

Authority: Item 4, Audit and Administration
Committee Report 09-010 (FCS09060)
CM: June 10, 2009

Item 10, Audit and Administration
Committee Report 09-011 (FCS09060)
CM: June 24, 2009

Bill No. 144

THE CITY OF HAMILTON

BYLAW NO. 09-144

**Being a By-law respecting development charges for Water and Wastewater Services
on lands within The City of Hamilton**

WHEREAS the *Development Charges Act, 1997*, S.O.1997, c.27 (hereinafter referred to as the "Act") authorizes municipalities to pass a By-law for the imposition of development charges against land to pay for increased capital costs required because of increased needs for services arising from development of the area to which the said By-law applies.

AND WHEREAS the City of Hamilton, as required by Section 10 of the Act, has undertaken and completed a development charge background study regarding the anticipated amount, type and location of development; the increase in needs for services; estimated capital costs to provide for such increased needs, including the long term capital and operating costs for capital infrastructure required for the services.

AND WHEREAS, as required by Section 11 of the Act, this By-law is being enacted within one year of the completion of the said development charge background study, titled "*City of Hamilton 2009 Development Charge Background Study*," prepared by Watson & Associates dated May 20, 2009;

AND WHEREAS in advance of passing this By-law the Council of the City of Hamilton has given notice of and held a public meeting on June 4 2009 in accordance with Section 12 of the Act regarding its proposals for this development charges By-law;

AND WHEREAS the Council of the City of Hamilton, through its Audit and Administration Committee, has received written submissions and heard all persons who applied to be heard no matter whether in objection to, or in support of, the said By-law;

AND WHEREAS, Council intends that development-related 2009 - 2031 capacity will be paid for by development charges;

AND WHEREAS the Council of the City of Hamilton, at its meeting of June 24, 2009, has adopted and approved the said background study and the development charges and policies recommended by the General Manager of the Corporate Services Department to be included in this By-law and determined that no further public meetings are required under Section 12 of the Act;

AND WHEREAS, Council approved report FCS09060 thereby updating its capital budget and forecast where appropriate and indicating that it intends that the increase in the need for services to service anticipated development will be met;

NOW THEREFORE, the Council of the City of Hamilton hereby enacts as follows:

Definitions

1. In this By-law,

- (a) "Act" means the *Development Charges Act, 1997*, S.O. 1997, c.27, as amended.
- (b) "agricultural land" means land which is zoned for an agricultural use in the zoning By-law of the predecessor municipality in which the land is located, and any subsequent amendment or replacement thereof, and used for a bona fide agricultural use.
- (c) "agricultural use" means the bona fide use of lands and buildings for apiaries, fish farming, dairy farming, fur farming, the raising or exhibiting of livestock, or the cultivation of trees, shrubs, flowers, grains, sod, fruits, vegetables and any other crops or ornamental plants and includes the operation of a farming business and the erection of a farm help house on agricultural land but excludes a commercial greenhouse. Agricultural use does not include the development of a single detached dwelling on agricultural land.
- (d) "apartment" means a building consisting of more than one dwelling unit with a private bathroom and kitchen facilities in each dwelling unit and which is not a single detached dwelling, a semi-detached dwelling, a farm help house or a multiple unit dwelling. For the purposes of this By-law, apartment includes a mobile home.
- (e) "bedroom" means a habitable room larger than seven square metres, including a den, study, or other similar area, but does not include a living room, dining room or kitchen.
- (f) "Board of Education" means a board as defined in sub-section 1(1) of the *Education Act 1997*, S.O. 1997, c.E.2, as amended.
- (g) "commercial development" means a building or structure used, designed or intended for use for, or in connection with the purchase and/or sale and/or rental of commodities; the provision of services for a fee; or the operation of a business office. Commercial development includes a "retail development" as defined herein but does not include an "industrial development" as defined herein.
- (h) "Council" means the Council of the City of Hamilton.
- (i) "covered sports field" means a completely enclosed sports field, court, track or surface. A covered sports field may be either free-standing or part of a larger building. A covered sports field may include an area for spectator seating or an audience but does not include ancillary lobby areas, change-rooms, restroom facilities, restaurants or food or beverage concessions, licensed drinking establishments, storage areas, or areas devoted to office or administrative use.

- (j) "development" has the meaning set out in sub-section 41(1) of the *Planning Act*; R.S.O. 1990, c.P.13, as amended, and includes redevelopment.
- (k) "development charge or development charges" means the charges imposed by this By-law against land to pay for increased capital costs required because of increased needs for services arising from development of the area to which this By-law applies.
- (l) "dwelling unit" means a room or suite of rooms used, or designed or intended for use by one or more persons living together as a single housekeeping unit in which culinary and sanitary facilities are provide for the exclusive use of such person or persons. (06-173, s. 1(a))
- (m) "existing industrial building" shall have the same meaning as that term is defined under Ontario Regulation 82/98 under the Act. For greater clarity, existing industrial building shall mean a building or buildings situated on a site in the City of Hamilton on July 06 2009 or the first building or buildings constructed on a site thereafter pursuant to site plan approval under Section 41 of the *Planning Act* for which full development charges were paid, which building or buildings are used for industrial purposes as defined herein.
- (n) "farming business" means a business operating on agricultural land with a current Farm Business Registration Number issued pursuant to the *Farm Registration and Farm Organizations Funding Act, 1993*, S.O. 1993, c.21, as amended, and assessed in the Farmland Realty Tax Class by the Municipal Property Assessment Corporation.
- (o) "farm help house", means a dwelling unit constructed on agricultural land used for agricultural uses and not attached to any other building or structure, with sleeping, cooking, living and sanitary facilities, and used for seasonal, interim or occasional residential uses by farm labourers.
- (p) "grade" means the average level of proposed or finished ground adjoining a building at all exterior walls.
- (q) "gross floor area" means the total area of all floors above grade of a building containing one or more dwelling units, or of a non-residential building or structure, or of a building or structure with both residential and non-residential uses, measured between the outside surfaces of exterior walls, or between the outside surfaces of exterior walls and the centre line of party walls dividing the dwelling unit or non-residential building or structure from another dwelling unit or non-residential building or structure or other portion of a building.
- (r) "industrial development" means a building or structure used, designed or intended for use for, or in connection with,
 - (i) manufacturing, producing, processing, storing or distributing something;
 - (ii) research or development in connection with manufacturing, producing or processing, something;
 - (iii) retail sales by a manufacturer, producer or processor of something they manufactured, produced or processed, if the retail sales are at the site which the manufacturing, production or processing takes place; and

- (iv) office or administrative purposes, if they are, carried out with respect to manufacturing, producing, processing, storage or distributing of something, and, in or attached to the building or structure used for that manufacturing, producing or processing, storage or distribution.

Without limiting the generality of the foregoing, industrial development also includes a building used as a commercial greenhouse which is not an agricultural use as defined herein, a warehouse, and a mini-storage facility.

For the purposes of this by-law, Industrial development also includes hotels.

- (s) "local board" means any a municipal service board, municipal business corporation, transportation commission, public library board, board of health, police services board, planning board, or any other board, commission, committee, body or local authority established or exercising any power under any act with respect to the affairs or purposes of the City, excluding a school board, a conservation authority, any municipal business corporation not deemed to be a local board under O. Reg 168/03 under the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, or successor legislation.
- (t) "lot" means a lot, block or parcel of land which can be legally and separately conveyed pursuant to Section 50 of the *Planning Act*, as amended, and includes a development having two (2) or more lots consolidated under a single ownership.
- (u) "mixed use development" means a building or structure used, designed or intended for use for both residential and non-residential uses.
- (v) "mobile home", means a building recognized in the Building Code as a "Mobile Home" in accordance with the standard for mobile homes in CANICSA-Z240.2.1 "Structural requirements for Mobile Homes".
- (w) "multiple unit dwelling" means a residential building consisting of two or more dwelling units attached by a vertical or horizontal wall or walls. Multiple unit dwelling refers to all dwelling units other than single detached, semi-detached, apartment unit dwellings, and residential facility dwellings. Multiple unit dwelling includes, but is not limited to, townhouses, street townhouses, row dwellings, stacked townhouses and duplexes.
- (x) "non-industrial development" means any non-residential building or structure which is not an industrial development. Without limiting the generality of the foregoing, non-industrial development includes commercial and retail buildings, a public hospital within the meaning of the *Public Hospitals Act*, R.S.O. 1990, c. P. 40, as amended, and R.R.O. 1990, Regulation 964, as amended, and motels and other forms of tourist accommodation.
- (y) "non-residential development" is any development other than a residential development.
- (z) "place of worship", means a building, or any part thereof, owned or occupied by a church or religious organization which is or would be classified as exempt from taxation in accordance with paragraph 3 of sub-section 3(1) of the *Assessment Act*, R.S.O. 1990, Chapter A.31.
- (aa) "Regulation" means Ontario Regulation 82/98 under the Act.

- (bb) "residential development" means:
- (i) a single detached dwelling;
 - (ii) a semi-detached dwelling;
 - (iii) a residential facility;
 - (iv) a mobile home;
 - (v) a multiple unit dwelling;
 - (vi) an apartment; or
 - (vii) a semi-detached dwelling, multiple unit dwelling and/or apartment in a mixed use development.
- (cc) "residential facility" means a building containing two or more bedrooms which bedrooms do not have self-contained kitchens. Residential facility includes a garden suite within the meaning of Section 39.1 of the *Planning Act*, as amended. Residential facility does not include a single detached dwelling, a semi-detached dwelling, a farm help house, a multiple unit dwelling or an apartment as defined herein. (06-173, s.1(b))
- (dd) "retail development" means land, buildings or portions thereof used, designed or intended for use for the purpose of offering foods, wares, merchandise, substances, articles or things for sale directly or providing entertainment to the public and includes the rental of wares, merchandise, substances, articles or things and includes offices and storage in connection with, related or ancillary to such retail uses. Retail development includes, but is not limited to: conventional restaurants; fast food restaurants; concert halls/ theatres/ cinemas/ movie houses/ drive-in theatres; automotive fuel stations with or without service facilities; specialty automotive shops/ auto repairs/ collision services/ car or truck washes; auto dealerships; regional shopping centres; community shopping centres; neighbourhood shopping centres, including more than two stores attached and under one ownership; department/ discount stores; banks and similar financial institutions, including credit unions (excluding freestanding bank kiosks); warehouse clubs and retail warehouses.
- (ee) "semi-detached dwelling" means a residential building consisting of two dwelling units attached by a vertical wall or walls, each of which has a separate entrance or access to grade.
- (ff) "services" means services designated in Schedule "C" of this By-law or designated in an agreement under Section 44 of the Act.
- (gg) "single detached dwelling" means a residential building containing one dwelling unit and not attached to another building or structure, whether or not the single detached dwelling is situated on a single lot.
- (hh) "temporary building or structure" means a non-residential building without a foundation which is constructed, erected or placed on land for a continuous period of time not exceeding one (1) year, or a like addition or alteration to an existing building or an existing structure that has the effect of increasing the usability thereof for a continuous period not exceeding one (1) year.

Schedules

2. The following schedules to this By-law form an integral part of this By-law:

- Schedule "A": Map of the Urban Area Boundary of the City of Hamilton
- Schedule "B": Downtown Community Improvement Plan (CIP) Area
- Schedule "C": Water and Wastewater Development Charges

Lands Affected

3. This By-law applies to all lands within the Urban Area Boundary of the City of Hamilton, as shown on Schedule "A".

Amount of Charge

4. The development of land in the City of Hamilton is also subject to By-law 09 -143, as amended, and By-law 06 – 174, as amended, and any additional development charges by laws that may be enacted by the Council of the City of Hamilton during the life of this By-law.
5. (a) Subject to paragraphs (c) or (d) below, where there is development of land within that part of the City depicted for the purposes of this By-law as Urban Area Boundary on Schedule "A" to this By-law, the development charges payable pursuant to this By-law shall be the development charges set out in Schedule "C" to this By-law;
- (b) Subject to paragraphs (c) or (d) below, where a building permit is issued for a building or structure located on land outside of the Urban Area Boundary depicted on Schedule "A" to this By-law and a connection of that building or structure to any or all of the water and wastewater services in Schedule "C" is proposed, the applicable charge set out in Schedule "C" shall be applied to the said development.
- (c) The amount of the applicable charge to be collected for each residential use for each year of the term of this By-law shall be calculated as a percentage of the full charge set out therefore in Schedule "C" to this By-law, which percentage is shown on Table 1 below, namely:

Table 1

PERCENTAGE OF CHARGE TO BE IMPOSED
July 6, 2009 to July 5, 2010

SERVICE	RESIDENTIAL				
	Single-Detached Dwelling & Semi-Detached Dwelling (per unit)	Apartments 2 Bedrooms + (per unit)	Apartments Bachelor & 1 Bedroom (per unit)	Multiple Dwellings (per unit)	Residential Facility Dwelling (per bedroom)
Water and Wastewater Services	73.34%	77.93%	69.64%	81.18%	73.36%

PERCENTAGE OF CHARGE TO BE IMPOSED
July 6, 2010 to July 5, 2011

SERVICE	RESIDENTIAL				
	Single-Detached Dwelling & Semi-Detached Dwelling (per unit)	Apartments 2 Bedrooms + (per unit)	Apartments Bachelor & 1 Bedroom (per unit)	Multiple Dwellings (per unit)	Residential Facility Dwelling (per bedroom)
Water and Wastewater Services	100.00%	100.00%	100.00%	100.00%	100.00%

(d) The amount of the applicable charge to be collected for each non-residential non-industrial or industrial use for each year of the term of this By-law shall be calculated as a percentage of the full charge therefore set out in Schedule "C" to this by-law, which percentage is shown on Table 2 below, namely:

Table 2

PERCENTAGE OF CHARGE TO BE IMPOSED

SERVICE	NON-RESIDENTIAL NON-INDUSTRIAL	
	July 6, 2009 - July 5, 2010	July 6, 2010 - July 5, 2011
	Water and Wastewater Services:	
Wastewater Services	100.00%	100.00%
Water Services	100.00%	100.00%

PERCENTAGE OF CHARGE TO BE IMPOSED

SERVICE	NON-RESIDENTIAL INDUSTRIAL	
	July 6, 2009 - July 5, 2010	July 6, 2010 - July 5, 2011
	Water and Wastewater Services:	
Wastewater Services	100.00%	100.00%
Water Services	0.00%	0.00%

Designation of Services

6. All development of land within the area to which this By-law applies will increase the need for water and wastewater services.
7. The development charges applicable to a development as determined pursuant to this By-law shall apply without regard to the services required or used by an individual development.

Approvals for Development

8. The development of land is subject to a development charge where the development requires the following:
 - (a) the passing of a zoning By-law or an amendment thereto under Section 34 of the *Planning Act*, as amended, or successor legislation;
 - (b) the approval of a minor variance under Section 45 of the *Planning Act*; as amended, or successor legislation;
 - (c) a conveyance of land to which a By-law under subsection 50(7) of the *Planning Act*, as amended, or successor legislation;
 - (d) the approval of a plan of subdivision under Section 51 of the *Planning Act*, as amended, or successor legislation;
 - (e) a consent under Section 53 of the *Planning Act*, as amended, or successor legislation;
 - (f) the approval of a description in accordance with Section 50 of the *Condominium Act*, R.S.O. 1990, c.C. 26 or Section 9 of the *Condominium Act 1998*, S.O. 1998, c.19; or
 - (g) the issuance of a permit under the *Building Code Act, 1992*, S.O. 1992, c.23, as amended, or successor legislation, in relation to a building or structure.
9. Where two or more of the actions described in Section 8 of this By-law occur at different times, or a second or subsequent building permit is issued resulting in increased, additional or different development, then additional development charges shall be imposed in respect of such increased, additional, or different development permitted by that action.
10. Where a development requires an approval described in section 8 of this By-law after the issuance of a building permit and no development charges have been paid, then the development charges shall be paid prior to the granting of the approval required under section 8 of this By-law.
11. Where a development does not require a building permit but does require one or more of the approvals described in Section 8 of this By-law, then, notwithstanding Section 30 of this By-law, development charges shall be payable.
12. Nothing in this by-law prevents Council from requiring, in an agreement under Section 51 or as a condition of consent or an agreement respecting same under Section 51 or as a condition or an agreement respecting same under Section 53 of the *Planning Act*, as amended, or successor legislation, that the owner, at his or her own expense, shall install

such local services related to or within a plan of subdivision, as Council may require, in accordance with the City's applicable local services policies in effect at this time.

Calculation of Development Charges

13. A development charge imposed pursuant to this By-law shall, subject to any other applicable provision hereof, be calculated as follows:
- (a) Subject to (i), (ii) and (iii) below, in the case of residential development or the residential portion of mixed use development, based on the number and type of dwelling units;
 - (i) in the case of a residential facility, based upon the number of bedrooms;
 - (ii) in the case of a dwelling unit containing six (6) or more bedrooms, the sixth and any additional bedroom shall be charged at the applicable residential facility rate; or
 - (iii) in the case of an apartment with dwelling units containing six (6) or more bedrooms, the applicable "apartment 2 bedroom +" rate shall apply to the dwelling unit and five (5) bedrooms and the applicable residential facility rate to the sixth and each additional bedroom.
 - (b) in the case of non-residential development, or the non-residential portion of a mixed-use development, based upon the gross floor area of such development measured in square feet. (06-173, s. (2))
14. Subject to the provisions of this By-law, development charges against land are to be calculated and collected in accordance with the services and rates set out in Schedule "C" to this By-law.

Exemptions for Intensification of Existing Housing

- 15.(1) No development charge shall be imposed where the only effect of an action referred to in Section 8 of this By-law is to:
- (a) permit the enlargement of an existing dwelling unit; or,
 - (b) permit the creation of up to two additional dwelling units, as prescribed, subject to the restrictions, prescribed in s. 2 of the Regulation.

Exemptions for Certain Buildings

16. No development charge shall be imposed on any building owned by and used for the purposes of:
- (a) the City of Hamilton;
 - (b) a Board of Education; or,

- (c) a local board.

Exemption for the Enlargement of Existing Industrial Buildings

17. No development charge shall be imposed on development constituting one or more enlargements of an existing industrial building as defined herein, whether attached or separate therefrom, up to a maximum of fifty percent (50%) of its gross floor area before the enlargement.
18. Where a proposed enlargement exceeds fifty (50%) per cent of the gross floor area of an existing industrial building, development charges are payable on the amount by which the proposed enlargement exceeds fifty percent (50%) of the gross floor area before the enlargement.
19. The cumulative total of the gross floor area previously exempted hereunder shall be included in the determination of the amount of the exemption applicable to any subsequent enlargement.
20. Where a subdivision of the site subsequent to any enlargement previously exempted hereunder results in the existing industrial building being on a lot separate from the development previously, further exemptions, if any, pertaining to the existing industrial building shall be calculated on the basis of the site as it existed on the date of the first exemption hereunder.

Other Exemptions from Development Charges

21. Notwithstanding any other provision of this By-law, the following types of development are exempted from development charges under this By-law, in the manner and to the extent set out below. Unless otherwise specified herein, the said exemption is equivalent to one hundred percent (100%) of the development charges otherwise payable under this By-law;
 - (a) a parking garage or structure exclusively devoted to parking, including an outdoor parking lot located at grade;
 - (b) an agricultural use;
 - (c) a place of worship;
 - (d) a covered sports field;
 - (e) a temporary building or structure, subject to section 32.

Downtown Community Improvement Plan (CIP) Exemption

22. All development within the boundaries of the Downtown Community Improvement Plan (CIP) as shown on Schedule "B" to this By-law is exempt from the provisions of this By-law.

Partial Exemptions

23. The following types of development will be partially exempt from development charges under this By-law in the manner and to the extent set out below:

- (a) the initial five thousand (5,000) square feet of gross floor area of an expansion of a non-industrial development provided that:
 - (i) the development which is subject to such expansion is existing as of the effective date of this By-law;
 - (ii) an expansion may be attached or unattached to the existing development provided that, where unattached, it must be situated on the same site as the existing development; and,
 - (iii) where, subsequent to an unattached expansion exempted hereunder, the lot is further subdivided such that the original existing development and the unattached expansion thereof are no longer situated on the same lot, further exemptions pursuant to this section, if any, shall only be calculated on the basis of the building and the lot as they existed on the date of the first exemption recognized hereunder.

(b) for any non-industrial development other than an expansion, development charges shall be imposed as follows:

- (i) fifty percent (50%) of the applicable development charge on the first five thousand (5000) square feet;
- (ii) seventy five percent (75%) of the applicable development charge on the next five to ten thousand (5000 – 10,000) square feet;
- (iii) one hundred percent (100%) of the applicable development charge on the amount of development exceeding ten thousand (10,000) square feet.

Where development has been exempted pursuant to this sub-section, the exemption set out in sub-section (a) above does not apply to any subsequent expansion on such development.

(c) development of a brownfield property that has been approved by the City for an ERASE Redevelopment Grant, or any successor thereof. The amount of the exemption hereunder is equivalent to the cost of environmental remediation on, in or under the property as approved by the City under the ERASE Redevelopment Grant program and required to be paid by the owner, up to but not exceeding the amount of the development charges otherwise payable under this By-law;

(d) a development by a university, other post-secondary school offering a degree or diploma recognized by the Province of Ontario or a not-for-profit private elementary or secondary school operated in compliance with Section 16 of the *Education Act*, as amended, where such development is used for the academic or teaching purposes of the university or school, is exempt from development charges under this By-law.

- (e) development of a public hospital as defined herein, is exempt from fifty percent (50%) of the development charges otherwise payable under this By-law.
- (f) development of student residences by McMaster University is exempt from 50% of the development charge otherwise payable pursuant to this By-law.

Rules with Respect to Redevelopment - Demolitions

24. In the case of the demolition of all or part of a building:

- (a) in the case of a demolition permit issued after the effective date of this By-law, a credit shall be allowed against the development charges otherwise payable pursuant to this By-law, provided that a building permit has been issued for the redevelopment within five (5) years from the date the demolition permit has been issued;
- (b) the credit shall be calculated based on the portion of a building used for a residential purpose that has been demolished by multiplying the number and type of dwelling units demolished, or in the case of a building used for a non-residential purpose that has been demolished by multiplying the non-residential square feet demolished by the relevant development charges in effect on the date when the development charges are payable pursuant to this By-law;
- (c) for greater certainty, and without limiting the generality of the foregoing, no credit shall be allowed where the demolished building or part thereof would have been exempt pursuant to this By-law; and
- (d) the amount of any credit pursuant to this section shall not exceed, in total, the amount of the development charges otherwise payable pursuant to this By-law with respect to the redevelopment.

Rules with Respect to Redevelopment - Conversions

- 25. Where an existing non-residential building or structure is converted in whole or in part to a residential use, the residential development charge payable for the residential units created shall be reduced by an amount equal to the non-residential rate per square foot established under this By-law and set out in Schedule "C", applied against the gross floor area so converted to residential use.
- 26. Where an existing residential building is converted in whole or in part to non-residential uses, the non-residential development charge payable for the gross floor area so converted shall be reduced by an amount equal to the residential development charge established under this By-law and set out in Schedule "C" applied for the type of residential unit(s) so converted. If a unit is only partially converted the reduction shall be in proportion to the extent of the conversion.
- 27. Development charges payable for the conversion of uses in a mixed use building or structure shall be determined in accordance with Sections 25 and 26.

28. The amount of any credit shall not exceed in total the amount of the development charges otherwise payable under the By-law.

Temporary Buildings or Structures

29. Where an application is made for the issuance of a permit under the *Building Code Act* in relation to a temporary building or structure, the Chief Building Official, or his or her delegate, may, as a condition of the issuance of the said permit, require that the owner of the land enter into an agreement with the City pursuant to Section 27 of the Act and Section 31 of this By-law and/or submit security satisfactory to the General Manager of Corporate Services and the City Solicitor, to be realized upon in the event that the temporary building or structure remains on the land for more than one (1) year, or any other time as may be set out in the said agreement or security, from the date of the construction or erection thereof. A temporary building or structure that has not been removed or demolished by the first anniversary of its construction or erection on the land, or by the date specified in an agreement, shall be deemed not to be, nor ever to have been, a temporary building or structure and development charges under this By-law shall become due and payable forthwith and the City may draw upon any letter of credit and/or transfer any cash security into the appropriate development charge reserve fund.

Collection of Development Charges

30. Subject to the provisions of Section 31, development charges are payable at the time a building permit is issued with respect to a development.

Prepayment or Deferral Agreements

31. (a) Save as otherwise specified in this By-law, and for non-residential development, a residential facility or an apartment development only, Council may authorize, in accordance with Section 27 of the Act, an agreement with a person to permit, on such terms as Council may require, including the payment of interest by such person, and for a term no longer than five (5) years, the payment of the development charge before or after it is otherwise payable under this By-law.
- (b) Notwithstanding (a) above, Council may authorize an agreement with a public hospital as defined in paragraph 1(x) above to permit, on such conditions as Council may require, including the payment of interest, and for a term no longer than ten (10) years, the payment of the development charge after it is otherwise payable under this By-law.
- (c) Notwithstanding (a) above, Council may authorize an agreement with an entity described in paragraph 23(d) above to permit, on such conditions as Council may require, including the payment of interest, and for a term no longer than thirty (30) years, the payment of the development charge after it is otherwise payable under this By-law.

Credit for Services-in-lieu Agreement

32. In accordance with Sections 38, 39, 40 and 41 of the Act, a person may perform work that relates to a service to which this By-law applies, in return for a credit towards the development charges payable by the said person, by way of an agreement. No such credit shall exceed the total development charges payable by the person.

Front-Ending Agreements

33. Council may authorize a front-ending agreement in accordance with the provisions of Part III of the Act, upon such terms as Council may require, in respect of the development of land.

Administration of By-law

34. This By-law shall be administered by the Corporate Services Department of the City of Hamilton.

Indexing

35. The development charges set out in Schedule "C" of this By-law shall be adjusted annually without amendment to this By-law by the percentage change during the preceding year, as recorded in the Statistics Canada Construction Cost Index. This adjustment shall take place as follows:
 - (a) the initial adjustment shall be one year from the effective date of this By-law, and
 - (b) thereafter, adjustment shall be made each year on the anniversary of the effective date of this By-law.

Reserve Fund Report

36. The General Manager of Corporate Services shall, in each year prior to May 01 thereof, commencing May 01, 2010 for the 2009 year, furnish to Council a statement in respect of the reserve funds required by the Act for the services to which this By-law relates, for the prior year, containing the information set out in Section 43 of the Act and Section 12 of the Regulation.

Transition

37. The development charge rates payable are the rates in effect on the date a complete building permit application is received and accepted by the City's Chief Building Official, provided that the permit is issued within 6 months of the effective date of a development charge rate increase. Where the said building permit is lawfully revoked by the Chief Building Official on or after the date of the said development charge rate increase, any subsequent application for a building permit on the lands or site will be subject to the development charge rate in effect on the date of building permit issuance. For the purposes of this section, a "complete application" shall mean an application with all required information and plans provided, all application fees paid and all prior charges and taxes relating to the subject land paid and discharged.
38. Where a complete application for site plan approval pursuant to City of Hamilton By-law 03-294, as amended, or any successor thereto, has been received by the City prior to May 01 2009, and no building permit in relation thereto has been issued prior to July 06, 2009, the development charge payable upon the issuance of the building permit or permits issued in relation to said approved site plan shall be the applicable development charge as of July 05, 2009, provided that:
- (a) any building permit required in relation to the said approval has been issued prior to January 6, 2010; and
 - (b) construction has commenced thereafter within six (6) months of the date of issuance of the said building permit or permits, such construction to be deemed to have commenced when all footings and foundations have been completed.

For the purposes of this Section 38, a "complete site plan application" means an application in compliance with the requirements of the City as set out in the document entitled "*City of Hamilton Submission Requirements and Application Form for Site Plan Control*" dated January 01, 2004, or any successor thereto, as the same may be amended from time to time, together with all applicable fees.

General

39. This By-law may be referred to as the "*City of Hamilton Water and Wastewater Development Charges By-law, 2009.*"

Date By-law Effective

40. This By-law shall come into force and take effect at 12:01 a.m. on July 06, 2009.

Date By-law Expires

41. This By-law expires two (2) years after the date on which it comes into force.

By-law Registration

42. A certified copy of this By-law may be registered in the Land Titles Office as against title to any land to which this By-law applies.

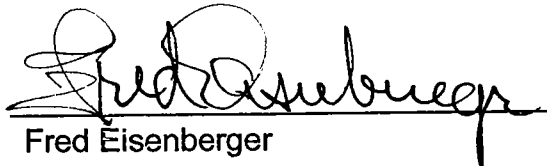
Headings for Reference Only

43. The headings inserted in this By-law are for convenience of reference only and shall not affect the construction or interpretation of this By-law.

Severability

44. If, for any reason, any provision, section, subsection, paragraph or clause of this By-law is held invalid, it is hereby declared to be the intention of Council that all the remainder of this By-law shall continue in full force and effect until repealed, re-enacted or amended, in whole or in part or dealt with in any other way.

PASSED and ENACTED this 24th day of June, 2009

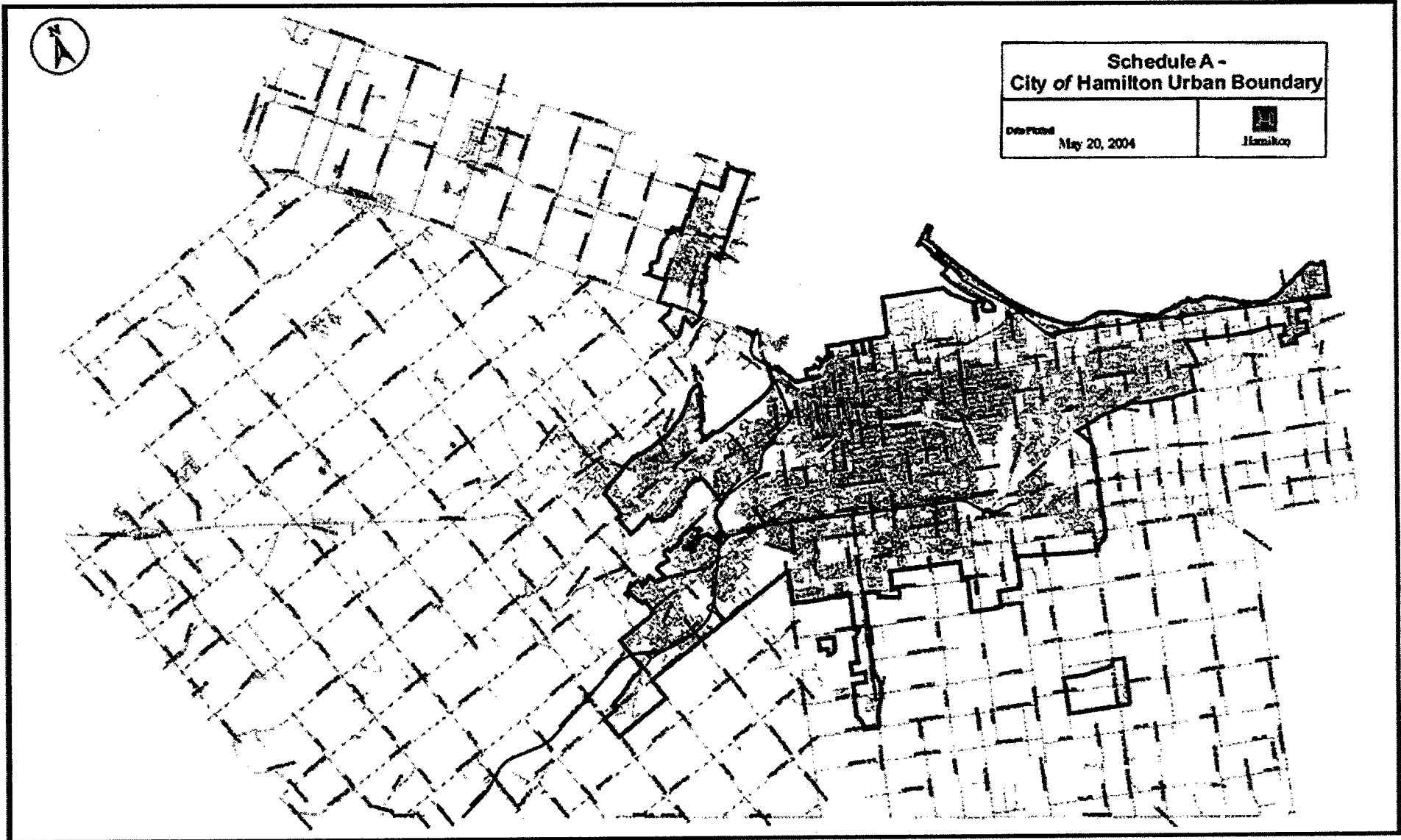


Fred Eisenberger
Mayor



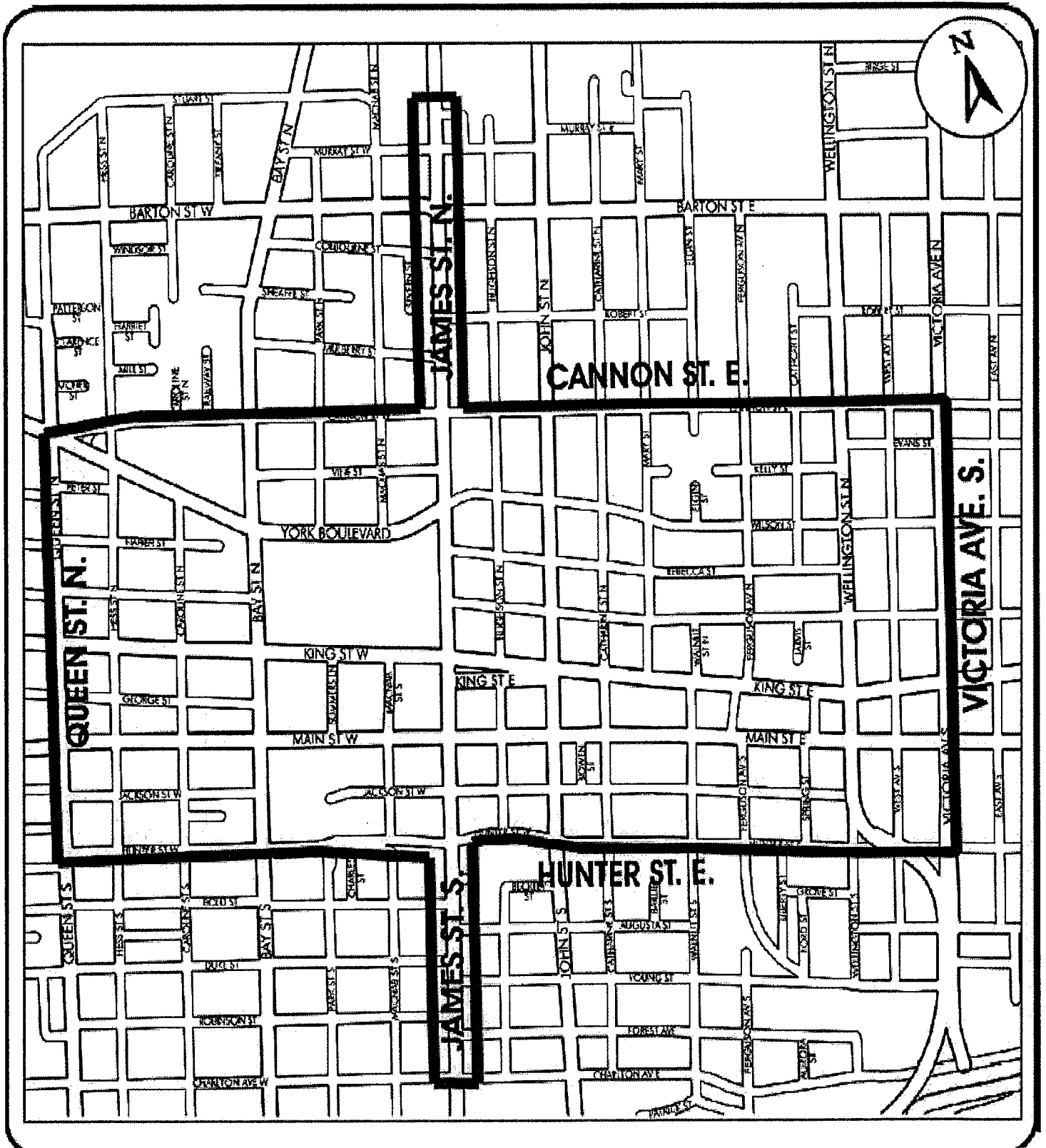
Kevin C. Christenson
City Clerk

Schedule "A" to By-law No. 09-144



Schedule "B" to By-law No. 09-144"

Map of Downtown Community Improvement Plan (CIP) Area



SCHEDULE C TO BY-LAW 09-____
SCHEDULE OF WATER AND WASTEWATER DEVELOPMENT CHARGES

SERVICE	RESIDENTIAL					NON-RESIDENTIAL (per s.f. of Gross Floor Area)
	Single-Detached Dwelling & Semi- Detached Dwelling (per unit)	Apartments 2 Bedrooms + (per unit)	Apartments Bachelor & 1 Bedroom (per unit)	Multiple Dwellings (per unit)	Residential Facility Dwelling (per bedroom)	
Water and Wastewater Services:						
Wastewater Services	9,180	5,632	3,764	6,580	2,708	6.65
Water Services	3,795	2,328	1,556	2,720	1,119	2.75
Total Water and Wastewater Services	12,975	7,961	5,320	9,299	3,827	9.40

"Note: there are two categories of non-residential charge. "industrial" and "non-industrial" as defined in this by-law

New "non-industrial" developments are charged as follows:

- 1-5,000 sq ft: 50% of the Total Water & Wastewater Services charge in effect
- 5001-10,000 sq ft: 75% of Total Water & Wastewater Services charge in effect
- 10,000 sq ft and greater: 100% of the Total Water & Wastewater Services charge in effect

For expansions of "non-industrial" developments already in existence at the commencement of this by-law the following rates apply:

- 1st 5000 sq ft of expansion: exempt
- Sq footage in excess of 5000: 100% of the Total Water & Wastewater Services charge in effect