

BY-LAW 2009-136

**A BY-LAW TO ESTABLISH DEVELOPMENT CHARGES FOR THE CITY OF KINGSTON, CITY AS THE
"CITY OF KINGSTON DEVELOPMENT CHARGE BY-LAW 2009"**

PASSED: September 15, 2009

WHEREAS subsection 2(1) of the *Development Charges Act, 1997* c. 27 (hereinafter called "the Act") provides that the council of a municipality may pass by-laws for the imposition of development charges against land for increased capital costs required because of the need for services arising from development in the area to which the by-law applies;

AND WHEREAS the Council of The Corporation of the City of Kingston ("City of Kingston") has given Notice in accordance with Section 12 of the Act of its intention to pass a by-law under Section 2 of the said Act;

AND WHEREAS the Council of the City of Kingston has heard all persons who applied to be heard no matter whether in objection to, or in support of, the development charge by-law at a public meeting held on July 14, 2009;

AND WHEREAS the Council of the City of Kingston had before it a report entitled Development Charge/ Impost Fee Background Study dated June 29, 2009 prepared by Watson & Associates Economists Ltd., as amended by an Addendum dated August 25, 2009, wherein it is indicated that the development of any land within the City of Kingston will increase the need for services as defined herein;

AND WHEREAS the Council of the City of Kingston has determined that the development or redevelopment of land, buildings or structures for residential and non-residential uses will require the provision, enlargement or expansion of the services referenced in Schedule "A" and Council has resolved to meet the increased need for services;

AND WHEREAS the Council of the City of Kingston on September 1, 2009 adopted the applicable Development Charge/Impost Fee Background Study, dated June 29, 2009, as amended by an Addendum dated August 25, 2009, in which certain recommendations were made relating to the establishment of a development charge policy for the City of Kingston pursuant to the Act;

AND WHEREAS the Council of the City of Kingston on September 1, 2009 determined that no additional public meeting was required;

NOW THEREFORE THE COUNCIL OF THE CITY OF KINGSTON ENACTS AS FOLLOWS:

DEFINITIONS

1. In this by-law:

- (1) "Act" means the *Development Charges Act*, S.O. 1997, c. 27;
- (2) "Administration Service" means all studies carried out by the municipality related to eligible services for which a development charge by-law may be imposed under the Act;
- (3) "Apartment dwelling" means any dwelling unit within a building containing more than four dwelling units where the units are connected by an interior corridor;
- (4) "Assessment Act" means the *Assessment Act*, R.S.O. 1990, c. A.31;
- (5) "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;
- (6) "Board of Education" means a board defined in s.s. 1(1) of the *Education Act*, R.S.O. 1990, c. E.2;
- (7) "Building Code Act" means the *Building Code Act*, 1992, S.O. 1992, c. 23;
- (8) "Capital cost" means costs incurred or proposed to be incurred by the municipality, or a local board thereof, directly or by others on behalf of, and as authorized by, the municipality or local board,
 - (a) to acquire land or an interest in land, including a leasehold interest;
 - (b) to improve land;
 - (c) to acquire, lease, construct or improve buildings and structures;
 - (d) to acquire, lease, construct or improve facilities including,
 - (i) rolling stock with an estimated useful life of seven years or more,
 - (ii) furniture and equipment, other than computer equipment, and

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- (iii) materials acquired for circulation, reference or information purposes by a library board as defined in the *Public Libraries Act*, R.S.O. 1990, c. P.44; and
- (e) to undertake studies in connection with any of the matters referred to in clauses (a) to (d);
- (f) to complete the development charge background study under Section 10 of the Act;
- (g) interest on money borrowed to pay for costs in (a) to (d);
- required for provision of services designated in this by-law within or outside the municipality;
- (9) "Commercial" means any non-residential development not defined under "institutional" or "industrial", and excludes commercial office uses;
- (10) "Council" means the Council of The Corporation of the City of Kingston;
- (11) "Development" means any activity or proposed activity in respect of land that requires one or more of the actions referred to in section 2 of this by-law and includes the redevelopment of land or the redevelopment, expansion, extension or alteration of a use, building or structure;
- (12) "Development charge" means a charge imposed pursuant to this By-law;
- (13) "Dwelling unit" means a room or suite of rooms used, or designed or intended for use by, one person or persons living together, in which culinary and sanitary facilities are provided for the exclusive use of such person or persons;
- (14) "Farm building" means that part of a bona fide farm operation encompassing barns, silos and other ancillary development to an agricultural use, but excluding a residential use;
- (15) "Grade" means the average level of finished ground adjoining a building or structure at all exterior walls;
- (16) "Gross floor area" means the total floor area measured between the outside of exterior walls, or between the outside of exterior walls and the centre line of party walls dividing the building from another building, or between the centre lines of party walls, of all floors above Grade;
- (17) "Industrial" means lands, buildings or structures used or designed for the assembling, altering, converting, fabricating, processing, treating or blending of raw or prepared materials to transform them into products to which value has been added, research and

development in connection with the industrial land use, and including warehouse uses, provided that the industrial use is located within a zone in which the proposed industrial use is permitted as defined in the City's zoning by-laws;

- (18) "Warehouse Use" means lands, buildings, or structures used or designed for the storage of goods which will be sold elsewhere or subsequently transported to another location for sale, including the storage of goods by a distributor or supplier who markets goods for retail sale at other locations, provided that the warehouse use is located within an industrial zone as defined in the City's zoning by-laws. Warehouse use shall not include:
- (i) mini-warehouses for the storage of household or other articles;
 - (ii) warehouses that are ancillary to retail or commercial uses; and
 - (iii) locations which sell directly to the ultimate consumer of the goods.
- (19) "Institutional" means lands, buildings or structures used or designed or intended for use by an organized body, society, health care organization or religious group and shall include, without limiting the generality of the foregoing, places of worship, senior's residences and special care facilities;
- (20) "Local board" means a public utility commission, public library board, local board of health, or any other board, commission, committee or body or local authority established or exercising any power or authority under any general or special act with respect to any of the affairs or purposes of the municipality or any part or parts thereof;
- (21) "Local services" means those services or facilities which are under the jurisdiction of the municipality and are related to a plan of subdivision or within the area to which the plan relates, required as a condition of approval under s.51 of the *Planning Act*, or as a condition of approval under s.53 of the *Planning Act*;
- (22) "Multiple dwelling" means all dwellings other than single detached dwellings, semi-detached dwellings, and apartment dwellings;
- (23) "Municipality" means The Corporation of the City of Kingston;
- (24) "Non-residential uses" means a building or structure used for other than a residential use;
- (25) "Owner" means the owner of land or a person who has made application for an approval for the development of land upon which a development charge is imposed;
- (26) "Planning Act" means the *Planning Act*, R.S.O. 1990, c. P.13, as amended;
- (27) "Regulation" means any regulation made pursuant to the Act;
- (28) "Residential uses" means lands, buildings or structures or portions thereof used, or designed or intended for use as a home or residence of one or more individuals, and shall

include a single detached dwelling, a semi-detached dwelling, a multiple dwelling, an apartment dwelling, and the residential portion of a mixed-use building or structure;

- (29) "Research and Development uses" means gross floor area in a building which is not exempt from assessment and taxation under the *Assessment Act*, R.S.O. 1990, c. A.31 and for which a corporation will receive Federal or Provincial Scientific Research and Experimental Development (SR&ED) income tax credits.
- (30) "Row dwelling" means a building divided into three or more dwelling units, each of which has a separate entrance and access to grade;
- (31) "Semi-detached dwelling" means a building divided vertically into two dwelling units each of which has a separate entrance and access to grade;
- (32) "Services" means services set out in Schedule "A" to this By-law;
- (33) "Single detached dwelling" means a completely detached building containing only one dwelling unit.

CALCULATION OF DEVELOPMENT CHARGES

- 2. (1) Every Owner of land in the Municipality shall pay to the Municipality a development charge as calculated in this by-law whenever the Owner's lands are developed and the development requires an approval described in (2) below.
- (2) Subject to subsection (3), development charges shall be calculated and collected in accordance with the provisions of this by-law and be imposed on land where the development requires:
 - (a) the passing of a zoning by-law or an amendment thereto under Section 34 of the *Planning Act*,
 - (b) the approval of a minor variance under Section 45 of the *Planning Act*,
 - (c) a conveyance of land to which a by-law passed under subsection 50(7) of the *Planning Act* applies;
 - (d) the approval of a plan of subdivision under Section 51 of the *Planning Act*,
 - (e) a consent under Section 53 of the *Planning Act*,

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- (f) the approval of a description under Section 50 of the *Condominium Act*, R.S.O. 1990, c.C.26; or
 - (g) the issuing of a permit under the *Building Code Act*, in relation to a building or structure.
- (3) Subsection (1) shall not apply in respect to:
- (a) local services installed or paid for by the owner within a plan of subdivision or within the area to which the plan relates, as a condition of approval under Section 51 of the *Planning Act*,
 - (b) local services installed or paid for by the owner as a condition of approval under Section 53 of the *Planning Act*.
3. (1) Development charges against land shall be imposed, calculated and collected in accordance with the base rates set out in Schedule "B", which relate to the services set out in Schedule "A".
- (2) The development charge applicable to land shall be calculated as follows:
- (a) in the case of residential development or redevelopment, or the residential portion of a mixed-use development or redevelopment, the sum of the product of the number of dwelling units of each type multiplied by the corresponding total development charge for such dwelling unit type, as set out in Schedule "B";
 - (b) in the case of non-residential development or redevelopment, or the non-residential portion of a mixed-use development or redevelopment, the product of the gross floor area of such development multiplied by the corresponding total development charge for such gross floor area, as set out in Schedule "B".
4. The development charges imposed pursuant to this by-law are payable in full, subject to the exemptions herein, from the effective date of this by-law.
- 1) Every applicant for a building permit that seeks an exemption to this By-law shall make an application in a form approved by the Municipality in which the applicant certifies that its

proposed use will qualify for the exemption upon issuance of the occupancy permit and shall not be materially altered in any manner such that the use would no longer qualify for the exemption granted in this by-law for a period of three years subsequent to the issuance of the occupancy certificate and if the application is approved by the Municipality shall enter into such agreements as required by the Municipality.

- 2) Upon approval by the Municipality, the requirement to pay development charges shall be deferred for a period of three years subsequent to the issuance of an occupancy permit and subject to subsection (3) shall at the end of that period be permanently waived and exempted.
- 3) In the event that the actual use does not conform to the use described in the application for exemption as approved by the Municipality and does not qualify otherwise for an exemption pursuant to this By-law, at the time of issuance of the occupancy permit or at any time within three years subsequent to issuing of the occupancy permit, the applicant shall be deemed to not qualify for the exemption and the applicant shall forthwith pay all fees that were deferred pursuant to this By-law failing which the amount unpaid will be added to the tax roll and collected in the same manner as taxes.

APPLICABLE LANDS

5. (1) Subject to subsection (2), charges payable under this by-law apply to all lands in the municipality, whether or not the land or use is exempt from taxation under Section 3 of the *Assessment Act*.
- (2) This by-law shall not apply to land that is owned by and used for the purposes of:
 - (a) a board as defined in the *Education Act*;
 - (b) any municipality or local board thereof;
 - (c) a place of worship classified as exempt from taxation under Section 3 of the *Assessment Act*;
 - (d) a non-residential farm building.

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- (3) The Municipality shall exempt industrial uses from the charges payable under this by-law where an application for exemption for a proposed industrial use has been approved by the Municipality and the approved use continues for the three year period subsequent to the issuance of an occupancy permit.
 - (4) The Municipality may exempt lands from this by-law where the lands are designated in the City of Kingston Official Plan as part of the Community Improvement Area and the Municipality implements a Community Improvement Plan by by-law which includes the said lands.

RULES WITH RESPECT TO EXEMPTIONS FOR INTENSIFICATION OF EXISTING HOUSING

6. (1) Notwithstanding Section 2 above, no development charge shall be imposed with respect to developments or portions of developments that result in:
 - (a) an interior alteration to an existing building or structure which does not change or intensify the use of land;
 - (b) the enlargement of an existing residential dwelling unit;
 - (c) the creation of one or two additional residential dwelling units in an existing single detached dwelling where the total gross floor area of the additional unit(s) does not exceed the gross floor area of the existing dwelling unit;
 - (d) the creation of one additional dwelling unit in a semi-detached dwelling or row dwelling where the total gross floor area of the additional unit does not exceed the gross floor area of the existing dwelling unit; or
 - (e) the creation of one additional dwelling unit in any other existing residential building provided the gross floor area of the additional unit does not exceed the smallest existing dwelling unit already in the building.

RULES WITH RESPECT TO AN "INDUSTRIAL" EXPANSION EXEMPTION

7. (1) Notwithstanding Section 2, if a development includes the enlargement of the gross floor area of an existing industrial building, the development charge that is payable shall be:

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- (a) if the existing gross floor area is enlarged by 50 percent or less, the amount of the development charge in respect of the enlargement is zero; or
 - (b) if the existing gross floor area is enlarged by more than 50 percent, the development charge is payable on the amount by which the enlargement exceeds 50 percent of the gross floor area before the enlargement.
- (2) For the purpose of this section, the terms “gross floor area” and “existing industrial building” shall have the same meaning as those terms have in O.Reg. 82/98 made under the Act.

LOCAL SERVICE INSTALLATION

8. Nothing in this by-law prevents Council from requiring, as a condition of an agreement under Section 51 or 53 of the *Planning Act*, that the owner, at his or her own expense, shall install or pay for such local services, within the Plan of Subdivision or within the area to which the plan relates, as Council may require.

MULTIPLE CHARGES

9. (1) Where two or more of the actions described in subsection 2(2) are required before land to which a development charge applies can be developed, only one development charge shall be calculated and collected in accordance with the provisions of this by-law.
- (2) Notwithstanding subsection (1), if two or more of the actions described in subsection 2(2) occur at different times, and if the subsequent action has the effect of increasing the need for municipal services as set out in Schedule “A”, an additional development charge on the additional residential units and non-residential gross floor area shall be calculated and collected in accordance with the provisions of this by-law.

SERVICES IN LIEU

10. (1) The Municipality may enter an agreement with an Owner under Section 38 of the Act, to give the Owner a credit towards the development charge applicable to the owner's development where the agreement requires the owner to perform work that relates to a service to which this by-law relates. The agreement shall provide that the credit will be

equal to the reasonable cost to the owner of providing the services to which this by-law relates. In no case shall the agreement provide for a credit that exceeds the total development charge payable by an owner to the municipality in respect of the development to which the agreement relates.

- (2) In any agreement under subsection (1), Council may also give a further credit to the owner equal to the reasonable cost of providing services in addition to, or of a greater size or capacity, than would be required under this by-law.
- (3) The credit provided for in subsection (2) shall not be charged to any development charge reserve fund.

RULES WITH RESPECT TO RE-DEVELOPMENT

11. Where all or part of a residential, non-residential or mixed-use building or structure is demolished or redeveloped, otherwise applicable development charges shall be reduced as calculated in section 12 below, provided that:
 - (1) the residential, non-residential or mixed-use building or structure was occupied within five years prior to the issuance of a building permit for redevelopment of the lands; and
 - (2) in the case where the residential, non-residential or mixed-use building or structure is demolished, a demolition permit has been issued within five years prior to the issuance of a building permit for redevelopment of the lands.
12. Where a residential, non-residential or mixed-use building or structure qualifies for a reduction in otherwise applicable development charges pursuant to section 11 above, the amount of the charge shall be reduced as follows:
 - (1) in the case of a residential building or structure, or the residential uses in a mixed-use building or structure, which is being redeveloped for residential or non-residential purposes, the development charges will be reduced by an amount calculated by multiplying the applicable development charge under this by-law by the number of dwelling units or dwelling rooms that have been or will be demolished or converted to another type of residential use or non-residential use, and according to the type of dwelling unit or dwelling room so demolished or converted.

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- (2) in the case of a non-residential building or structure, or the non-residential uses in a mixed-use building or structure, which is being redeveloped for non-residential purposes, no development charge will be imposed to the extent that the existing non-residential gross floor area to be demolished would have been, if newly constructed, subject to the payment of development charges at the time of building permit issuance for the new building or structure and is replaced by new non-residential gross floor area; however, development charges will be imposed on all additional non-residential gross floor area in excess of the existing non-residential gross floor area that has been or will be demolished.
- (3) in the case of a non-residential building or structure, or the non-residential uses in a mixed-use building or structure, which is being redeveloped for residential purposes, there shall be no reduction in the amount of development charges payable.
13. A reduction shall not exceed the amount of the development charge that would otherwise be payable, and no reduction is available if the existing land use is exempt under this by-law.

TIMING OF CALCULATION AND PAYMENT

14. (1) Development charges shall be calculated and payable in full in money or by provision of services as may be agreed upon, or by credit granted under the Act, on the date that the first building permit is issued in relation to a building or structure on land to which a development charge applies.
- (2) Where development charges apply to land in relation to which a building permit is required, the building permit shall not be issued until the development charge has been paid in full.

RESERVE FUNDS

15. (1) Monies received for the payment of development charges shall be used only in accordance with the provisions of Section 35 of the Act.
- (2) Monies received from payment of development charges under this by-law shall be maintained in two separate reserve funds as follows: roads and related and protection; and transit, parks and recreation, libraries, social housing and administration.

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- (3) The reserve funds created by operation of this by-law shall be maintained in separate sub accounts in accordance with the service sub-categories set out in Schedule "A". The development charge payments shall be credited to each sub account in accordance with the amounts shown in Schedule "B", plus interest earned thereon.
 - (4) Where any development charge, or part thereof, remains unpaid after the due date, the amount unpaid shall be added to the tax roll and shall be collected in the same manner as municipal taxes.
 - (5) Where any unpaid development charges are collected as municipal taxes under subsection (4), the monies so collected shall be credited to the development charge reserve funds referred to in subsection (2).
 - (6) The Treasurer of the Municipality shall, in each year commencing in 2010 for the 2009 year, furnish to Council a statement in respect of the reserve funds established hereunder for the prior year, containing the information set out in Section 12 of O.Reg. 82/98.

BY-LAW AMENDMENT OR APPEAL

16. (1) Where this by-law or any development charge prescribed thereunder is amended or repealed either by order of the Ontario Municipal Board or by resolution of the Municipal Council, the Municipal Treasurer shall calculate forthwith the amount of any overpayment to be refunded as a result of said amendment or repeal.
 - (2) Refunds that are required to be paid under subsection (1) shall be paid with interest to be calculated as follows:
 - (a) Interest shall be calculated from the date on which the overpayment was collected to the date on which the refund is paid;
 - (b) The Bank of Canada interest rate in effect on the date of enactment of this by-law shall be used.
 - (3) Refunds that are required to be paid under subsection (1) shall include the interest owed under this section.

BY-LAW INDEXING

17. The development charges set out in Schedule "B" to this by-law shall be adjusted annually as of the date the by-law comes into force, without amendment to this by-law, in accordance with the most recent twelve month change in the Statistics Canada Quarterly, "Construction Price Statistics" (Ottawa Region).

SEVERABILITY

18. In the event any provision, or part thereof, of this by-law is found by a court of competent jurisdiction to be ultra vires, such provision, or part thereof, shall be deemed to be severed, and the remaining portion of such provision and all other provisions of this by-law shall remain in full force and effect.

HEADINGS FOR REFERENCE ONLY

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

BY-LAW REGISTRATION

20. A certified copy of this by-law may be registered on title to any land to which this by-law applies.

BY-LAW ADMINISTRATION

21. This by-law shall be administered by the Municipal Treasurer.

SCHEDULES TO THE BY-LAW

22. The following Schedules to this by-law form an integral part of this by-law:

Schedule "A"	- Designated Municipal Services
Schedule "B"	- Schedule of City-Wide Development Charges

DATE BY-LAW EFFECTIVE

23. This By-law shall come into force and effect on September 29, 2009.

SHORT TITLE

24. This by-law may be cited as the "City of Kingston Development Charge By-Law, 2009."

GIVEN FIRST AND SECOND READINGS September 1, 2009

GIVEN THIRD READING AND FINALLY PASSED September 15, 2009

CITYCLERK

MAYOR

SCHEDULE "A"
TO BY-LAW NO. 2009-136

DESIGNATED MUNICIPAL SERVICES UNDER THIS BY-LAW

1. Protection Service (Fire and Police)
2. Roads and Related Service
3. Parks and Recreation Service (but not including acquisition of lands for parks)
4. Library Service
5. Transit
6. Social Housing
7. Administration Service

SCHEDULE "B"
TO BY-LAW NO. 2009-136

SCHEDULE OF CITY-WIDE DEVELOPMENT CHARGES

SERVICE	RESIDENTIAL					NON-RESIDENTIAL (per s.f. of Gross Floor Area)
	Single-Detached & Semi-Detached	Apartments		Other Multiple Dwellings		
		2 Bedrooms +	Bachelor and 1 Bedroom	2 Bedrooms +	Dwelling < 750 s.f. with 1 Bedroom	
Protection	\$ 523	\$ 335	\$ 234	\$ 400	\$ 234	\$ 0.34
Roads and Related	5,880	3,761	2,631	4,502	2,631	4.19
Transit	225	144	101	172	101	0.17
Parks and Recreation	2,233	1,428	998	1,709	998	0.13
Libraries	438	280	196	335	196	0.03
Social Housing	104	67	47	80	47	0.01
Administration	87	56	39	67	39	0.05
TOTAL DEVELOPMENT CHARGE	\$ 9,490	\$ 6,071	\$ 4,246	\$ 7,265	\$ 4,246	\$ 4.92

¹ Includes financing costs in non-residential rate for Roads only.