

**CITY OF HAMILTON
BY-LAW NO. 22-158**

**Being a By-law Respecting Community Benefits Charges
on Lands within the City of Hamilton**

WHEREAS the City of Hamilton (hereinafter referred to as the “City”) will experience growth through Development and Redevelopment;

AND WHEREAS Council for the City desires to impose Community Benefits Charges against land to pay for the Capital Costs of facilities, services and matters required because of Development or Redevelopment in the area to which the by-law applies;

AND WHEREAS the *Planning Act, 1990* (the “Act”) provides that the council of a municipality may by by-law impose Community Benefits Charges against Development or Redevelopment;

AND WHEREAS a Community Benefits Charge strategy report has been completed which identifies the Facilities, Services and Matters that will be funded with Community Benefits Charges and complies with the requirements of the *Planning Act, R.S.O. 1990 c.P.13*, as amended;

AND WHEREAS Council, at its meeting of June 22, 2022, has adopted and approved the said Community Benefits Charge Strategy and the Community Benefits Charges and policies recommended by the General Manager of the Finance and Corporate Services Department to be included in this By-law; and

AND WHEREAS the Corporation of the City of Hamilton has consulted with such persons and public bodies as the municipality considers appropriate;

NOW THEREFORE the council of the City of Hamilton enacts as follows:

1. That in this by-law and the Recitals, thereto:

INTERPRETATION

- (a) **“Adaptive Reuse”** means the alteration of an existing Building on a Protected Heritage Property for compliance of its continuing or resumed use(s) with current Building Code requirements; or, for compliance of its proposed new use(s) with current Building Code requirements; or, for ensuring its structural integrity; or for optimizing its continued, resumed or new use(s); while maintaining the cultural heritage value or interests of the subject Building; and in compliance with the conditions of any Heritage Permit required for the subject alterations;

- (b) **“Affordable Housing Project”** means a development or redevelopment that provides housing and incidental facilities for persons of low and moderate income;
- (c) **“Board of Education”** means a board as defined in clause 1(1) of the Education Act 1997, S.O. 1997, c.E.2
- (d) **“Building”** means any structure or building as defined in the Building Code, as amended from time to time or any successor thereof but does not include a vehicle;
- (e) **“Building Code”** means Ontario Regulations 332/12; Building Code;
- (f) **“Building Code Act”** means the *Building Code Act, 1992*, SO 1992, c 23, as amended, or any successor thereof;
- (g) **“Building Permit”** means a building permit issued pursuant to the Building Code Act;
- (h) **“Capital Costs”** means costs incurred or proposed to be incurred by the City or a Local Board thereof directly or by others on behalf of, and as authorized by, the City or Local Board,
- (i) to acquire land or an interest in land, including a leasehold interest,
 - (ii) to improve land,
 - (iii) to acquire, lease, construct or improve buildings and structures,
 - (iv) to acquire, construct or improve facilities including,
 - (A) furniture and equipment, and
 - (B) rolling stock, and
 - (v) to undertake studies in connection with any of the matters referred to in clauses (i) to (iv) above, including the Community Benefits Charge Strategy,
- required for the provision of Services designated in this By-law within or outside the City, including interest on borrowing for those expenditures under clauses (i) to (v) above that are growth-related;
- (i) **“City”** means the City of Hamilton or the geographic area of the municipality, as the context requires;
- (j) **“Community Benefits Charge”** or **“Community Benefits Charges”** means the charges permitted by the *Planning Act* and imposed by this By-law against land to pay for the Capital Costs of Facilities, Services and Matters required because of Development or Redevelopment in the area to which the by-law applies;
- (k) **“Community Benefits Charge Strategy”** means the community benefits strategy prepared by the City in accordance with the *Planning Act* and approved by Council on June 22, 2022;

- (l) **“Council”** means the Council of the City;
- (m) **“Development”** means the construction, erection, or placing of one or more Buildings on land or the making of an addition or alteration to a Building that has the effect of increasing the size or usability thereof or any development requiring any of the actions described in subsection 12(a), and includes Redevelopment;
- (n) **“Downtown CIPA”** means the area shown on Schedule “A”;
- (o) **“Facilities, Services and Matters”** are the facilities, services and matters described in the Community Benefits Charge Strategy;
- (p) **“Full Kitchen”** means a kitchen which contains a fridge, stove and sink;
- (q) **“General Manager”** means the General Manager of Corporate Services and Finance for the City;
- (r) **“Local Board”** means a municipal service board, 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 and a conservation authority;
- (s) **“Lodging House”** means a Building that is used or designed to provide four or more lodging units, which may share common areas of the Building other than the lodging unit and do not appear to function as a single housekeeping unit and does not include a Residential Facility;
- (t) **“Lodging Unit”** means a room or set of rooms located in a Lodging House designed or intended to be used for sleeping and living accommodation, which:
 - (i) is designed for the exclusive use of the resident or residents of the unit;
 - (ii) is not normally accessible to persons other than the resident or residents of the unit; and,
 - (iii) may contain either a bathroom or Full Kitchen but does not contain both for the exclusive use of the resident or residents of the unit;
- (u) **“Mixed-use Development”** means a Building used, designed or intended for use for both Residential and Non-residential Uses;
- (v) **“Non-residential Use”** means the use of land or Buildings other than for a Residential Use;
- (w) **“Ontario Heritage Act”** means the *Ontario Heritage Act*, R.S.O. 1990, c. O.18;

- (x) **“Owner”** means the owner of land who has made application for an approval for the Development of land for which a Community Benefits Charge may be imposed;
- (y) **“Parcel”** means a lot or parcel of land which can be legally conveyed pursuant to the *Planning Act*;
- (z) **“Planning Act”** means the *Planning Act*, R.S.O. 1990 c.P.13, as amended;
- (aa) **“Protected Heritage Property”** means a property that is designated under Part IV of the Ontario Heritage Act, subject to a Heritage Easement under Part II of the Ontario Heritage Act, subject to a Heritage Easement under Part IV of the Ontario Heritage Act, or subject to a covenant or agreement on title held between the property owner and a conservation authority or level of government in the interest of conserving built heritage;
- (bb) **“Redevelopment”** means the construction, erection or placing of one or more Buildings on land where all or part of a Building has previously been demolished on such land, or changing the use of a Building or part of a Building from a Non-Residential Use to a Residential Use, or changing a Building or part of Building from one form of Residential Use to another form of Residential Use;
- (cc) **“Residential Unit”** means a room or group of rooms occupied or designed to be occupied exclusively as an independent and separate self-contained housekeeping unit including a house;
- (dd) **“Residential Facility”** means a Building or part thereof containing four or more rooms or suites of rooms designed or intended to be used for sleeping and living accommodation that have a common entrance from street level and:
 - (i) where the occupants have the right to use, in common, halls, stairs, yards, common rooms and accessory Buildings;
 - (ii) which may or may not have exclusive sanitary facilities for each occupant;
 - (iii) which does not have exclusive Full Kitchen facilities for each occupant;
 - (iv) where support services such as meal preparation, grocery shopping, laundry; and
 - (v) housekeeping, nursing, respite care and attendant services may be provided at various levels;
- (ee) **“Residential Use”** means land, or Buildings of any kind whatsoever used or designed or intended for use as:
 - (i) one or more Residential Units, including the portion of a Mixed-use Development comprised of any Residential Units and any areas

intended to be used exclusively by the occupants of the Residential Units;

- (ii) a Lodging House; or
 - (iii) a Residential Facility;
- (ff) **“Short Term Accommodation”** means a Building or a portion of a Building designed or used or designed or intended for use as a temporary rental sleeping accommodation for travellers and shall include but not be limited to a motel, motor hotel, hotel or an apartment hotel; and
- (gg) **“Valuation date”** means, with respect to land that is the subject of Development or Redevelopment,
- (i) the day before the day the Building Permit is issued in respect of the Development or Redevelopment, or
 - (ii) if more than one Building Permit is required for the Development or Redevelopment, the day before the day the first permit is issued.
2. Any reference in this By-law to any statute or regulation or any section of any statute or regulation shall, unless otherwise expressly stated, be deemed to be a reference to such statute, regulation or section as amended, restated or re-enacted from time to time and to any successor legislation or regulation. Any defined term in the Planning Act that has not been defined in section 1 of this By-law, shall have the meaning given to it in the *Planning Act*.
3. Unless otherwise indicated, references in this By-law to sections and schedules are to sections and schedules of this By-law.
4. In this By-law "herein", "hereof", "hereto" and "hereunder" and similar expressions refer to this By-law.
5. If the context of this By-law requires changes of gender and number, this By-law shall be read such that words importing the singular number only shall include the plural and vice versa, words importing the masculine gender shall include the feminine and neuter genders and vice versa.

Schedules

6. The following schedules to this By-law form an integral part of this By-law:
- Schedule “A”: Downtown CIPA

Lands Affected

7. This By-law applies to all land within the City except lands that are owned by and used for the purposes of:
- (a) the City or a Local Board; or

- (b) a Board of Education.

Facilities, Services and Matters Funded by the Community Benefits Charges

8. The Facilities, Services and Matters will be funded with the Community Benefits Charges.
9. All Development and Redevelopment of land within the area to which this By-law applies will increase the need for the Facilities, Services and Matters.
10. The Community Benefits Charges applicable to a Development or Redevelopment as determined pursuant to this By-law shall apply without regard to the Facilities, Services and Matters required or used by an individual Development or Redevelopment.

Amount of Community Benefits Charge

11. (a) Where there is Development or Redevelopment other than that described in subsection 12(b) and which requires one or more of the approvals set out in subsection 12(a), on land to which this By-law applies, the Community Benefits Charges payable pursuant to this By-law shall be four (4) percent of the value of the land being developed as of the Valuation Date.
- (b) Land referred to in subsections 11(a) and 11(c) means the entire Parcel or Parcels on which the Development or Redevelopment is occurring regardless of whether the Development or Redevelopment is only on a part of the Parcel or Parcels or is a phase of a Development or Redevelopment.
- (c) If a Development or Redevelopment consists of two or more above grade Buildings that will not be constructed concurrently, will be subject to separate building permits and are anticipated to be completed at different times, each phase of the Development or Redevelopment is deemed to be a separate Development or Redevelopment for the purposes of this By-law. The Community Benefits Charges for the first of the above grade Buildings will be calculated in accordance with subsection 11(a). For each subsequent above grade Building the Community Benefits Charges Payable shall be calculated as follows:
4% of the value of the land being developed as of the Valuation Date minus the Community Benefits Charges Payable for the first above grade Building

If the difference in the aforesaid calculation is zero or a negative value no CBC is payable, and no credit or refund will be payable.

For the purposes of this subsection an above grade shared podium structure will not be considered part of a Building.

Approvals to Which Community Benefits Charge Applies

12. (a) A Community Benefits Charge shall be imposed with respect to Development or Redevelopment of land that requires:
- (i) the passing of a zoning By-Law or of an amendment to a zoning By-Law under section 34 of the *Planning Act*;
 - (ii) the approval of a minor variance under section 45 of the *Planning Act*;
 - (iii) a conveyance of land to which a by-law passed under subsection 50(7) of the *Planning Act* applies;
 - (iv) the approval of a plan of subdivision under section 51 of the *Planning Act*;
 - (v) a consent under section 53 of the *Planning Act*;
 - (vi) the approval of a description under section 9 of the *Condominium Act, 1998*, SO 1998, c 19, as amended, or any successor thereof; or
 - (vii) the issuing of a permit under the *Building Code Act* in relation to a Building.
- (b) Despite 3.4(a) above, a Community Benefits Charge shall not be imposed with respect to:
- (i) Development of a proposed Building with fewer than five storeys at or above ground;
 - (ii) Development of a proposed Building with fewer than 10 Residential Units;
 - (iii) Redevelopment of an existing Building that will have fewer than five storeys at or above ground after the redevelopment; or
 - (iv) Redevelopment that proposes to add fewer than 10 Residential Units to an existing Building.
- (c) If a Development or Redevelopment is partially comprised of a use described in subsections 13(a) or (b) the portion of the Development or Redevelopment comprised of such use will not be considered part of the Development or Redevelopment and only the portion of the Development or Redevelopment that does not contain a use described in subsections 13(a) or (b) will be considered for the determination of whether a Community Benefits Charge is payable pursuant to this By-law.

Exemptions

13. Notwithstanding the provisions of this By-law, Community Benefits Charges shall not be imposed with respect to:
- (a) Development or Redevelopment as prescribed in Ontario Regulation 509/20 for the purposes of subsection 37(4)(e) of the *Planning Act*;
 - (b) until such time as the City develops and implements a Community Benefits Charge Incentive Program, Development or Redevelopment of an Affordable Housing Project that:

- (i) is not included within the exemption in subsection 6 of section 1 of Ontario Regulation 509/20;
 - (ii) has been approved to receive construction funding from the Government of Canada or the Province of Ontario (including their Crown corporations) under an affordable housing program or has been approved by the City through an affordable housing program;
 - (ii) such affordable housing Development or Redevelopment is not eligible for funding for Community Benefits Charges liabilities from the Government of Canada or the Province of Ontario (including their Crown corporations); and
- (c) Redevelopment or Development on a Protected Heritage Property involving the Adaptive Reuse of all of a Building but without any addition thereto or the construction of any additional Buildings on the Protected Heritage Property provided the Protected Heritage Property contains:
- (i) heritage attributes that are the subject of designation under Part IV of the Ontario Heritage Act;
 - (ii) features subject to a Heritage Easement under Part II of the Ontario Heritage Act;
 - (iii) features subject to a Heritage Easement under Part IV of the Ontario Heritage Act; or
 - (iv) features subject to a covenant or agreement on title held between the property owner and a conservation authority or level of government in the interest of conserving,

Downtown CIPA and Other Partial Exemptions

14. Notwithstanding any other provision of this By-law, the Community Benefits Charges payable under this By-law respecting all Development and Redevelopment for which the date of Building Permit issuance is on or before June 12, 2024 and which is within the boundaries of the Downtown CIPA as shown on Schedule "A", shall be reduced by 40%.
15. Redevelopment of an existing Residential Development for the purpose of creating a Residential Facility or Lodging House within the existing Building envelope is exempt from 50% of the Community Benefit Charge otherwise payable pursuant to this By-law.

In-Kind Contributions

16. In accordance with subsection 37(6) of the *Planning Act*, the City may in its sole discretion permit an Owner to provide the City Facilities, Services or Matters required because of Development or Redevelopment on lands to which the By-law applies, in return for a deduction from the Community Benefits Charges payable by the Owner subject to the Owner and the City entering into an agreement.
17. The General Manager is delegated the authority to make the decision in section 16 herein and may authorize and execute any agreement required pursuant to section 16 herein on such terms and conditions satisfactory to the General Manager.

18. Before the Owner enters into an agreement in accordance with section 16 to provide the City Facilities, Services or Matters required because of Development or Redevelopment on lands to which the By-law applies the City shall advise the Owner of the value that will be attributed to them.
19. The value attributed under section 18 shall be deducted from the amount the Owner would otherwise be required to pay under this By-law. If the value attributed under section 18 exceeds the Community Charges Benefits payable the excess value shall not be paid to Owner providing the Facilities, Services or Matters and no credit shall be provided to the Owner. If the value attributed under section 18 is less than the Community Benefits Charges that are payable the Owner shall pay the difference to the City in accordance with section 20.

Time of Payment of Community Benefits Charges

20. Community Benefits Charges imposed under this By-law are calculated, payable, and collected upon issuance of a Building Permit for the Development or Redevelopment.

Multiple building permits

21. If a Development or Redevelopment requires more than one Building Permit but only contains one above grade Building, the Community Benefits Charges for the Development or Redevelopment are payable upon the first Building Permit being issued.
22. For Development or Redevelopment that requires more than one Building Permit and is comprised of more than one above grade Building, Community Benefits Charges are payable upon the issuance of the first Building Permit being issued and for each Building Permit issued for the construction of every above grade Building after the first above grade Building and shall be calculated in accordance with subsection 11(c). If the first Building Permit for the Development or Redevelopment permits the construction of more than one above grade Building, the Community Benefits Charges payable for any additional above grade Building will payable upon the issuance each Building Permit for any additional above grade Building and the Community Benefits Charges shall be calculated in accordance with subsection 11(c).

Interest on Refunds

22. If it is determined that a refund is required to be paid pursuant to subsections 37(27) and 37(27) of the *Planning Act*, the City shall pay interest on a refund required to be paid pursuant to 37(28) and 37(29) of the *Planning Act* at a rate not less than that required pursuant to subsection 37(29) of the *Planning Act* from the day the amount was paid to the municipality to the day it is refunded.

Severability

23. If, for any reason, any provision of this By-law is held to be 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, amended or modified.

Administration of By-law

24. This By-law shall be administered by the Corporate Services and Finance Department of the City.

Headings for Reference Only

25. 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.

Non-Binding Nature

26. Nothing in this By-law shall be construed so as to commit or require the City or its Council to authorize or proceed with any specific capital project at any specific time.

General

27. This By-law may be referred to as the “City of Hamilton Community Benefits Charges By-law”.

Date By-law In Force

28. This By-law shall come into effect at 12:01 A.M. on September 18, 2022.

PASSED this 22 day of June, 2022.

F. Eisenberger
Mayor

A. Holland
City Clerk

