

Authority: Item 9, Audit, Finance &
Administration Committee Report
19-009 (FCS19050)
CM: June 12, 2019
Ward: City Wide
Bill No. 141

CITY OF HAMILTON

BY-LAW NO. 19-141

Being a By-law to Amend By-law No. 11-174 City of Hamilton GO Transit Development Charges By-law, 2011

WHEREAS section 19 of the *Development Charges Act, 1997*, S.O. 1997, c.27 (hereinafter referred to as the “Act”) provides for amendments to be made to development charges by-laws;

WHEREAS the Council of the City of Hamilton has determined that certain amendments should be made to the City of Hamilton GO Transit Development Charges By-law, 2011 (By-law 11-174);

WHEREAS, in accordance with section 10 of the Act, at its meeting of April 24, 2019, the Council of the City of Hamilton approved a background study through Report FCS19020 dated March 25, 2019 entitled “2019 Background Study for GO Transit Development Charges By-law Amendment”;

WHEREAS, as required by section 10 of the Act, the said development charges background study has been completed and made public a minimum of 60 days prior to passing this development charges By-law amendment;

WHEREAS, as required by section 11 of the Act, this By-law amendment is being enacted within one year of the completion of the said development charges background study, titled “2019 Background Study for GO Transit Development Charges By-law Amendment” prepared by staff, dated March 25, 2019;

WHEREAS the Council of the City of Hamilton has given notice and held a public meeting on April 18, 2019 in accordance with section 12 the Act regarding its proposals for this development charges By-law amendment;

WHEREAS the Council of the City of Hamilton, through its Audit, Finance 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 amendment;

WHEREAS the Council of the City of Hamilton, at its meeting of June 12, 2019, has adopted and approved the said background study and the development charges policies recommended by the General Manager of the Finance and Corporate Services Department to be included in this By-law amendment and determined that no further public meetings are required under section 12 of the Act; and

WHEREAS the Council of the City of Hamilton, at its meeting of April 24, 2019, approved a Report FCS19020 dated March 25, 2019 entitled “2019 Background Study for GO Transit Development Charges By-law Amendment”.

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

1. By-law 11-174 is hereby amended by deleting Section 1 and replacing with the following:

Definitions

1. In this By-law,

- (a) **“Act”** means the *Development Charges Act, 1997*, S.O. 1997, c.27.
- (b) **“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.
- (c) **“affordable housing project”** means a development or redevelopment that provides housing and incidental facilities for persons of low and moderate income.
- (d) **“apartment dwelling”** means a building containing more than two dwelling units where the dwelling units are connected by an interior corridor, but does not include a residential facility. For the purposes of this By-law, apartment dwelling includes a stacked townhouse and a mobile home.
- (e) **“apartment dwelling unit”** means a dwelling unit within an apartment dwelling.

- (f) “**back-to-back townhouse dwelling**” means a building containing four or more dwelling units vertically by a common wall, including a rear common wall, that do not have rear yards.
- (g) “**back-to-back townhouse dwelling unit**” means a dwelling unit within a back-to-back townhouse dwelling.
- (h) “**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.
- (i) “**Board of Education**” means a board as defined in Subsection 1(1) of the *Education Act 1997*, S.O. 1997, c.E.2.
- (j) “**building**” means any structure or building as defined in the Building Code but does not include a vehicle.
- (k) “**Building Code**” means Ontario Regulation 332/12 as amended or any successor thereto made under the *Building Code Act, 1992*, S.O. 1992, c.23, as amended.
- (l) “**Council**” means the Council of the City of Hamilton.
- (m) “**development**” means the construction, erection, or placing of one or more buildings or structures on land or the making of an addition or alteration to a building or structure that has the effect of increasing the size or usability thereof or any development requiring any of the actions described in section 12, and includes redevelopment.
- (n) “**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.
- (o) “**Downtown Hamilton Community Improvement Project Area**” or “**CIPA**” means the area shown on Schedule “B”.
- (p) “**Downtown Public Art Reserve**” means a public art reserve established and administered by the City of Hamilton that may fund public art in the CIPA.
- (q) “**duplex**” means a Building containing two dwelling units, but shall not include a semi-detached dwelling.

- (r) **“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 provided for the exclusive use of such person or persons.
- (s) **“full kitchen”** means a kitchen which contains a fridge, stove and sink.
- (t) **“garden suite”** has the same meaning as it has in subsection 39.1(2) of the *Planning Act*.
- (u) **“GO Transit Service”** includes stations, sites, parking facilities, rolling stock, storage yards, layover facilities, maintenance facilities, tunnels, grade separations, crossings, track, corridor rail expansions, bus terminals, control centres, capital works studies, background studies, and financing costs.
- (v) **“grade”** means the average level of proposed or finished ground adjoining a building at all exterior walls.
- (w) **“laneway”** means a public highway or road allowance having a width of less than 12.0 metres.
- (x) **“laneway house”** means a dwelling unit abutting a laneway on the same lot or parcel of land as another single detached dwelling or semi-detached dwelling, physically detached from and secondary to the single detached dwelling or semi-detached dwelling.
- (y) **“live/work unit”** means a building, or part of thereof, which contains, or is intended to contain, both a dwelling unit and non-residential areas and which is intended for both residential use and non-residential use concurrently, and shares a common wall or floor with or without direct access between the residential and non-residential areas.
- (z) **“local board”** means any 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.

- (aa) **“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.
- (bb) **“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.
- (cc) **“lot”** means a lot, block or parcel of land which can be legally and separately conveyed pursuant to section 50 of the *Planning Act* and includes a development having two or more lots consolidated under a single ownership.
- (dd) **“mixed use development”** means a building used, designed or intended for use for both residential and non-residential uses.
- (ee) **“mobile home”** means a building recognized in the Building Code as a “Mobile Home” in accordance with the standard for mobile homes in CSA Z240.2.1 “Structural requirements for Manufactured Homes” or CSA A277 “Procedures for Factory Certification of Buildings”.
- (ff) **“multiple unit dwelling”** means a building consisting of two or more dwelling units attached by a vertical or horizontal wall or walls other than a single detached dwelling, semi-detached dwelling, apartment dwelling, or residential facility. Multiple unit dwelling includes, but is not limited to, townhouse dwelling, back-to-back townhouse dwelling, duplex, and the portion of a live/work unit intended to be used exclusively for living accommodations for one or more individuals.
- (gg) **“non-residential development”** or **“non-residential use”** is any development other than a residential development or residential use.
- (hh) **“Planning Act”** means the *Planning Act*, R.S.O. 1990, c. P. 13.

- (ii) **“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.

- (jj) **“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 from a residential Development to a non-residential development or from a non-residential development to a residential development, or changing a building from one form of residential development to another form of residential development or from one form of non-residential use to another form of non-residential use and including any development or redevelopment requiring any of the actions described in Section 12.

- (kk) **“Regulation”** means Ontario Regulation 82/98 under the Act.

- (ll) **“Residential Development”** or **“Residential Use”** means:
 - (i) a single detached dwelling;
 - (ii) a semi-detached dwelling;
 - (iii) a residential facility;
 - (iv) a laneway house;
 - (v) a multiple unit dwelling;
 - (vi) an apartment dwelling; or
 - (vii) the portion of a mixed-use development comprised of any dwelling units and any areas intended to be used exclusively by the occupants of the dwelling units,

but does not include any buildings used or designed to be used for use as short term accommodation.

- (mm) **“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.

For the purposes of this By-law, residential facility includes a lodging house and a garden suite.

- (nn) “**semi-detached dwelling**” means a building consisting of two dwelling units attached by a vertical wall or walls, each of which has a separate entrance or access to grade.
- (oo) “**service**” means service defined in the by-law or designated in an agreement under section 44 of the Act.
- (pp) “**short term accommodation**” means 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.
- (qq) “**single detached dwelling**” means a building containing one dwelling unit and not attached to another building, whether or not the single detached dwelling is situated on a single lot.
- (rr) “**stacked townhouse dwelling**” means a building containing four or more dwelling units which are horizontally and vertically separated in a split level or stacked manner, where each dwelling unit egresses directly outside to grade (no egress to a common corridor).
- (ss) “**stacked townhouse dwelling unit**” means a dwelling unit within a stacked townhouse dwelling.
- (tt) “**student residence**” means a residential development that is solely owned by a university, college of applied arts and technology or other

accredited post-secondary institution, designed or intended to be used for sleeping and living accommodations by students of the university, college of applied arts and technology or other accredited post-secondary institution that owns the residential development.

- (uu) **“temporary building or structure”** means a building without a foundation which is constructed, erected or placed on land for a continuous period of time not exceeding one 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 year.
- (vv) **“townhouse dwelling”** means a building divided vertically into three or more dwelling units, by common walls which prevent internal access between units where each dwelling unit egresses directly outside to grade.
- (ww) **“townhouse dwelling unit”** means a dwelling unit within a townhouse dwelling.

2. Section 16 of By-law 11-174 is hereby amended by adding “or,” at the end of subsection (c) and striking out the “or,” after subsection (b) and by adding the following:

(d) CityHousing Hamilton.

3. By-law 11-174 is hereby amended by deleting Section 17 and replacing with the following:

Other Exemptions from Development Charges

17. 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:

- (a) a laneway house;
- (b) a garden suite; and
- (c) until such time as the City’s Housing Services Division develops and implements a Development Charge Incentive Program, dwelling units within an affordable housing project that (A) either

have 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 have been approved by the City of Hamilton through an affordable housing program; and (B) the affordable housing project in which the dwelling unit is situate is not eligible for funding for development charge liabilities from the Government of Canada or the Province of Ontario (including their Crown corporations).

4. By-law 11-174 is hereby amended by deleting Section 18 and replacing with the following:

Downtown Hamilton Community Project Area (CIPA) Exemption

18. Development within the boundaries of the Downtown Hamilton Community Improvement Project Area (CIPA) as shown on Schedule “B” attached to this By-law shall:
- (a) be exempted from the following percentages of the development charges otherwise payable, after all other credits and exemptions are considered, under the By-law for only the portion of the building that is within the height restrictions as shown in Schedule “C” attached to this By-law based on the later of the date on which development charges are payable or the date all applicable development charges were actually paid:

Date	Percentage of exemption (%)	Percentage of development charge payable (%)
July 6, 2011 to July 5, 2015	90	10
July 6, 2015 to July 5, 2016	85	15
July 6, 2016 to July 5, 2017	80	20
July 6, 2017 to July 5, 2018	75	25
July 6, 2018 to July 6, 2019	70	30
July 6, 2019 to July 5, 2020	60	40

July 6, 2020 to July 5, 2021	50	50
July 6, 2021 to July 5, 2022	40	60
July 6, 2022 to July 5, 2023	40	60
July 6, 2023 to July 6, 2024	40	60

Schedule “C” attached to this By-law shall not be amended by any decision by the Local Planning Appeal Tribunal relating to the City’s Zoning By-law Amendment 18-114; or by any amendments, including site specific or area specific, to the City’s Zoning By-law 05-200 either through Local Planning Appeal Tribunal decisions or by Council.

For clarity, any development in excess of the height restrictions as shown in Schedule “C” attached to this By-law shall be subject to the full calculated development charge and only be reduced if there are any credits or exemptions remaining after applying any and all other credits or exemptions to the portion of the building that is within the height restrictions as shown in Schedule “C” attached to this By-law.

- (b) for each year this By-law is in effect an additional exemption will apply as follows:
 - (i) a dollar for dollar exemption on any remaining development charges payable equal to any amount of contribution by the payer of the development charges to the Downtown Public Art Reserve in an amount not to exceed ten percent of the development charges otherwise payable on the height that is within the height restrictions as shown as Schedule “C”; and
 - (ii) the amount of all exemption provided in Subsection 27(b) shall be limited to \$250,000 annually and any single exemption shall be reduced by the amount it would exceed the \$250,000 limit.

The exemptions in Section 18 shall not apply in addition to the exemptions in Sections 15, 17 and 19. The exemptions provided in Section 18 shall only apply if the amount of exemption is greater than that provided under Sections 15, 17 and 19, individually or cumulatively. If the exemptions under Section 15, 17 and 19 are greater, individually or cumulatively, than

that which could be provided under Section 18, no exemption pursuant to Section 18 shall apply.

5. Section 19 of By-law 11-174 is hereby amended by replacing Section 19 (b) with the following:

(b) Until June 30, 2020 development of a student residence is exempt from 50% of the development charge otherwise payable pursuant to this By-law according to the type of residential development. After June 30, 2020 no exemption shall be provided for development of a student residence and the development of a student residence will be subject to the payment of development charges payable pursuant to this By-law.

6. Section 19 of By-law 11-174 is hereby amended by replacing Section 19 (e) with the following:

(e) the adaptive reuse of the part of a building on a Protected Heritage Property that contains:

(iii) heritage attributes that are the subject of designation under Part IV of the *Ontario Heritage Act*;

(iv) features subject to a Heritage Easement under Part II of the *Ontario Heritage Act*;

(v) features subject to a Heritage Easement under Part IV of the *Ontario Heritage Act*; or

(vi) 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,

is exempted from development charges.

7. By-law 11-174 is hereby amended by replacing Section 35 with the following:

35. This By-law expires December 31, 2019 as authorized by Ontario Regulation 468/16 and Ontario Regulation 489/16 or a revised date as authorized through Provincial Regulations.

8. The City Clerk is hereby authorized and directed to consolidate this and any other duly enacted amendments to By-law 11-174 into the main body of the said By-law, and to make any necessary and incidental changes to numbering and nomenclature thereof arising from the said consolidation

9. This By-law shall come into force and take effect at 12.01 a.m. on July 6, 2019.

PASSED this 12th day of June 2019.

F. Eisenberger
Mayor

J. Pilon
Acting City Clerk