development agreement;

(b) the area or areas where the developments may be located; and

(c) the matters that the Council must consider prior to the approval of a development agreement.

(2) The land-use by-law must identify the developments to be considered by development agreement. 2008, c. 39, s. 240.

Provisional approval with municipal planning strategy

240A (1) Notwithstanding Section 245, where an amendment to a municipal planning strategy would be required prior to the approval of a development agreement or an amendment to a development agreement, the Council may hold a public hearing on the proposed development agreement or amendment and may provisionally approve the development agreement or amendment at the same

meeting of the Council in which the supporting amendment to the municipal planning strategy is passed by the Council.

(2) A development agreement or amendment to a development agreement provisionally approved pursuant to subsection (1) is approved when the supporting amendment to the municipal planning strategy takes effect. 2022, c. 13, s. 5.

Provisional approval with land-use by-law

240B (1) Notwithstanding Section 245, where an amendment to a land-use by-law would be required prior to the approval of a development agreement or an amendment to a development agreement, the Council may hold a public hearing on the proposed development agreement or amendment and may provisionally approve the development agreement or amendment at the same meeting of the Council in which the supporting amendment to the land-use by-law is passed by the Council.

(2) A development agreement or an amendment to a development agreement provisionally approved pursuant to subsection (1) is approved when the supporting amendment to the land-use by-law takes effect. 2022, c. 13, s. 5.

Provisional approval with municipal planning strategy and land-use by-law

240C (1) Notwithstanding Section 245, where an amendment to a municipal planning strategy and an amendment to a land-use by-law would be required prior to the approval of a development agreement or amendment to a development agreement, the Council may hold a public hearing on the proposed development agreement or amendment and may provisionally approve the development agreement or amendment at the same meeting of the Council in which the supporting amendment to the municipal planning strategy is passed by the Council and the supporting amendment to the land-use by-law is passed by the Council.

(2) A development agreement or an amendment to a development agreement provisionally approved pursuant to subsection (1) is approved

(a) where the land-use by-law and municipal planning strategy amendments come into effect on the same date, when the law-use by-law and municipal planning strategy come into effect; and

(b) where the land-use by-law and municipal planning strategy amendments come into effect on different dates, on the later of the two dates. 2022, c. 13, s. 5.

Approval in principle of development agreement

240D (1) Notwithstanding Sections 240, 240A, 240B, 240C and 245, where a development agreement or amendment to a development agreement has been presented and debated during the public hearing process before the Council, and where the development agreement or amendment to a development agreement otherwise meets the requirements outlined in Sections 242 and 243, but requires

minor administrative amendments prior to being finalized, the Council may approve the development agreement or amendment to a development agreement in principle.

(2) Where amendments to a municipal planning strategy or land-use by-law would be required prior to approval in principle of either a development agreement or amendment to a development agreement, approval of any associated amendment to the municipal planning strategy or land-use by-law may be approved at the same meeting of the Council in which the supporting amendment to the municipal planning strategy or land-use by-law is passed by the Council.

(3) Once a development agreement or amendment to a development agreement has received approval in principle by the Council, the Chief Administrative Officer may approve any remaining administrative amendments without the development agreement or amended development agreement having to be heard again by the Council.

(4) A development agreement or amendment to a development agreement that has been approved in principle by the Council and any remaining administrative amendments that have been approved by the Chief Administrative Officer pursuant to this Section are deemed to receive final approval when the supporting amendment to the municipal planning strategy or land-use by-law takes effect, and all requirements in Section 243 have been met. 2023, c. 18, s. 6.

Comprehensive development districts

241 (1) The Council may regulate the development of a district by development agreement by establishing a comprehensive development district for which the municipal planning strategy identifies

(a) the classes of uses permitted in a district;

(b) developments or uses in a district, if any, that are permitted without a development agreement;

(c) the area or areas where a district may be established; and

(d) the matters that the Council must consider prior to the approval of a development agreement for the development of a district.

(2) When a municipal planning strategy provides for a comprehensive development district, the land-use by-law must include a comprehensive development district zone.

(3) No development may occur in a comprehensive development district unless it is consistent with the development agreement or it is a development permitted without a development agreement. 2008, c. 39, s. 241.

Content of development agreements

242 **(1)** A development agreement may contain terms with respect to

(a) matters that a land-use by-law may contain;

(b) hours of operation;

(c) maintenance of the development;

(d) easements for the construction, maintenance or improvement of watercourses, ditches, land drainage works, stormwater systems, wastewater facilities, water systems and other utilities;

(e) grading or alteration in elevation or contour of the land and provision for the disposal of storm and surface water;

(f) the construction, in whole or in part, of a stormwater system, wastewater facilities and water system;

(g) the subdivision of land;

(ga) matters that a subdivision by-law may contain;

(gb) requiring off-site improvements that are necessary to support the development or accepting the payment of money in lieu of such improvements;

(h) security or performance bonding.

(2) A development agreement may include plans or maps.

(3) A development agreement may

(a) identify matters that are not substantive or, alternatively, identify matters that are substantive;

(b) identify whether the variance provisions are to apply to the development agreement;

(c) provide for the time when and conditions under which the development agreement may be discharged with or without the concurrence of the property owner;

(d) provide that upon the completion of the development or phases of the development, the development agreement, or portions of it, may be discharged by the Council;

(e) provide that, where the development does not commence or is not completed within the time specified in the development agreement, the development agreement or portions of it may be discharged by the Council without the concurrence of the property owner. 2008, c. 39, s. 242; 2022, c. 13, s. 6.

Requirements for effective development agreement

243 **(1)** A development agreement must not be entered into until

(a) the appeal period has elapsed and no appeal has been commenced; or

(b) all appeals have been abandoned or disposed of or the development agreement has been affirmed by the Board.

(2) The Council may stipulate that a development agreement must be signed by the property owner within a specified period of time.

(3) A development agreement does not come into effect until

(a) the appeal period has elapsed and no appeal has been commenced or all appeals have been abandoned or disposed of or the development agreement has been affirmed by the Board; and

(b) the development agreement is signed by the property owner, within the specified period of time, if any, and the Municipality.

(c) *repealed 2022, c. 13, s. 7.*

(4) The Clerk shall file every development agreement, amendment to a development agreement and discharge of a development agreement in the registry. 2008, c. 39, s. 243; 2022, c. 13, s. 7.

Discharge of development agreement

244 (1) A development agreement is in effect until discharged by the Chief Administrative Officer.

(2) The Chief Administrative Officer may discharge a development agreement, in whole or in part, in accordance with the terms of the agreement or with the concurrence of the property owner.

(2A) The Chief Administrative Officer may discharge a completed development agreement in whole or in part.

(3) After a development agreement is discharged, the land is subject to the land-use by-law. 2008, c. 39, s. 244; 2022, c. 13, s. 8; 2023, c. 18, s. 7.

Adoption or amendment of development agreement by policy

245 (1) The Council shall adopt or amend a development agreement by policy.

(2) The Council shall hold a public hearing before approving a development agreement or an amendment to a development agreement.

(3) Only those members of the Council present at the public hearing may vote on the development agreement or the amendment.

(3A) Notwithstanding subsections (1) to (3), a development officer may approve non-substantive amendments to a development agreement without holding a public hearing.

(3B) Subsection (3A) does not apply where amendments to a development agreement are a combination of substantive and non-substantive amendments.

(4) Upon the approval of a development agreement or an amendment to a development agreement, the Clerk shall post a notice on the Municipality's website, including the date the notice is posted, for a minimum of fourteen days, stating that the development agreement is approved and setting out the right of appeal.

(5) The Clerk shall file a certified copy of a development agreement or amendment with the Minister when notice of the development agreement or an amendment to it is published.

(6) Within seven days after a decision refusing to approve a development agreement or an amendment to a development agreement, the Clerk shall notify the applicant in writing, giving reasons for the refusal and setting out the right of appeal.

(7) Amendments to those items in a development agreement that the parties have identified as not substantive, if the substantive items were identified in the agreement, or that were not identified as being substantive, do not require a public hearing. 2008, c. 39, s. 245; 2022, c. 13, s. 9.

Incentive or bonus zoning agreements

245A (1) Where a municipal planning strategy so provides, a land-use by-law may provide for incentive or bonus zoning agreements.

(2) A land-use by-law that provides for incentive or bonus zoning agreements must

(a) identify the developments that are subject to an incentive or bonus zoning agreement;

(b) identify the area or areas where the developments may be located;

(c) set out the matters that the Council may consider before approving an incentive or bonus zoning agreement; and

(d) set out the method to be used to determine the contribution for incentive or bonus zoning.

(3) An incentive or bonus zoning agreement may

(a) include plans or maps;

(b) provide for the time when the conditions under which the incentive or bonus zoning agreement may be discharged with or without the concurrence of the property owner;

(c) provide that, upon completion of the development or phases of the development, the incentive or bonus zoning agreement, or portions of it, may be discharged by the Council;

(d) provide that, where the development does not commence or is not completed within the specified time in the incentive or bonus zoning agreement, the incentive or bonus zoning agreement or portions of it may be discharged by the Council without the concurrence of the property owner;

(e) include any terms respecting incentive or bonus zoning and the external appearance of structures;

(f) provide for security to ensure that any money accepted in lieu of a contribution is paid when due.

(4) Where the land-use by-law provides for incentive or bonus zoning agreements within the Centre Plan Area, the land-use by-law must require the inclusion of affordable housing in a development, in addition to any other requirements adopted by the Council, as the contribution for any incentive or bonus zoning applicable to the development.

(5) Notwithstanding subsection (4), the land-use by-law may provide that the Council may accept money in lieu of a contribution under this Section.

(6) The Municipality shall use any money accepted in lieu of a contribution under this Section for the purpose for which the money was accepted.

(7) Where the Council has agreed to accept money in lieu of a contribution under this Section, the agreed upon amount is a first lien on the land being developed and may be collected in the same manner as taxes. 2008, c. 41, s. 5; 2013, c. 18, s. 4; 2018, c. 10, s. 4; 2022, c. 13, s. 10.

Adoption or amendment of agreement

245B (1) The Council may, by resolution, adopt or amend an incentive or bonus zoning agreement.

(2) A public hearing is not required before approving an incentive or bonus zoning agreement or an amendment to an incentive or bonus zoning agreement.

(3) An incentive or bonus zoning agreement, an amendment to an incentive or bonus zoning agreement and a discharge of an incentive or bonus zoning agreement must be filed in the registry. 2008, c. 41, s. 5.

Duration of agreement

245C (1) An incentive ~~agreement~~ or bonus zoning [agreement] is in effect until discharged by the Council.

(2) The Council may discharge an incentive or bonus zoning agreement in whole or in part, in accordance with the terms of the incentive or bonus zoning agreement or with the concurrence of the property owner.

(3) After an incentive or bonus zoning agreement is discharged, the land to which it related continues to be subject to the land-use by-law and any site plan approval. 2008, c. 41, s. 5.

Site-plan approval

246 (1) Where a municipal planning strategy so provides, a land-use by-law shall identify

(a) the use that is subject to site-plan approval;

(b) the area where site-plan approval applies;

(c) the matters that are subject to site-plan approval;

(d) those provisions of the land-use by-law that may be varied by a site-plan approval;

(e) the criteria the development officer must consider prior to granting site-plan approval;

(f) the notification area;

(g) the form and content of an application for site-plan approval; and

(h) with respect to the HRM by Design Downtown Plan Area and the Centre Plan Area, the requirements for public consultation that must take place prior to an application for site plan approval being submitted to the Municipality.

(2) No development permit may be issued for a development in a site-plan approval area unless

(a) the class of use is exempt from site-plan approval as set out in the land-use by-law and the development is otherwise consistent with the requirements of the land-use by-law; or

(b) the development officer has approved an application for site-plan approval and the development is otherwise consistent with the requirements of the land-use by-law.

(3) A site-plan approval may deal with

(a) the location of structures on the lot;

(b) the location of off-street loading and parking facilities;

(c) the location, number and width of driveway accesses to streets;

(d) the type, location and height of walls, fences, hedges, trees, shrubs, ground cover or other landscaping elements necessary to protect and minimize the land-use impact on adjoining lands;

(e) the retention of existing vegetation;

(f) the location of walkways, including the type of surfacing material, and all other means of pedestrian access;

(g) the type and location of outdoor lighting;

(h) the location of facilities for the storage of solid waste;

(i) the location of easements;

(j) the grading or alteration in elevation or contour of the land and provision for the management of storm and surface water;

(k) the type, location, number and size of signs or sign structures;

(l) the external appearance of structures in the HRM by Design Downtown Plan Area and the Centre Plan Area;

(la) security or performance bonding;

(m) provisions for the maintenance of any of the items referred to in this subsection. 2008, c. 39, s. 246; 2008, c. 41, s. 6; 2013, c. 18, s. 5; 2024, c. 3, s. 40.

Design review committees

246A (1) The Council may, by by-law, establish one or more design review committees for the HRM by Design Downtown Plan Area and the Centre Plan Area.

(2) Subject to subsection (3), the design review committee shall exercise the powers of the development officer with respect to any matter set out in subsection 246(3) to the extent, for the area and under the conditions set out in the by-law and, for greater certainty, a decision of the design review committee is in substitution for a decision of the development officer.

(3) A decision of the design review committee is not in substitution of a decision of the development officer for the issuance of any permits.

(4) The by-law referred to in subsection (1) must

(a) provide for the membership of the design review committee;

(b) provide for the appointment of the chair and other officers of the committee;

(c) fix the terms of appointment and set out provisions respecting re-appointment if any;

(d) fix the remuneration, if any, to be paid to the chair of the committee, if the chair is not a Council member;

(e) determine the reimbursement of members of the committee for expenses incurred as members;

(f) establish the duties and procedure of the committee;

(g) provide for the matters the committee may consider when reviewing the external appearance of structures for a development; and

(h) list non-substantive matters that may not be appealed.

(5) The by-law referred to in subsection (1) may provide that the members are to be appointed by resolution.

(6) There is an appeal to the Council from a decision of the design review committee, except in relation to those non-substantive matters listed in the by-law pursuant to clause (4)(h).

(6A) The results of all public consultation with respect to the Centre Plan Area pursuant to clause 246(1)(h) or regulations made pursuant to clause 277A(1)(b) must be submitted to the design review committee.

(7) The design review committee shall approve or refuse an application within sixty days from the date of the application.

(8) An application that is not approved or refused within sixty days is deemed to have been refused.

(9) An appeal to the Council, pursuant to subsection (6) must be heard by the Council within sixty days unless the parties to the appeal agree otherwise and the Council shall render its decision within thirty days after having heard the appeal.

(10) Where a design review committee approves or refuses to approve an application for a site plan, the process and notification procedures and the rights of appeal are the same as those that apply when a development officer grants or refuses to grant a variance. 2008, c. 41, s. 7; 2013, c. 18, s. 6.

Site-plan approval

247 (1) A development officer shall approve an application for site-plan approval unless

(a) the matters subject to site-plan approval do not meet the criteria set out in the land-use by-law; or

(b) the applicant fails to enter into an undertaking to carry out the terms of the site plan.

(2) Where a development officer approves or refuses to approve a site plan, the process and notification procedures and the rights of appeal are the same as those that apply when a development officer grants or refuses to grant a variance.

(3) *repealed 2023, c. 18, s. 8.*

(4) The Council, in hearing an appeal concerning a site-plan approval, may make any decision that the development officer could have made.

(5) The Council may by resolution provide that any person applying for approval of a site plan must pay the Municipality the cost of

(a) notifying affected land owners; and

(b) posting a sign.

(6) A development officer may, with the concurrence of the property owner, discharge a site-plan, in whole or in part.

(7) Subsections (8) and (9) apply only with respect to the HRM by Design Downtown Plan Area and the Centre Plan Area.

(8) A development officer may, with concurrence of the property owner, amend the site plan for matters that are non-substantive.

(9) *repealed 2023, c. 18, s. 8.*

2008, c. 39, s. 247; 2008, c. 41, s. 8; 2013, c. 18, s. 7; 2023, c. 18, s. 8.

Development permit in site-plan approval area

248 A development officer shall issue a development permit for a development in a site-plan approval area if a site plan is approved, the development otherwise complies with the land-use by-law and

(a) the appeal period has elapsed and no appeal has been commenced; or

(b) all appeals have been abandoned or disposed of or the site plan has been affirmed by the Council. 2008, c. 39, s. 248.

Conveyance to person not a party

249 Where the owner of property that is subject to a development agreement or a site plan conveys all or part of the property to a person not a party to the development agreement or site plan, the development agreement or the site plan continues to apply to the property until, in the case of a development agreement, it is discharged by the Council and, in the case of a site-plan, it is discharged by the development officer. 2008, c. 39, s. 249.

Variance

250 (1) A development officer may grant a variance in one or more of the following terms in a development agreement, if provided for by the development agreement, or in land-use by-law requirements:

(a) percentage of land that may be built upon;

(b) size or other requirements relating to yards;

(c) lot frontage or lot area, or both, if

(i) the lot existed on the effective date of the by-law, or

(ii) a variance was granted for the lot at the time of subdivision approval.

(2) Where a municipal planning strategy and land-use by-law so provide, a development officer may grant a variance in one or more of the following terms in a development agreement, if provided for by the development agreement, or in land-use by-law requirements:

(a) number of parking spaces and loading spaces required;

(b) ground area and height of a structure;

(c) floor area occupied by a home-based business;

(d) external appearances of structures in the HRM by Design Downtown Plan Area and the Centre Plan Area;

(e) height and area of a sign.

(3) A variance may not be granted if

(a) the variance violates the intent of the development agreement or land-use by-law;

(b) the difficulty experienced is general to properties in the area; or

(c) the difficulty experienced results from an intentional disregard for the requirements of the development agreement or land-use by-law. 2008, c. 39, s. 250; 2008, c. 41, s. 9; 2013, c. 18, s. 8.

Variance respecting setback or street wall

250A (1) A development officer shall grant under Section 250 a variance respecting a step back or a street wall notwithstanding any land-use by-law or development agreement unless the variance would materially conflict with the municipal planning strategy.

(2) A decision to reject a variance under subsection (1) may be appealed to the Board, with the onus on the development officer to prove to the Board how the variance materially conflicts with the municipal planning strategy.

(3) Sections 264 to 269 apply, with necessary changes, to an appeal under this Section. 2023, c. 18, s. 9; 2024, c. 3, s. 41.

Variance procedures

251 (1) Within seven days after granting a variance, the development officer shall give notice in writing of the variance granted only to every assessed owner whose property is within thirty metres of the applicant's property.

(1A) Any municipal planning strategy or by-law made before the coming into force of this subsection that requires notice to be given to assessed owners whose property is more than thirty metres of the applicant's property is deemed to require notice to be given only to assessed owners whose property is within thirty metres of the applicant's property.

(2) The notice must

(a) describe the variance granted;

(b) identify the property where the variance is granted; and

(c) set out the right to appeal the decision of the development officer.

(3) Where a variance is granted, a property owner served a notice may appeal the decision to the Council within fourteen days after receiving the notice.

(4) Where a variance is refused, the applicant may appeal the refusal to the Council within seven days after receiving notice of the refusal, by giving written notice to the Clerk who shall notify the development officer.

(5) Where an applicant appeals the refusal to grant a variance, the Clerk or development officer shall give seven days written notice of the hearing to every assessed owner whose property is within thirty metres of the applicant's property.

(5A) Where the Council has increased the distance for notice under subsection (5), the Clerk or development officer shall

(a) give at least seven days written notice of the hearing only to every assessed owner whose property is within the distance specified in the policy of the applicant's property; or

(b) post notice of the hearing, including the date the notice is posted, on the Municipality's website at least seven days prior to the hearing date and keep the notice posted until the completion of the hearing.

(6) The notice must

(a) describe the variance applied for and the reasons for its refusal;

(b) identify the property where the variance is applied for; and

(c) state the date, time and place when the Council will hear the appeal. 2008, c. 39, s. 251; 2008, c. 41, s. 10; 2022, c. 13, s. 11; 2023, c. 18, s. 10.

No appeal respecting non-substantive matter

251A (1) Any appeal of a decision or matter referred to in Sections 247 to 251 must, at the time the appeal is filed, clearly state the grounds for appeal.

(2) An appeal of a decision or matter referred to in Sections 247 to 251 may not be made in respect of a non-substantive matter prescribed by the regulations.

(3) The Council shall dismiss without hearing any appeal that fails to comply with subsection (1) or is in respect of a non-substantive matter prescribed by the regulations.

(4) The Minister may make regulations prescribing non-substantive matters for the purpose of this Section.

(5) The exercise by the Minister of the authority contained in subsection (4) is a regulation within the meaning of the *Regulations Act*. 2023, c. 18, s. 11.

Variance appeals and costs

252 (1) Where the Council hears an appeal from the granting or refusal of a variance, the Council may make any decision that the development officer could have made.

(2) A development officer shall issue a development permit for any development for which a variance has been granted and that otherwise complies with the terms of the development agreement or a land-use by-law, whichever is applicable, if

(a) the appeal period has elapsed and no appeal has been commenced; or

(b) all appeals have been abandoned or disposed of or the variance has been affirmed by the Council.

(3) The Council may by resolution provide that any person applying for a variance shall pay the Municipality the cost of

(a) notifying affected land owners;

(b) posting a sign. 2008, c. 39, s. 252.

Non-conforming structure or use

253 (1) A non-conforming structure, non-conforming use of land or non-conforming use in a structure, may continue if it exists and is lawfully permitted at the date of the first publication of the notice of intention to adopt or amend a land-use by-law.

(2) A non-conforming structure is deemed to exist at the date of the first publication of the notice of intention to adopt or amend a land-use by-law if

(a) the non-conforming structure was lawfully under construction and was completed within a reasonable time; or

(b) the permit for its construction was in force and effect, the construction was commenced within twelve months after the date of the issuance of the permit and the construction was completed in conformity with the permit within a reasonable time.

(3) A non-conforming use in a structure is deemed to exist at the date of the first publication of the notice of intention to adopt or amend a land-use by-law if

(a) the structure containing the non-conforming use was lawfully under construction and was completed within a reasonable time; or

(b) the permit for its construction or use was in force and effect, the construction was commenced within twelve months after the date of the issuance of the permit and the construction was completed in conformity with the permit within a reasonable time,

and the use was permitted when the permit for the structure was granted and the use was commenced upon the completion of construction.

(4) This Act does not preclude the repair or maintenance of a non-conforming structure or a structure containing a non-conforming use.

(5) A change of tenant, occupant or owner of any land or structure does not of itself affect the use of land or a structure. 2008, c. 39, s. 253.

Non-conforming structure for residential use

254 (1) Where a non-conforming structure is located in a zone that permits the use made of it and the structure is used primarily for residential purposes, it may be

(a) rebuilt, replaced or repaired, if destroyed or damaged by fire or otherwise, it is substantially the same as it was before the destruction or damage and it is occupied by the same use;

(b) enlarged, reconstructed, repaired or renovated if

(i) the enlargement, reconstruction, repair or renovation does not further reduce the minimum required yards or

separation distance that do not conform with the land-use by-law, and

(ii) all other applicable provisions of the land-use by-law except minimum frontage and area are satisfied.

(2) A non-conforming structure, that is not located in a zone permitting residential uses and not used primarily for residential purposes, may not be rebuilt or repaired, if destroyed or damaged by fire or otherwise to the extent of more than seventy-five percent of the market value of the building above its foundation, except in accordance with the land-use by-law, and after the repair or rebuilding it may only be occupied by a use permitted in the zone. 2008, c. 39, s. 254.

Non-conforming use of land

255 A non-conforming use of land may not be

(a) extended beyond the limits that the use legally occupies;

(b) changed to any other use except a use permitted in the zone; or

(c) recommenced, if discontinued for a continuous period of six months. 2008, c. 39, s. 255.

Non-conforming use in a structure

256 (1) Where there is a non-conforming use in a structure, the structure may not be

(a) expanded or altered so as to increase the volume of the structure capable of being occupied, except as required by another Act of the Legislature; or

(b) repaired or rebuilt, if destroyed or damaged by fire or otherwise to the extent of more than seventy-five percent of the market value of the building above its foundation, except in accordance with the land-use by-law and after the repair or rebuilding it may only be occupied by a use permitted in the zone.

(2) Where there is a non-conforming use in a structure, the non-conforming use may be extended throughout the structure.

(3) Where there is a non-conforming use in a structure, the non-conforming use

(a) may not be changed to any other use except a use permitted in the zone; or

(b) may not be recommenced, if discontinued for a continuous period of six months. 2008, c. 39, s. 256.

Relaxation of restrictions

257 (1) A municipal planning strategy may provide for a relaxation of the restrictions contained in this Part respecting non-conforming structures, non-conforming uses of land and non-conforming uses in a structure and, in particular, may provide for

(a) the extension, enlargement, alteration or reconstruction of a non-conforming structure;

(b) the extension of a non-conforming use of land;

(c) the extension, enlargement or alteration of structures containing non-conforming uses, with or without permitting the expansion of the non-conforming use into an addition;

(d) the reconstruction of structures containing non-conforming uses, after destruction;

(e) the recommencement of a non-conforming use of land or a non-conforming use in a structure after it is discontinued for a continuous period in excess of six months;

(f) the change in use of a non-conforming use of land or a non-conforming use in a structure, to another non-conforming use.

(2) The policies adopted in accordance with this Section must be carried out through the land-use by-law and may require a development agreement. 2008, c. 39, s. 257.

Modification or discharge of private covenant

257A (1) The Chief Administrative Officer may modify or discharge a private covenant in so far as it is more restrictive than the current zoning for the land it governs with respect to height or density.

(2) A covenant modified or discharged under subsection (1) is deemed to have been modified or discharged for offending public policy under subsection 61(1) of the *Land Registration Act* and a certified copy of the decision of the Chief Administrative Officer may be registered or recorded as if it were an order of the court made under that subsection[.]

(3) A decision of the Chief Administrative Officer under subsection (1) may be appealed to the Board.

(4) Sections 264 to 269 apply, with necessary changes, to an appeal under this Section. 2023, c. 18, s. 12.

Development officer

258 (1) The Council shall appoint a development officer to administer its land-use by-law and subdivision by-law.

(2) Where the Municipality participates in a district planning commission or enters into an agreement with another municipality to provide services, the Council may appoint as its development officer an employee of the commission or of the other municipality. 2008, c. 39, s. 258.

Development permit

259 (1) Before any development is commenced, a development permit must be obtained if the Council has adopted a land-use by-law.

(2) A land-use by-law may specify developments for which a development permit is not required. 2008, c. 39, s. 259.

Time limits for development permit application

260 (1) Within fourteen days after receiving an application for a development permit, the development officer shall

(a) determine if an application is incomplete; and

(b) where the application is incomplete, notify the applicant in writing advising what is required to complete the application.

(2) Within thirty days after receiving a completed application for a development permit, the development officer shall grant the development permit or inform the applicant of the reasons for not granting the permit. 2008, c. 39, s. 260.

Limitations on granting development permit

261 (1) A development permit must be issued for a proposed development if the development meets the requirements of the land-use by-law, the terms of a development agreement or an approved site plan.

(2) Where a land-use by-law is amended or a development agreement is approved or amended, a development permit for a development pursuant to the amendment or the agreement may not be issued until

(a) the appeal period has elapsed; or

(b) all appeals have been abandoned or disposed of or the decision of the Council has been affirmed by the Board.

(3) A development permit that is inconsistent with a proposed land-use by-law or a proposed amendment to a land-use by-law may not be issued for one hundred and fifty days from the publication of the first notice advertising the Council's intention to adopt or amend the by-law.

(4) Where the proposed land-use by-law or by-law amendment has not come into effect after the expiry of one hundred and fifty days from the publication of the first notice advertising the Council's intention to adopt or amend the by-law, the development officer shall issue the development permit if the proposed development meets the requirements of the land-use by-law. 2008, c. 39, s. 261.

Appeals to the Board

262 (1) The approval or refusal by the Council to amend a land-use by-law may be appealed to the Board by

(a) an aggrieved person;

(b) the applicant;

(c) an adjacent municipality;

(d) the Director.

(2) The approval, or refusal to approve, and the amendment, or refusal to amend, a development agreement may be appealed to the Board by

(a) an aggrieved person;

(b) the applicant;

(c) an adjacent municipality;

(d) the Director.

(3) The refusal by a development officer to

(a) issue a development permit; or

(b) approve a tentative or final plan of subdivision or a concept plan,

may be appealed by the applicant to the Board. 2008, c. 39, s. 262.

No appeal permitted

263 The following are not subject to an appeal:

(a) an amendment to a land-use by-law to make the by-law consistent with a statement of provincial interest;

(b) an amendment to a land-use by-law or a development agreement to implement a decision of the Board;

(c) a development agreement approved, as ordered by the Board;

(d) an amendment to a land-use by-law that is required to carry out a concurrent amendment to a municipal planning strategy;

(e) the adoption or amendment of an incentive or bonus zoning agreement. 2008, c. 39, s. 263; 2008, c. 41, s. 11.

Service of appeal

264 (1) An appeal must be served on the Board within fourteen days after the date

(a) of posting of notice of the adoption of the land-use by-law amendment;

(b) of written notice of the Council's decision refusing to amend the land-use by-law;

(c) of posting of notice of the approval or amendment of a development agreement;

(d) of written notice of the Council's decision refusing to approve or amend a development agreement;

(e) of written notice of the development officer's decision refusing to issue a development permit or refusing to approve a tentative or final plan of subdivision or a concept plan;

(f) a decision is deemed to be refused.

(2) Notwithstanding subsection (1), where a development agreement or amendment to a development agreement was provisionally approved under Section 240B, an appeal must be served on the board within fourteen days after the date notice is given for the adoption of the land-use by-law amendment and the appeal period for the development agreement or development agreement amendment runs concurrently with the appeal period for the land-use by-law amendment. 2008, c. 39, s. 264; 2022, c. 13, s. 12.

Restrictions on appeals

265 (1) An aggrieved person or an applicant may only appeal

(a) an amendment or refusal to amend a land-use by-law, on the grounds that the decision of the Council does not reasonably carry out the intent of the municipal planning strategy;

(b) the approval or refusal of a development agreement or the approval of an amendment to a development agreement, on the grounds that the decision of the Council does not reasonably carry out the intent of the municipal planning strategy;

(c) the refusal of an amendment to a development agreement, on the grounds that the decision of the Council does not reasonably carry out the intent of the municipal planning strategy and the intent of the development agreement.

(2) An applicant may only appeal a refusal to issue a development permit on the grounds that the decision of the development officer does not comply with the land-use by-law, a development agreement, an order establishing an interim planning area or an order regulating or prohibiting development in an interim planning area.

(3) An applicant may only appeal a refusal to approve a concept plan or a tentative or final plan of subdivision on the grounds that the decision of the development officer does not comply with the subdivision by-law.

(4) The Director may only appeal on the grounds that the decision of the Council is not reasonably consistent with a statement of provincial interest,

an order establishing an interim planning area or an order regulating or prohibiting development in an interim planning area. 2008, c. 39, s. 265.

Procedures on appeal

266 (1) The Municipality shall file a complete appeal record with the Board, and any other person as the Board may require, within fourteen business days of the Municipality being notified by the Board of the appeal.

(2) A hearing must begin within forty-five days from the filing of the appeal record unless the Board determines that it is necessary for the interests of justice for the hearing to begin at some later time or unless all the parties agree that the hearing may begin at some later time.

(3) The Board shall render its decision within sixty days after the close of submissions by the parties, unless the Board otherwise states at the close of the hearing or unless it is necessary for the interests of justice.

(4) A decision of the Board is not invalid nor does the Board lose jurisdiction over a matter in the event that a decision is rendered later than sixty days after the close of submissions.

(5) In the event that the Board directs the filing of post-hearing written submissions, such submissions must be filed with the Board within fourteen days after the close of the hearing unless the Board determines that it is necessary for the interests of justice for such submissions to be submitted at some later time or unless all the parties agree that the submissions may be filed at some later time.

(6) Notwithstanding subsection 28(1) of the *Utility and Review Board Act*,

(a) the Board shall, by order, impose costs on the Municipality if it fails to file a complete appeal record within the time referred to in subsection (1); and

(b) the Board may, by order, impose costs on any party to an appeal that fails to meet any deadline or time limit established pursuant to this Section or otherwise established or imposed by the Board.

(6A) Notwithstanding subsection 28(1) of the *Utility and Review Board Act*, the Board shall, by order, impose costs on the Municipality if

(a) the Board overturns a decision of a of development officer under Section 250A; and

(b) the Board determines that the awarding of costs is in the interests of justice.

(7) When imposing costs pursuant to subsection (6) or (6A), the Board shall consider, in addition to what the Board considers relevant, the financial ability of the party to pay and the conduct of the party in the appeal.

(8) This Section only applies to appeals to the Board made pursuant to this Part.

(9) This Section only applies to proceedings commenced on or after the coming into force of this Section. 2008, c. 39, s. 266; 2023, c. 18, s. 13.

Powers of Board on appeal

267 (1) The Board may

(a) confirm the decision appealed from;

(b) allow the appeal by reversing the decision of the Council to amend the land-use by-law or to approve or amend a development agreement;

(c) allow the appeal and order the Council to amend the land-use by-law in the manner prescribed by the Board or order the Council to approve the development agreement, approve the development agreement with the changes required by the Board or amend the development agreement in the manner prescribed by the Board;

(d) allow the appeal and order that the development permit be granted;

(e) allow the appeal by directing the development officer to approve the tentative or final plan of subdivision or concept plan.

(2) The Board may not allow an appeal unless it determines that the decision of the Council or the development officer, as the case may be, does not reasonably carry out the intent of the municipal planning strategy or conflicts with the provisions of the land-use by-law or the subdivision by-law. 2008, c. 39, s. 267.

Restrictions on powers of Board

268 (1) The Board may not order the granting of a development permit, the approval of a plan of subdivision, a land-use by-law amendment, a development agreement or an amendment to a development agreement that

(a) is not reasonably consistent with a statement of provincial interest;

(b) conflicts with an order made by the Minister establishing an interim planning area or regulating or prohibiting development in an interim planning area.

(2) The Board may not make any decision that commits the Council to make any expenditures with respect to a development. 2008, c. 39, s. 268.

Use of mediation

269 The Minister, a Council or the Board may, if the person or body considers it appropriate, at any time before a decision is made pursuant to this Part, use mediation, conciliation or other dispute resolution methods to attempt to resolve concerns or disputes. 2008, c. 39, s. 269.

No injurious affection

270 Property is deemed not to be injuriously affected by the adoption, amendment or repeal of a statement of provincial interest, interim planning area and development regulations in connection with it, subdivision regulations, subdivision by-law, municipal planning strategy, land-use by-law or the entering into, amending or discharging of a development agreement or by any action taken under this Act or the regulations to address a housing supply crisis. 2008, c. 39, s. 270; 2023, c. 18, s. 14.

Plans, by-laws and strategies under other legislation

271 A municipal development plan and zoning by-law or municipal planning strategy and land-use by-law adopted pursuant to the *Municipal Government Act* or a former *Planning Act* are a municipal planning strategy and land-use by-law within the meaning of this Act, to the extent they are consistent with this Act. 2008, c. 39, s. 271.

Conflict

272 In the event of a conflict between this Part and this Act or another Act of the Legislature, this Part prevails. 2008, c. 39, s. 272.

Prohibition on breach of agreement or site plan

273 No person shall breach the terms of a development agreement, site plan, or an incentive or bonus zoning agreement. 2008, c. 41, s. 12.

Breach of development agreement

274 (1) Upon the breach either of a development agreement or an incentive or bonus zoning agreement, the Municipality may, where thirty days notice in writing has been provided to the owner, enter the land and perform any of the terms contained in the development agreement or the incentive or bonus zoning agreement, or take such remedial action as is considered necessary to correct a breach of the development agreement or an incentive or bonus zoning agreement, including the removal or destruction of any thing that contravenes the terms of a development agreement or an incentive or bonus zoning agreement.

(2) All reasonable expenses, whether arising out of the entry on the land or from the performance of the terms, are a first lien on the land that is the subject of the development agreement or the incentive or bonus zoning agreement.

(3) No action lies against the Municipality or against any agent, servant or employee of the Municipality for anything done pursuant to this Section. 2008, c. 39, s. 274; 2008 c. 41, s. 13.

Breach of approved site plan

275 (1) The Municipality may, upon the breach of an approved site plan, where thirty days notice in writing has been provided to the owner, enter the land and perform any of the terms contained in the site plan.

(2) All reasonable expenses whether arising out of the entry on the land or from the performance of the terms of the site plan are a first lien on the land that is the subject of the site plan.

(3) No action lies against the Municipality or against any agent, servant or employee of the Municipality for anything done pursuant to this Section. 2008, c. 39, s. 275.

Remedies where offence

276 (1) This Section applies to this Part and Part IX.

(2) In the event of an offence,

(a) where authorized by the Council or by the Chief Administrative Officer, the Clerk or development officer, in the name of the Municipality; or

(b) the Director, in the name of His Majesty in right of the Province, when authorized by the Minister,

may apply to the Supreme Court of Nova Scotia for any or all of the remedies provided pursuant to this Section.

(3) The Supreme Court may hear and determine the matter at any time and, in addition to any other remedy or relief, may make an order

(a) restraining the continuance or repetition of an offence in respect of the same property;

(b) directing the removal or destruction of any structure or part of a structure that contravenes any order, regulation, municipal planning strategy, land-use by-law, development agreement, site plan or statement in force in accordance with this Part and authorizing the Municipality or the Director, where an order is not complied with, to enter upon the land and premises with necessary workers and equipment and to remove and destroy the structure, or part of it, at the expense of the owner;

(c) as to the recovery of the expense of removal and destruction and for the enforcement of this Part, order, regulation, land-use by-law or development agreement and for costs as is deemed proper,

and an order may be interlocutory, interim or final.

(4) Where, after the action or proceeding is commenced, it appears that

(a) the offence that was the subject of the action or proceeding may have been done or committed by a person other than the defendant;

(b) the title to the property, or part of or any interest in it, that vested at the commencement of the action or proceeding, has since become vested in a person other than the defendant; or

(c) there has been a fresh offence by the same person or by another person with respect to the same property,

it is not necessary to bring another application and the original application may be amended from time to time and at any time before final judgment to include all parties and all offences, and the whole matter of the offences must be heard, dealt with and determined, notwithstanding that the offences may be offences against different Sections of this Part or against different orders, land-use by-laws, development agreements, regulations or statements of provincial interest.

(5) Where the owner of any property where an offence is taking place or has taken place cannot be found, the Municipality or the Director may post a notice of the offence and of the application upon the property. 2008, c. 39, s. 276.

Right of entry

277 **(1)** This Section applies to this Part and Part IX.

(2) A person authorized by the Minister or by the Council has the right to enter at all reasonable times in or upon any property within the Municipality, without a warrant, for the purposes of an inspection necessary to administer an order, land-use by-law, development agreement, regulation or statement of provincial interest.

(3) The authorized person shall not enter any place actually being used as a dwelling without the consent of the occupier unless the entry is made in daylight hours and written notice of the time of the entry has been given to the occupier at least twenty-four hours in advance of the entry.

(4) Where a justice or a judge of the Supreme Court of Nova Scotia is satisfied, on evidence under oath, that the entry is refused or no person is present to grant access, the justice or judge may by order authorize entry into or on the property during reasonable hours set by the justice or judge.

(5) Any order made by a justice or a judge of the Supreme Court of Nova Scotia continues in force until the purpose for which entry is required is fulfilled. 2008, c. 39, s. 277; 2014, c. 16, s. 7.

Regulations

277A (1) The Minister may make regulations

(a) respecting the nature and extent of affordable housing to be required by subsections 235(6) and 245A(4) and the enforcement of the affordable housing requirements;

(b) with respect to the Centre Plan Area, prescribing additional requirements for public consultation that must take place prior to an application for site-plan approval being submitted to the Municipality.

(2) The exercise by the Minister of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*. 2013, c. 18, s. 9.

PART IX

SUBDIVISION

Requirements for subdivision approval

278 (1) An application for subdivision approval must

(a) be made to the development officer; and

(b) include a plan of subdivision prepared by a Nova Scotia Land Surveyor.

(2) Subdivision approval is not required for a subdivision

(a) if all lots to be created, including the remainder lot, exceed ten hectares in area;

(b) resulting from an expropriation;

(c) resulting from an acquisition or disposition of land by His Majesty in right of the Province or in right of Canada or by an agency of His Majesty;

(d) of a cemetery into burial lots;

(e) resulting from an acquisition of land by a municipality for municipal purposes;

(f) resulting from the disposal, by the Municipality or His Majesty in right of the Province, of a street or part of a street or a former street or part of a former street, including the consolidation of a street or part of a street or a former street or part of a former street with adjacent land;

(g) resulting from the disposal of a trail or part of a trail, including the consolidation of a trail or part of a trail with adjacent land;

(h) of an abandoned railway right of way;

(i) that is a consolidation of a part of an abandoned railway right of way with adjacent land;

(j) resulting from a lease of land for twenty years or less, including any renewal provisions of the lease;

(k) resulting from the acceptance for registration by the Registrar of Condominiums of a phase of a phased-development condominium that meets the requirements, if any, prescribed by the regulations made pursuant to the *Condominium Act*;

(l) resulting from the issuance of a certificate of title under the *Quieting Titles Act* or the *Land Titles Clarification Act*; or

(m) resulting from a devise of land by will executed on or before January 1, 2000.

(3) In order to create a subdivision based on an exemption from the requirement for approval set out in any of the clauses in subsection (2), except clause (b), a document that

(a) specifies the intent to create the subdivision, the exemption on which the subdivision is based and the facts that entitle the subdivision to the exemption; and

(b) provides proof of the consent of the person entitled to create the subdivision,

must be registered or recorded in the registry. 2008, c. 39, s. 278; 2015, c. 24, s. 4; 2021, c. 7, s. 7.

Deemed consolidation

279 (1) Two or more lots that are contiguous, are parcels registered pursuant to the *Land Registration Act* and are and have been in common ownership and used together since April 15, 1987, or earlier are deemed to be consolidated if the owner or the owner's agent registers a statutory declaration in the parcel registers for the lots stating that the lots were in common ownership and used together on or before April 15, 1987, and have continued to be so owned and used, and including the facts that support the statement.

(2) Registration or recording of the statutory declaration referred to in subsection (1) is deemed to consolidate the lots as of the date of registration or recording.

(3) Subdivision approval of the consolidation is not required. 2008, c. 39, s. 279; 2015, c. 24, s. 5.

Registrar General may validate subdivision

279A The Registrar General appointed pursuant to the *Land Registration Act* may validate a subdivision that is not in compliance with the subdivision approval or exemption requirements of this Part, if the affected lots are parcels reg-

istered pursuant to the *Land Registration Act* and it would not be practicable to rectify, repeal or nullify the subdivision. 2015, c. 24, s. 6.

Provincial subdivision regulations

280 (1) Provincial subdivision regulations prescribed by the Minister pursuant to the *Municipal Government Act* apply to the Municipality except as otherwise provided by those regulations or this Act.

(2) At least thirty days before prescribing or amending provincial subdivision regulations that apply to the Municipality, the Minister shall

(a) send a copy of the proposed regulations to the Clerk and invite written comments; and

(b) place a notice in a newspaper circulating in the area that will be affected by the regulations stating where the proposed regulations may be inspected and invite written comments.

(3) Where, on the coming into force of the *Municipal Government Act*, the Municipality had not adopted a subdivision by-law, the Municipality is deemed to have adopted the provincial subdivision regulations applicable to the Municipality as its subdivision by-law.

(4) A subdivision by-law that is inconsistent with the provincial subdivision regulations is deemed to be amended by the subdivision regulations applicable to the Municipality, unless the by-law provisions are more stringent, implement the municipal planning strategy. 2008, c. 39, s. 280.

Subdivision by-law

281 (1) A subdivision by-law applies to the whole of the Municipality, but the by-law may contain different requirements for different parts of the Municipality.

(2) A subdivision by-law must include

(a) any requirements prescribed by the provincial subdivision regulations applicable to the Municipality unless

(i) the Municipality adopts more stringent requirements, or

(ii) the municipal requirements implement the municipal planning strategy;

(b) procedures for preliminary evaluation and tentative and final approvals;

(c) requirements for preliminary evaluation and tentative and final approvals;

(d) the form of a notice of approval of subdivision;

(e) provisions for the repeal of a subdivision; and

(f) provisions for the referral of an application to a department or agency of the Government of the Province or of the Municipality.

(3) A subdivision by-law may include

(a) requirements for access to a lot;

(b) requirements respecting the shape of a lot;

(c) where they are not prescribed in a land-use by-law, minimum lot frontage and minimum lot area;

(d) provisions allowing a waiver of certain requirements of the by-law and the circumstances in which a waiver may be allowed;

(e) the fee for the processing of applications for approval or repeal of a subdivision, including registration, recording and filing fees;

(f) requirements for the design and construction of streets, private roads, wastewater facilities, stormwater systems, water systems and other services;

(g) requirements for part of a system for the supply or distribution of electricity or other source of energy or a telecommunications system to be placed underground;

(h) requirements for the transfer to the Municipality of useable land, or equivalent value, for trails, park, playground and similar public purposes, and a requirement that, where the land being subdivided has frontage on the ocean, a river or a lake, the land transferred include land with frontage on the ocean, river or lake or land to provide public access to the ocean, river or lake, so long as the land required to be transferred does not exceed

(i) five per cent of the area of the lots shown to be approved on the final plan of subdivision, or

(ii) ten per cent of the area of the lots shown to be approved on the final plan of subdivision, if the requirement and the reasons for it are provided for in a municipal planning strategy;

(i) procedures and requirements for concept plan approval;

(j) the identification of transportation reserves and requirements that lots be designed so as not to impede a transportation reserve;

(ja) with respect to subdivision applications that are located outside the serviced area as that term is defined in Section 190 and

that are for the creation of ten or more lots, requirements for hydrogeological impact assessments including an evaluation of the quality, quantity and sustainability of water supply within the proposed subdivision and an evaluation of the cumulative impacts on water supplies outside of the proposed subdivision;

(jb) in areas where hydrogeological impact assessments are required, water supply standards that must be met before a subdivision can be approved, for quantity, sustainability of water supply and for the cumulative impact on water supplies outside of the proposed subdivision;

(k) regulate the width of streets or private road rights-of-way on which subdivisions are permitted.

(4) Where a municipal planning strategy so provides, a subdivision by-law may

(a) regulate or prohibit new municipal streets in all, or part, of the Municipality if, in the opinion of the Council, the streets would be premature;

(b) regulate or prohibit subdivisions on private roads in all, or part, of the Municipality;

(c) limit the number of lots that may be created from an area of land in a calendar year.

(5) A subdivision by-law may require that, prior to approval of a final plan of subdivision, the applicant shall

(a) install water systems, wastewater facilities, stormwater systems and other services in the area of land being subdivided to the standards prescribed by the Municipality;

(b) install trees for streets, bus bays, sidewalks and pathways; and

(c) lay out, construct, grade and pave, in whole or in part, any street in the area of land being subdivided to the standards prescribed by the Municipality,

or, in the alternative, enter into a bond or other security satisfactory to the Municipality to

(d) install and provide the water systems, wastewater facilities, stormwater systems and other services in the area of land being subdivided to the standards prescribed by the Municipality;

(e) install the trees along streets, bus bays, sidewalks and pathways required by the by-law; and

(f) lay out, construct, grade and pave, in whole or in part, any street in the area of land being subdivided to the standards prescribed by the Municipality,

and, in either case, provide a bond or other security, satisfactory to the Municipality, for the maintenance of the services for a maximum of two years from the date the services are accepted by the Municipality as having been installed to the standards prescribed by the Municipality.

(6) A subdivision by-law may require that an applicant have, or permit an applicant to have, a qualified professional certify to the Municipality that the services have been designed and installed to the standards prescribed by the Municipality, and the Municipality may rely on the certificate so given.

(7) A subdivision by-law may authorize the Municipality to require an applicant for subdivision approval to provide water systems, wastewater facilities, stormwater systems and other services, including streets, in the area of land being subdivided with a capacity exceeding the anticipated requirements of the applicant's subdivision, if the Municipality reimburses the applicant for any costs incurred with respect to the excess capacity.

(8) Any cost to the Municipality pursuant to subsection (7) may, at the option of the Council, be recovered by the Municipality in the same manner as an infrastructure charge or in another manner.

(9) The procedure for the adoption, amendment, repeal, approval and publication of a subdivision by-law is the same as the procedure prescribed for planning documents.

(10) Notwithstanding the *Public Utilities Act* and for greater certainty, any by-law made pursuant to this Section and any transfer, bond, security, cost, charge or requirement, fixed or imposed pursuant to this Section, do not require approval by the Board. 2008, c. 39, s. 281; 2010, c. 16, s. 6.

Contents of subdivision by-law

282 (1) The Council may, in the subdivision by-law, require a person applying for final approval of a subdivision to

(a) provide, at no cost to the Municipality, easements for the drainage of stormwater in those circumstances specified in the subdivision by-law on the land that is proposed to be subdivided or outside that land;

(b) transfer to the Municipality land, including easements, that may be necessary to operate and maintain stormwater systems;

(c) enter into an agreement to carry out a drainage plan or grading plan required by a subdivision by-law and to provide security satisfactory to the engineer to secure performance of the agreement.

(2) A subdivision by-law may

(a) specify standards and requirements for an easement required by the subdivision by-law;

(b) set standards and requirements respecting drainage master plans, drainage plans and grading plans;

(c) prescribe when drainage master plans, drainage plans and grading plans are required. 2008, c. 39, s. 282.

Land or cash-in-lieu

283 **(1)** In this Section, "equivalent value" includes cash or facilities, services or other value in kind, related to parks, playgrounds and similar public purposes or any combination thereof, determined by the Municipality to be equivalent to the value of the land as determined by the assessor pursuant to this Section.

(2) Where a subdivision by-law provides for the transfer to the Municipality of useable land, the applicant may provide land, equivalent value or a combination of land and equivalent value equal to the amount of the transfer required by the subdivision by-law.

(3) The subdivision by-law may specify the cases in which land only, equivalent value only, or land and equivalent value in a specified combination shall be transferred.

(4) Where equivalent value is to be provided in lieu of transferring land, the amount required must be determined by an assessor based on the market value of the proposed lots excluding streets, easements and the residue of the land of the applicant, and this valuation may be appealed in the same manner as an assessment.

(5) Where cash is paid in lieu of transferring land, the Council shall use the funds for the acquisition of, and capital improvements to, parks, playgrounds and similar public purposes and may use the interest on any funds not expended for those purposes for the operation and maintenance costs of parks, playgrounds and similar public purposes.

(6) Notwithstanding subsections (5) and (14), the Council may transfer

(a) the funds referred to in subsections (5) and (14) to a non-profit organization that is providing parks, playgrounds or other recreational facilities in the Municipality to be used for the acquisition of and capital improvements to those parks, playgrounds or other recreational facilities; and

(b) the interest on the funds referred to in subsections (5) and (14) to a non-profit organization that is providing parks, playgrounds or other recreational facilities in the Municipality to be used for the operation or maintenance of those parks, playgrounds or other recreational facilities.

(7) A subdivision by-law may include a definition of useable land, which may specify a minimum area, minimum dimensions, location and a method of establishing a minimum quality of the land.

(8) Useable land does not include any streets or easements conveyed to the Municipality.

(9) The area of useable land to be conveyed to the Municipality is calculated on the area of the lots to be approved, as shown on the final plan of subdivision, excluding streets and the residue of the land of the applicant.

(10) A development officer shall accept any land offered by an applicant that meets the definition of useable land contained in the subdivision by-law.

(11) An applicant may, with the approval of the Council, convey to the Municipality an area of land in the Municipality of equal value outside the area being subdivided, in lieu of land in the subdivision.

(12) An applicant may provide a bond or other security acceptable to the Council for the conveyance to the Municipality of land in a future phase of the subdivision rather than conveying land from the approved phase of the subdivision or equivalent value.

(13) Any land conveyed to the Municipality pursuant to this Section must be

(a) free and clear of all encumbrances except an easement or right of way that does not materially interfere with the use and enjoyment of the land; and

(b) used for parks, playgrounds and similar public purposes.

(14) Where the Council determines that any land transferred pursuant to this Section may no longer be needed for parks, playgrounds or similar public purposes, the Council may sell the land, after notifying the owners of lots in the subdivision with respect to which the land was conveyed to the Municipality, by notice published in a newspaper circulating in the Municipality or posted on the Municipality's website at least fourteen days prior to the Council meeting at which a decision to sell will be made, and the proceeds must be used for parks, playgrounds and similar public purposes.

(15) A notice published on the Municipality's website under subsection (14) must include the date the notice is posted and remain posted until the Council meeting at which a decision to sell will be made has completed. 2008, c. 39, s. 283; 2024, c. 3, s. 42.

Infrastructure charges

284 **(1)** A municipal planning strategy may authorize the inclusion of provisions for infrastructure charges in a subdivision by-law.

(2) Infrastructure charges for

(a) new or expanded water systems;

(b) new or expanded wastewater facilities;

(c) new or expanded stormwater systems;

(d) new or expanded streets;

(e) new or expanded solid-waste management facilities;

(f) new traffic signs and signals and new or expanded transit facilities;

(g) new or expanded parks, playgrounds, trails, bicycle paths, swimming pools, ice arenas, recreation centres and other recreational facilities;

(h) new or expanded fire departments and other fire facilities;

(i) new or expanded public libraries and other library facilities,

may be imposed in a subdivision by-law to recover all, or part, of the capital costs incurred, or anticipated to be incurred, by the Municipality by reason of the subdivision and future development of land and infrastructure charges for land, planning, studies, engineering, surveying and legal costs incurred with respect to any of them.

(3) The subdivision by-law must set out the infrastructure charge areas in which infrastructure charges are to be levied, the purposes for which infrastructure charges are to be levied and the amount of, or method of calculating, each infrastructure charge.

(4) Infrastructure charges may be set at different levels related to the proposed land use, zoning, lot size and number of lots in a subdivision and the anticipated servicing requirements for the infrastructure charge area.

(5) Infrastructure charges may not be imposed if an infrastructure charge has been paid with respect to the area of land, unless further subdivision of the land will impose additional costs on the Municipality.

(6) An infrastructure charge may only be used for the purpose for which it is collected.

(7) Final approval of a subdivision may not be granted unless the infrastructure charges are paid or the applicant has entered into an agreement with the Municipality securing the payment of the infrastructure charges.

(8) Infrastructure charges are a first lien on the land being subdivided and may be collected in the same manner as taxes.

(9) A by-law in effect on the date this Act comes into force that provides for a trunk sewer tax imposed on each lot in a new or existing subdivision is deemed to be a by-law made pursuant to this Section.

(10) Notwithstanding the *Public Utilities Act* and for greater certainty, any by-law made pursuant to this Section and any charge set, levied or imposed pursuant to this Section do not require the approval of the Board. 2008, c. 39, s. 284; 2014, c. 16, s. 8.

Infrastructure charges agreement

285 (1) An applicant and the Municipality may enter into an infrastructure charges agreement that may

(a) provide for the payment of infrastructure charges in instalments;

(b) permit the applicant to provide certain services or extended services in lieu of the payment of all, or part, of the charge;

(c) provide for security to ensure that the infrastructure charges are paid when due;

(d) provide for any other matter necessary or desirable to effect the agreement.

(2) A subdivision by-law may prescribe the circumstances in which an infrastructure charges agreement may be entered into and the general terms that such an agreement shall contain. 2008, c. 39, s. 285.

Effect of infrastructure charges agreement

286 An infrastructure charges agreement

(a) is binding on the land that is subdivided;

(b) must be registered in the registry or, in the case of land registered pursuant to the *Land Registration Act*, must be recorded in the land registration office in the register of each parcel created or altered by the subdivision, and shall be indexed as a conveyance to and from the owner of the land that is subdivided; and

(c) is binding on each individual lot in a subdivision, to the extent specified in the agreement. 2008, c. 39, s. 286.

Time limits for subdivision approval application

287 (1) Within fourteen days of receiving an application for subdivision approval, the development officer shall

(a) determine if the application is complete; and

(b) where the application is incomplete, notify the applicant in writing, advising what is required to complete the application.

(2) A completed application for subdivision approval that is neither approved nor refused within ninety days after it is received is deemed to be refused, unless the applicant and the development officer agree, in writing, to an extension.

(3) The development officer shall inform the applicant of the reasons for a refusal in writing. 2008, c. 39, s. 287.

Limitations on granting subdivision approval

288 (1) Subject to Section 295, an application for subdivision approval must be approved if the proposed subdivision is in accordance with the enactments in effect at the time a complete application is received by the development officer.

(2) An application for subdivision approval must be refused if

(a) the proposed use of the lots being created is not permitted by the land-use by-law;

(b) the proposed lots do not comply with a requirement of the land-use by-law, unless a variance has been granted with respect to the requirement;

(c) the proposed lots would require an on-site sewage disposal system and the proposed lots do not comply with requirements established pursuant to the *Environment Act* for on-site sewage disposal systems, unless the owner has been granted an exemption from technical requirements by the Minister of Environment and Climate Change, or a person designated by that Minister;

(d) the development officer is made aware of a discrepancy among survey plans that, where either claimant were completely successful in a claim, would result in a lot that cannot be approved;

(e) the proposed access to a street does not meet the requirements of the Municipality or His Majesty in right of the Province;

(f) the proposed subdivision does not meet the requirements of the subdivision by-law and no variance is granted; or

(g) the proposed subdivision is inconsistent with a proposed subdivision by-law or a proposed amendment to a subdivision by-law, for a period of one hundred and fifty days from the publication of the first notice advertising the Council's intention to adopt or amend the subdivision by-law. 2008, c. 39, s. 288; O.I.C. 2021-60.

Lots not meeting requirements

289 Where a subdivision by-law or a land use by-law specifies minimum lot dimensions or lot area and the subdivision by-law so provides, the development officer may approve a plan of subdivision that shows not more than two lots that do not meet these requirements, if the lot dimensions and area are not less than ninety per cent of the required minimums. 2008, c. 39, s. 289.

Streets

290 **(1)** No plan of subdivision may be approved by a development officer if

(a) the plan shows a street to be owned by the Municipality, unless the Engineer has approved the design and construction standards of the street, and any intersection with a street, owned by the Municipality;

(b) the plan shows a proposed intersection with a street owned by His Majesty in right of the Province, unless the intersection has been approved by the Minister of Public Works, or a person designated by that Minister; or

(c) the Minister of Public Works, or a person designated by that Minister, or the Engineer advises that the probable volume of traffic from the development will create unsafe conditions for which no remedial arrangements have been made.

(2) The owners of lots shown on a plan of subdivision as abutting on a private right of way are deemed to have an easement over the private right of way for vehicular and pedestrian access to the lot and for the installation of electricity, telephone and other services to the lot.

(3) The new streets and new extensions of streets shown on a plan of subdivision, excluding roads that are shown on the plan as private roads, are vested absolutely in the Municipality in which they are situate when the final approved plan is filed in the registry.

(4) A deemed easement under subsection (2) is retroactive to the date of the survey of the plan of subdivision or, where required at the time, the date of the approval of the plan of subdivision even if that survey or approval was made prior to the coming into force of this Act. 2008, c. 39, s. 290; O.I.C. 2021-56; O.I.C. 2021-209; 2024, c. 3, s. 43.

Requirement to approve plan of subdivision

291 A development officer shall approve a plan of subdivision prepared to carry out a development agreement authorized by a municipal planning strategy and land-use by-law, notwithstanding that the plan does not comply with the subdivision by-law, if the plan complies with the terms of the agreement. 2008, c. 39, s. 291.

Underlying lots deemed consolidated

292 Where a subdivision plan shows a remainder lot that is made up of the remainder of two or more underlying lots that have not been consolidated, the underlying lots are deemed to be consolidated before approval of the subdivision plan unless the application and plan indicate that they are not and if

(a) subsection 293(1) is complied with; and

(b) the remainder lot is ten hectares or less in area, the subdivision plan includes a survey of the entirety of the remainder lot,

in which case, the development officer shall register the deeds respecting the remainder lot, if any, with the approved plan. 2008, c. 39, s. 292.

Subdivision that adds or consolidates

293 (1) No plan of subdivision that adds or consolidates parcels or areas of land in different ownerships may be approved by a development officer until the development officer is provided with

(a) executed deeds suitable for registering to effect the addition or consolidation; and

(b) the fees for registering the deeds.

(2) The development officer shall register the deeds with the approved plan. 2008, c. 39, s. 293.

Approval by development officer

294 (1) No plan of subdivision that, under the *Land Registration Act*, is not acceptable for registration pursuant to the *Registry Act*, may be approved by a development officer unless the development officer is provided with proof that the parcels affected are all registered pursuant to the *Land Registration Act*.

(2) No plan of subdivision that adds or consolidates parcels or areas of land, that, under the *Land Registration Act*, is not acceptable for registration pursuant to the *Registry Act*, may be approved by a development officer unless the development officer is provided with proof that both the parcel from which land is taken and the parcel to which land is added are registered pursuant to the *Land Registration Act*.

(3) A deed to effect a consolidation provided to a development officer pursuant to Section 293 must, where the deed is to be registered pursuant to the *Land Registration Act*, include a legal description of the consolidated parcel.

(4) The approval of a plan of subdivision contrary to subsection (1) or (2) must be cancelled if the plan of subdivision is not accepted for registration pursuant to the *Land Registration Act*. 2008, c. 39, s. 294.

Tentative plan of subdivision

295 Where a tentative plan of subdivision is approved pursuant to the subdivision by-law, a lot or lots shown on the approved tentative plan must be approved at the final plan of subdivision stage if

(a) the lots are substantially the same as shown on the tentative plan;

(b) any conditions on the approval of the tentative plan have been met;

(c) the services required by the subdivision by-law at the time of approval of the tentative plan have been constructed and any municipal service has been accepted by the Municipality or acceptable security has been provided to the Municipality to ensure the construction of the service; and

(d) the complete application for final subdivision plan approval is received within two years of the date of the approval of the tentative plan. 2008, c. 39, s. 295.

Appeals to the Board

296 The refusal to approve a concept plan or tentative or final plan of subdivision may be appealed to the Board by the applicant in accordance with the procedure for an appeal to the Board set out in Part VIII. 2008, c. 39, s. 296.

Filing of approved final plan of subdivision

297 (1) No final plan of subdivision may be filed in the registry unless the plan has been approved by a development officer in accordance with this Part.

(2) A development officer, or a person acting for a development officer, shall, within seven days of the approval of a final plan of subdivision, forward two original copies of the approved plan to the registry, one of which is to be filed in the registry.

(3) At the same time as an approved final plan of subdivision is filed in the registry, a notice of the approved final plan of subdivision must be registered in the registry.

(4) A notice of the approved final plan of subdivision must be indexed as a conveyance from the person whose land is divided.

(5) Where an approved final plan of subdivision effects an addition or consolidation, the notice of the plan must be indexed as a conveyance from the person whose land is divided and from the person whose land is enlarged as a result of the addition or consolidation. 2008, c. 39, s. 297.

Lot crossing municipal boundary

298 Where a lot to be created by a plan of subdivision crosses a municipal boundary, an approval is also required from each other municipality in which the proposed lot is located. 2008, c. 39, s. 298.

When subdivision takes effect

299 **(1)** A subdivision of land takes effect when the plan of subdivision is filed in the registry.

(2) No deed, mortgage, lease or other instrument that would result in the subdivision of land for which subdivision approval is required has effect until the subdivision is approved and the plan is filed.

(3) A deed, mortgage, lease or other instrument, that purports to subdivide land and is executed before the approval and the filing of a plan of subdivision in the registry in accordance with this Part, is deemed

(a) to have been executed immediately after the filing of the plan of subdivision; and

(b) where the deed, mortgage, lease or other instrument has been registered in the registry, to have been duly registered at the time of the actual registration.

(4) Where two or more deeds, mortgages, leases or other instruments are deemed to have been executed at the same time, they are deemed to have been executed in the same order as they were actually executed.

(5) Where a deed, mortgage, lease or other instrument is made that results in the subdivision of land in accordance with a plan of subdivision duly approved and filed in the registry, the amendment of the plan does not restrict the right of the owner, mortgagee, lessee or other holder to execute other deeds, mortgages, leases or instruments in which the property is described as it is described in the original deed, mortgage, lease or other instrument. 2008, c. 39, s. 299.

Amendment of approved final plan of subdivision

300 **(1)** An approved final plan of subdivision may be amended, provided the amendment does not materially alter the boundaries of a lot created by the approved plan.

(2) The provisions of this Act that apply to an approved final plan of subdivision apply to an amended plan of subdivision, except the effective date of the approval of the amended plan is the same as that of the approved final plan of subdivision. 2008, c. 39, s. 300.

Subdivision for which no approval required

301 Nothing in this Act prevents an application for approval of or the approval of, a subdivision for which no approval is required. 2008, c. 39, s. 301.

Title or interest not affected

302 **(1)** A failure to comply with

(a) this Act;

(b) the *Municipal Government Act*; or

(c) the former *Planning Act*,

or a regulation or by-law made thereunder does not affect the creation of a title or interest in real property conveyed, or purported to have been conveyed, by deed, lease, mortgage or other instrument before April 16, 1987.

(2) Subsection (1) does not affect the rights acquired by a person from a judgment or order of a court given or made in litigation or proceedings commenced before April 16, 1987. 2008, c. 39, s. 302.

Subdivisions under other legislation

303 A subdivision by-law adopted pursuant to the *Municipal Government Act* or a former *Planning Act* is a subdivision by-law within the meaning of this Act, to the extent that it is consistent with this Act. 2008, c. 39, s. 303.

PART X

FIRE AND EMERGENCY SERVICES

Municipal role

304 The Municipality may maintain and provide fire and emergency services by providing the service, assisting others to provide the service, working with others to provide the service or a combination of means. 2008, c. 39, s. 304.

Registration as fire department

305 (1) A body corporate may apply to the Municipality for registration as a fire department.

(2) The Municipality may not refuse to register a body corporate that complies with this Act if

(a) the Municipality is satisfied that the body corporate is capable of providing the services it offers to provide;

(b) the body corporate carries liability insurance, as required by the Municipality;

(c) the body corporate does not provide the fire services for profit; and

(d) the Municipality does not provide the same services for the same area.

(3) A fire department, including a fire department of the Municipality or fire protection district, shall register in the Municipality if it provides emergency services in the Municipality.

specific classes of buildings, and while the agreement is in effect the building officials of the municipality or regional organization designated to administer and enforce this Act have jurisdiction to do so in the municipality.

(4) The clerk of the municipality or the secretary of the regional organization shall issue a certificate of appointment bearing that person's signature or a facsimile thereof to each building official appointed by the municipality or regional organization who shall produce the certificate when requested to do so while in the performance of the ~~inspector's~~ [building official's] duties.

(5) Where an enactment requires that any action taken in a court of law be taken in the name of the municipality, any actions required to be taken with respect to the enforcement of this Act shall be taken in the name of the municipality in which the property is located, but an agreement entered into between two or more municipalities or between a municipality and a regional organization pursuant to subsection (3) may provide that the authority to carry on actions or any class of actions may be delegated to a person or a regional organization, and in such cases the approval of the council of the municipality for each action shall not be required. *R.S., c. 46, s. 5; 2005, c. 47, s. 12.*

6 repealed 1994-95, c. 7, s. 2.

Municipal by-laws

7 (1) The council of the municipality may pass by-laws not inconsistent with this Act or the regulations made by the Minister

(a) prescribing permits or classes of permits for the purpose of this Act and the regulations including permits in respect of construction or demolition or any stage thereof, and for occupancy and change of occupancy of a building;

(b) providing for applications for permits and requiring the applications to be accompanied by such plans, specifications, documents and other information as is prescribed;

(c) requiring the payment of fees on applications for and issuance of permits and prescribing the amounts thereof;

(d) providing for the refunding of fees under such circumstances as are prescribed;

(e) providing for the inspection of construction or demolition;

(f) prescribing the time within which notices required by the regulations must be given to ~~an~~ [a] building official;

(g) prescribing an expiry date for construction or demolition permits.

(2) A by-law passed pursuant to this Section does not require the approval of the Minister but when a by-law is published, the clerk shall file a certified copy of the by-law with the Minister. *R.S., c. 46, s. 7; 1998, c. 18, s. 550; 2005, c. 47, s. 3.*

Prohibitions

8 No person shall

(a) construct or demolish a building to which this Act applies; or

(b) occupy or change the class of occupancy of a building to which this Act applies,

except in accordance with this Act or the regulations and unless a permit therefor has been issued by ~~an~~ [a] building official and the permit is in force. *R.S, c. 46, s. 8; 2005, c. 47, s. 12.*

Issue of permits

9 (1) The building official shall issue a permit pursuant to Section 8 except where

(a) the proposed building or the proposed construction or demolition will not comply with an Act or a regulation or by-law made pursuant to this Act or Parts VIII or IX of the Municipal Government Act; or

(b) the application therefor is incomplete or any fees due are unpaid.

(2) An applicant for a permit shall inform the building official of any change in any information contained in the application.

(3) ~~An~~ [A] building official may revoke a permit

(a) where it was issued on mistaken or false information;

(b) where, after twelve months after its issuance, the construction or demolition in respect of which it was issued has not been seriously commenced; or

(c) where the construction or demolition of the building is substantially suspended or discontinued for more than twelve months.

(4) ~~An~~ [A] building official shall not revoke a permit pursuant to subsection (3) until he has given written notice of his intention to do so to the permit holder and the owner of the building, if the owner is not the permit holder, at least thirty days prior to the proposed date of revocation.

(5) Any decision to refuse a permit or to revoke a permit and the reasons therefor shall be communicated in writing to the permit holder or the owner. *R.S., c. 46, s. 9; 1998, c. 18, s. 550; 2005, c. 47, s. 12.*

Entry by building official

10 (1) Subject to subsections (2) and (3), ~~an~~ [a] building official may, for the purpose of ensuring compliance with the provisions of this Act or the Building Code, enter in or upon any land or premises at any reasonable time without a warrant.

(2) ~~An~~ [A] building official shall not enter any room or place actually being used as a dwelling without the consent of the occupier unless the entry is made during daylight hours and written notice of the time of the entry has been given to the occupier at least twenty-four hours in advance.

(3) If a person refuses to allow ~~an~~ [a] building official to exercise or attempts to interfere or interferes with ~~an~~ [a] building official in the exercise of a power described in this Act, the municipality on whose behalf the building official is acting may apply to the Supreme Court of Nova Scotia for an order to allow the building official entry to the building and an order restraining a person from further interference. *R.S., c. 46, s. 10; 2005, c. 47, ss. 4, 12.*

Powers of building official

11 (1) For the purposes of an inspection pursuant to Section 10, the building official may

(a) require the production of the drawings and specifications of the building or any part thereof that are in the possession of the owner, the permit holder, if the permit holder is not the owner, or agent of the owner;

(b) be accompanied by any person who has a special or expert knowledge of any matter in relation to a building or part thereof;

(a) an indictable offence and is liable to imprisonment for a term of not more than four years; or

(b) an offence punishable on summary conviction.

Where accused may be tried and punished

(2) An accused who is charged with an offence under subsection (1) may be tried and punished by any court having jurisdiction to try that offence in the place where the offence is alleged to have been committed or in the place where the accused is found, is arrested or is in custody, but where the place where the accused is found, is arrested or is in custody is outside the province in which the offence is alleged to have been committed, no proceedings in respect of that offence shall be instituted in that place without the consent of the Attorney General of that province.

1995, c. 22, s. 6; 2015, c. 23, s. 18; 2019, c. 25, s. 298.

Fines and Forfeiture

Power of court to impose fine

734 (1) Subject to subsection (2), a court that convicts a person, other than an organization, of an offence may fine the offender by making an order under section 734.1

(a) if the punishment for the offence does not include a minimum term of imprisonment, in addition to or in lieu of any other sanction that the court is authorized to impose; or

(b) if the punishment for the offence includes a minimum term of imprisonment, in addition to any other sanction that the court is required or authorized to impose.

Offender's ability to pay

(2) Except when the punishment for an offence includes a minimum fine or a fine is imposed in lieu of a forfeiture order, a court may fine an offender under this section only if the court is satisfied that the offender is able to pay the fine or discharge it under section 736.

Meaning of default of payment

(3) For the purposes of this section and sections 734.1 to 737, a person is in default of payment of a fine if the fine has not been paid in full by the time set out in the order made under section 734.1.

Imprisonment in default of payment

(4) Where an offender is fined under this section, a term of imprisonment, determined in accordance with subsection (5), shall be deemed to be imposed in default of payment of the fine.

Determination of term

(5) The term of imprisonment referred to in subsection (4) is the lesser of

(a) the number of days that corresponds to a fraction, rounded down to the nearest whole number, of which

(i) the numerator is the unpaid amount of the fine plus the costs and charges of committing and conveying the defaulter to prison, calculated in accordance with regulations made under subsection (7), and

(ii) the denominator is equal to eight times the provincial minimum hourly wage, at the time of default, in the province in which the fine was imposed, and

(b) the maximum term of imprisonment that the court could itself impose on conviction or, if the punishment for the offence does not include a term of imprisonment, five years in the case of an indictable offence or two years less a day in the case of a summary conviction offence.

Moneys found on offender

(6) All or any part of a fine imposed under this section may be taken out of moneys found in the possession of the offender at the time of the arrest of the offender if the court making the order, on being satisfied that ownership of or right to possession of those moneys is not disputed by claimants other than the offender, so directs.

Provincial regulations

(7) The lieutenant governor in council of a province may make regulations respecting the calculation of the costs and charges referred to in subparagraph (5)(a)(i) and in paragraph 734.8(1)(b).

Application to other law

(8) This section and sections 734.1 to 734.8 and 736 apply to a fine imposed under any Act of Parliament, except that subsections (4) and (5) do not apply if the term of imprisonment in default of payment of the fine provided for in that Act or regulation is

(a) calculated by a different method; or

(b) specified, either as a minimum or a maximum.

R.S., 1985, c. C-46, s. 734; R.S., 1985, c. 27 (1st Supp.), s. 161; 1995, c. 22, s. 6; 1999, c. 5, s. 33; 2003, c. 21, s. 19; 2008, c. 18, s. 38; 2019, c. 25, s. 299.

Terms of order imposing fine

734.1 A court that fines an offender under section 734 shall do so by making an order that clearly sets out

(a) the amount of the fine;

(b) the manner in which the fine is to be paid;

(c) the time or times by which the fine, or any portion thereof, must be paid; and

(d) such other terms respecting the payment of the fine as the court deems appropriate.

1995, c. 22, s. 6.

Obligations of court

734.2 (1) A court that makes an order under section 734.1 shall

(a) cause a copy of the order to be given to the offender;

(b) explain the substance of sections 734 to 734.8 and 736 to the offender;

(c) cause an explanation to be given to the offender of the procedure for applying under section 734.3 for a change to the optional conditions and of any available fine option programs referred to in section 736 as well as the procedure to apply for admission to them; and

(d) take reasonable measures to ensure that the offender understands the order and the explanations.

For greater certainty

(2) For greater certainty, a failure to comply with subsection (1) does not affect the validity of the order.

1995, c. 22, s. 6; 2008, c. 18, s. 39.

Change in terms of order

734.3 A court that makes an order under section 734.1, or a person designated either by name or by title of office by that court, may, on application by or on behalf of the offender, subject to any rules made by the court under section 482 or 482.1, change any term of the order except the amount of the fine, and any reference in this section and sections 734, 734.1, 734.2 and 734.6 to an order shall be read as including a reference to the order as changed under this section.

1995, c. 22, s. 6; 2002, c. 13, s. 74.

Proceeds to go to provincial treasurer

734.4 (1) If a fine or forfeiture is imposed or an amount set out in an undertaking, release order or recognizance is forfeited and no provision, other than this section, is made by law for the application of the proceeds, the proceeds belong to Her Majesty in right of the province in which the fine or forfeiture was imposed or the amount was forfeited, and shall be paid by the person who receives them to the treasurer of that province.

Proceeds to go to Receiver General for Canada

(2) The proceeds described in subsection (1) belong to Her Majesty in right of Canada and must be paid by the person who receives them to the Receiver General if, as the case may be,

(a) the fine or forfeiture is imposed

(i) in respect of a contravention of a revenue law of Canada,

(ii) in respect of a breach of duty or malfeasance in office by an officer or employee of the Government of Canada, or

(iii) in respect of any proceedings instituted at the instance of the Government of Canada in which that government bears the costs of prosecution; or

(b) an amount set out in an undertaking, release order or recognizance is forfeited in connection with proceedings mentioned in paragraph (a).

Direction for payment to municipality

(3) If a provincial, municipal or local authority bears, in whole or in part, the expense of administering the law under which a fine or forfeiture is imposed or under which proceedings are taken in which an amount set out in an undertaking, release order or recognizance is forfeited,

(a) the lieutenant governor in council of a province may direct that the proceeds that belong to Her Majesty in right of the province shall be paid to that authority; and

(b) the Governor in Council may direct that the proceeds that belong to Her Majesty in right of Canada shall be paid to that authority.

1995, c. 22, s. 6; 2019, c. 25, s. 300.

Licences, permits, etc.

734.5 If an offender is in default of payment of a fine,

(a) where the proceeds of the fine belong to Her Majesty in right of a province by virtue of subsection 734.4(1), the person responsible, by or under an Act of the legislature of the province, for issuing, renewing or suspending a licence, permit or other similar instrument in relation to the offender may refuse to issue or renew or may suspend the licence, permit or other instrument until the fine is paid in full, proof of which lies on the offender; or

(b) where the proceeds of the fine belong to Her Majesty in right of Canada by virtue of subsection 734.4(2), the person responsible, by or under an Act of Parliament, for issuing or renewing a licence, permit or other similar instrument in relation to the offender may refuse to issue or renew or may suspend the licence, permit or other instrument until the fine is paid in full, proof of which lies on the offender.

1995, c. 22, s. 6; 1999, c. 5, s. 34.

Civil enforcement of fines, forfeiture

734.6 (1) Where

(a) an offender is in default of payment of a fine, or

(b) a forfeiture imposed by law is not paid as required by the order imposing it,

then, in addition to any other method provided by law for recovering the fine or forfeiture,

(c) the Attorney General of the province to whom the proceeds of the fine or forfeiture belong, or

(d) the Attorney General of Canada, where the proceeds of the fine or forfeiture belong to Her Majesty in right of Canada,

may, by filing the order, enter as a judgment the amount of the fine or forfeiture, and costs, if any, in any civil court in Canada that has jurisdiction to enter a judgment for that amount.

Effect of filing order

(2) An order that is entered as a judgment under this section is enforceable in the same manner as if it were a judgment obtained by the Attorney General of the province or the Attorney General of Canada, as the case may be, in civil proceedings.
1995, c. 22, s. 6.

Warrant of committal

734.7 (1) Where time has been allowed for payment of a fine, the court shall not issue a warrant of committal in default of payment of the fine

(a) until the expiration of the time allowed for payment of the fine in full; and

(b) unless the court is satisfied

(i) that the mechanisms provided by sections 734.5 and 734.6 are not appropriate in the circumstances, or

(ii) that the offender has, without reasonable excuse, refused to pay the fine or discharge it under section 736.

Reasons for committal

(2) Where no time has been allowed for payment of a fine and a warrant committing the offender to prison for default of payment of the fine is issued, the court shall state in the warrant the reason for immediate committal.

Period of imprisonment

(2.1) The period of imprisonment in default of payment of the fine shall be specified in a warrant of committal referred to in subsection (1) or (2).

Compelling appearance of person bound

(3) The provisions of Parts XVI and XVIII with respect to compelling the appearance of an accused before a justice apply, with such modifications as the circumstances require, to proceedings under paragraph (1)(b).

Effect of imprisonment

(4) The imprisonment of an offender for default of payment of a fine terminates the operation of sections 734.5 and 734.6 in relation to that fine.

1995, c. 22, s. 6; 1999, c. 5, s. 35.

Definition of *penalty*

734.8 (1) In this section, ***penalty*** means the aggregate of

(a) the fine, and

(b) the costs and charges of committing and conveying the defaulter to prison, calculated in accordance with regulations made under subsection 734(7).

Reduction of imprisonment on part payment

(2) The term of imprisonment in default of payment of a fine shall, on payment of a part of the penalty, whether the payment was made before or after the execution of a warrant of committal, be reduced by the number of days that bears the same proportion to the number of days in the term as the part paid bears to the total penalty.

Minimum that can be accepted

(3) No amount offered in part payment of a penalty shall be accepted after the execution of a warrant of committal unless it is sufficient to secure a reduction of sentence of one day, or a whole number multiple of one day, and no part payment shall be accepted until any fee that is payable in respect of the warrant or its execution has been paid.

To whom payment made

(4) Payment may be made under this section to the person that the Attorney General directs or, if the offender is imprisoned, to the person who has lawful custody of the prisoner or to any other person that the Attorney General directs.

Application of money paid

(5) A payment under this section shall be applied firstly to the payment in full of costs and charges, secondly to the payment in full of any victim surcharge imposed under section 737, and then to payment of any part of the fine that remains unpaid.

1995, c. 22, s. 6; 1999, c. 5, s. 36, c. 25, s. 19(Preamble).

Date modified:

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Criminal Code (R.S.C. (Revised Statutes of Canada), 1985, c. C-46)
Act current to 2024-06-19 and on 2024-01-14.

PART XXIII

Sentencing (continued)

Fines and Forfeiture (continued)

Fines on organizations

735 (1) An organization that is convicted of an offence is liable, in lieu of any imprisonment that is prescribed as punishment for that offence, to be fined in an amount, except where otherwise provided by law,

(a) that is in the discretion of the court, where the offence is an indictable offence; or

(b) not exceeding one hundred thousand dollars, where the offence is a summary conviction offence.

Application of certain provisions — fines

(1.1) A court that imposes a fine under subsection (1) or under any other Act of Parliament shall make an order that clearly sets out

(a) the amount of the fine;

(b) the manner in which the fine is to be paid;

(c) the time or times by which the fine, or any portion of it, must be paid; and

(d) any other terms respecting the payment of the fine that the court deems appropriate.

Effect of filing order

(2) Section 734.6 applies, with any modifications that are required, when an organization fails to pay the fine in accordance with the terms of the order.

R.S., 1985, c. C-46, s. 735; R.S., 1985, c. 1 (4th Supp.), s. 18(F), c. 23 (4th Supp.), s. 7; 1995, c. 22, s. 6; 1999, c. 5, s. 37; 2003, c. 21, s. 20.

Fine option program

736 (1) An offender who is fined under section 734 may, whether or not the offender is serving a term of imprisonment imposed in default of payment of the fine, discharge the fine in whole or in part by earning credits for work performed during a period not greater than two years in a program established for that purpose by the lieutenant governor in council

(a) of the province in which the fine was imposed, or