



City Of Kingston

Ontario

By-Law Number 2023-143

**A By-Law To Provide for the Payment of Community Benefits Charges
Pursuant to Section 37 of the Planning Act**

(“Community Benefits Charge By-Law”)

Passed: July 11, 2023

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By-Law Number 2023-143

**A By-Law to Provide for the Payment of Community Benefits
Charges Pursuant to Section 37 of the *Planning Act***

Passed: July 11, 2023

Whereas section 37 of the *Planning Act* provides that the council of a municipality may by by-law impose **community benefits charges** against land to pay for **capital costs** of **services** required because of **development** or **redevelopment**; and

Whereas pursuant to subsection 37(9) of the *Planning Act*, **Council** passed a **community benefits charge strategy**, which identifies the **services** that will be funded with **community benefits charges** and complies with **prescribed** requirements; and

Whereas pursuant to subsection 37(10) of the *Planning Act*, the **City** consulted with stakeholders and held a public meeting in preparing the **community benefits charge strategy**; and

Whereas Council desires to impose **community benefits charges** against land to pay for **capital costs** of **services** required because of **development** and **redevelopment**;

Therefore be it resolved that Council enacts as follows:

1.0 Interpretation

1.1 This by-law may be cited as the "**Community Benefits Charge By-Law**".

1.2 In this by-law:

"affordable residential unit" means:

- (a) a **residential unit** intended for use as a rented residential premises if:
 - (i) the rent is no greater than eighty (80) percent of the average market rent; and
 - (ii) the tenant is dealing at arm's length with the landlord; or
- (b) a residential unit not intended for use as a residential premises if
 - (i) the price of the **residential unit** is no greater than eighty (80) percent of the average purchase price; and
 - (ii) the **residential unit** is sold to a person who is dealing at arm's length with the seller.

“**bedroom**” means any room in a **residential unit** that is not:

- (a) a common area, being:
 - (i) a living room open to all occupants of the **residential unit**; or
 - (ii) a dining room open to all occupants of the **residential unit**;
- (b) an area used for sanitary purposes, such as a washroom;
- (c) an area used for cooking purposes, such as a kitchen;
- (d) an area occupied solely by mechanical equipment, such as furnaces, hot water heaters, or laundry equipment;
- (e) a circulation space, such as a stairway or hallway;
- (f) a room less than six (6) square metres in area where there are built-in cabinets and/or closets;
- (g) a room less than seven (7) square metres in area where there are no built-in cabinets and/or closets; or
- (h) a room without a window or similar alternative source of natural light when the door is closed.

“**building**” means anything that is comprised of components joined together and that stands more or less permanently in one place. A **building** includes all components such as walls, roofs, floors, structural systems, columns, plumbing, fixtures, service systems, private sewage systems, decks, porches, canopies, architectural features, chimneys, mechanical systems and any component that is attached to a **building**. For clarity, “**structure**” has a corresponding meaning.

“**capital costs**” means growth-related costs incurred or proposed to be incurred by the **City** or a **local board** of the **City** directly or by others on behalf of, and as authorized by, the **City** 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, construct or improve facilities, including:
 - (i) furniture and equipment, and;
 - (ii) rolling stock; or

- (e) to undertake studies in connection with any of the matters referred to in clauses (a) to (d) 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 (a) to (d) above.

“City” means The Corporation of the City of Kingston.

“community benefits charge” means a charge imposed pursuant to this by-law.

“community benefits charge strategy” means the **community benefits charge strategy**, dated September 20, 2022 (updated June 20, 2023), and approved by **Council**.

“Council” means the **Council** of the **City**.

“development” and **“redevelopment”** means:

- (a) the creation of a new lot;
- (b) the creation of a new use;
- (c) a change in land use; or
- (d) the alteration, enlargement, erection, construction, reconstruction, relocation, renovation or restoration of a **building** or **structure**, or parts thereof.

“Development Charges Act” means the *Development Charges Act, 1997*, S.O. 1997, c. 27.

“Director” means the **City’s** Director of Planning Services, the **Director’s** designate, or, in the event of organizational changes, the director of the successor division or department responsible for the administration of this by-law.

“finished grade” means the average elevation of the ground surface at the base of the main wall, measured at the four (4) most distant points representing the outermost corners of the **building**. When used in reference to a round **building** or another **building** that does not have corners, **finished grade** means the average elevation of the ground surface at the base of the **building**, measured around the perimeter.

“**gross floor area**” means the total floor area of all floors of a **building** above **finished grade**, measured between the outside of the exterior walls or between the outside of exterior walls and the centre line of party walls dividing the **building** from another **building**.

“**local board**” has the meaning as set out in the *Municipal Act*.

“***Municipal Act***” means the *Municipal Act, 2001*, S.O. 2001, c. 25.

“**owner**” means the **owner** of land or a person who has made an application for an approval for the **development** or **redevelopment** of land for which a **community benefits charge** may be imposed.

“***Planning Act***” means the *Planning Act*, R.S.O 1990, c. P.13.

“**prescribed**” means **prescribed** in the regulations made under the ***Planning Act***.

“**residential unit**” means a unit that:

- (a) consists of a self-contained set of rooms located in a **building** or **structure**;
- (b) is used or intended for use as residential premises; and
- (c) contains kitchen and bathroom facilities that are intended for the use of the unit only.

“**services**” means the facilities, services and matters required as a result of **development** or **redevelopment** in the area to which this by-law applies.

“**storey**” means occupied space of a **building** between the top of any floor and the top of the floor next above it, or between the top of the floor and the ceiling above the floor, if there is no floor above it. Any portion of a **building** partly below ground is deemed a **storey** where any part of its ceiling is one (1) metre or more above **finished grade**. An attic is not a **storey**. A mezzanine level is not a **storey** where the floor area of the mezzanine is equal to forty percent (40%) or less of the **gross floor area** of the **storey** immediately below it. Where the floor area of a mezzanine level exceeds forty percent (40%) of the **gross floor area** of the **storey** immediately below it, it is a **storey**.

“**zoning by-law**” means any by-law enacted by the **City** under section 34 of the ***Planning Act***.

- 1.3 For the purposes of interpreting this by-law:
- (a) a reference to any legislation, regulation, by-law, plan or strategy, or to a provision thereof includes a reference to any legislation, regulation, by-law, plan or strategy enacted, made or passed in substitution thereof or amendment thereof;
 - (b) any reference to legislation includes all of the regulations made thereunder; and
 - (c) “include”, “includes” and “including” indicate that the subsequent list is not exhaustive.
- 1.4 This by-law is not to be interpreted as exempting any person from the requirement to comply with any other **City** by-law or federal or provincial legislation. In the event of a conflict between the provisions of this by-law and any other **City** by-law, the provision that establishes the higher standard of health, safety and well-being of persons and protection of persons will apply.

2.0 Administration

- 2.1 The Schedule attached to this by-law forms part of it.
- 2.2 The **Director** is responsible for the administration of this by-law.
- 2.3 Where this by-law provides that the **Director** may do an act, the **Director** may, when doing the act, seek and consider information or documents from any person, and may consult with other **City** employees, legal counsel, or other advisors, all as the **Director** considers necessary.
- 2.4 Where this by-law provides that the **Director** may do an act, it may be done by a person authorized by the **Director** to do the act.

Within five (5) years after this by-law is passed, **Council** will ensure that a review of this by-law is undertaken and will pass a resolution declaring whether a revision to this by-law is needed. Thereafter, **Council** will further review and pass a resolution every five (5) years after the previous resolution was passed.

3.0 Designation of Services

- 3.1 A **community benefits charge** may be imposed to recover:
- (a) **capital costs of services** not provided for under subsection 2(4) of the ***Development Charges Act***; and
 - (b) **capital costs** related to **services** identified in the **City’s community benefits charge strategy**.

4.0 Payment of a Community Benefits Charge

4.1 A **community benefits charge** is payable by the **owner** of land proposed for **development** in the amounts set out in this by-law where:

(a) the land proposed for **development** or **redevelopment** is located in the area described in subsection 5.1 of this by-law; and

the proposed **development** or **redevelopment** requires any of the approvals as set out in subsection 6.1 of this by-law.

5.0 Application of this By-Law

5.1 Subject to subsection 5.2 of this by-law, this by-law applies to all lands within the geographic boundaries of the City of Kingston.

5.2 This by-law does not apply to lands that are owned by and used for the purposes of:

(a) the **City**, or a **local board** thereof;

(b) a Board of Education; or

(c) the County of Frontenac, or a **local board** thereof.

6.0 Approvals for Development or Redevelopment

6.1 A **community benefits charge** may be imposed only with respect to **development** or **redevelopment** that requires one or more of the following approvals:

(a) the passing of a **zoning by-law** or an amendment to a **zoning by-law** 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*;

(f) the approval of a description under 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 in relation to a **building** or **structure**.

7.0 Exemptions

7.1 Despite the provisions of this by-law, a **community benefits charge** will not be imposed with respect to the following types of **development** or **redevelopment**:

- (a) **development** of a proposed **building** or **structure** with fewer than five (5) **storeys** at or above ground;
- (b) **development** of a proposed **building** or **structure** with fewer than ten (10) **residential units**;
- (c) **redevelopment** of a **building** or **structure** that exists as of the date of passing this by-law that will have fewer than five (5) **storeys** at or above ground after the **redevelopment**;
- (d) **redevelopment** that proposes to add fewer than ten (10) **residential units** to a **building** or **structure** that exists as of the date of passing of this by-law; or
- (e) such types of **development** or **redevelopment** as are **prescribed**.

7.2 Despite the provisions of this by-law, a **community benefits charge** will not be imposed with respect to:

- (a) **development** or **redevelopment** of a **building** or **structure** intended for use as a long-term care home within the meaning of the *Fixing Long-Term Care Act, 2021*, S.O. 2021, c.39, sched 1;
- (b) **development** or **redevelopment** of a **building** or **structure** intended for use as a retirement home within the meaning of subsection 2(1) of the *Retirement Homes Act, 2010*, S.O. 2010, c. 11;
- (c) **development** or **redevelopment** of a **building** or **structure** intended for use by any of the following post-secondary institutions for the objects of the institution:
 - (i) a university in Ontario that receives direct, regular and ongoing operating funding from the Government of Ontario;
 - (ii) a college or university federated or affiliated with a university described in subparagraph (i); or
 - (iii) an Indigenous Institute prescribed for the purposes of section 6 of the *Indigenous Institutes Act, 2017*, S.O. 2017, c. 34, Sched 20;

- (d) **development** or **redevelopment** of a **building** or **structure** intended for use as a memorial home, clubhouse or athletic grounds by an Ontario branch of the Royal Canadian Legion;
- (e) **development** or **redevelopment** of a **building** or **structure** intended for use as a hospice to provide end-of-life-care;
- (f) **development** or **redevelopment** of a **building** or **structure** intended for use as residential premises by any of the following entities:
 - (i) a corporation to which the *Not-for-Profit Corporations Act, 2010*, S.O. 2010, c. 15 applies, that is in good standing under that Act and whose primary objective is to provide housing;
 - (ii) a corporation without share capital to which the *Canada Not-for-profit Corporations Act*, S.C. 2009, c. 23 applies, that is in good standing under that Act and whose primary objective is to provide housing;
 - (iii) a non-profit housing co-operative that is in good standing under the *Co-operative Corporations Act*, R.S.O. 1990, c. C.35; or
- (g) **affordable residential units**;
- (h) **development** or **redevelopment** of lands that are the subject of a by-law described in the repealed subsection 37(1) of the *Planning Act* unless:
 - (i) the by-law is amended to remove any requirement to provide facilities, services or matters that were included under the repealed subsection 37(1);
 - (ii) the by-law is repealed; or
 - (iii) an increase in the number of previously approved **residential units** is proposed.

7.3 Despite the provisions of this by-law, a **community benefits charge** will not be imposed with respect to attainable residential units, as defined in subsection 4.1(1) of the *Development Charges Act*. This subsection 7.3 will come into effect on the date when subsection 37(32.1) of the *Planning Act* comes into effect.

8.0 Amount of a Community Benefits Charge

- 8.1 The amount of a **community benefits charge** payable pursuant to this by-law will be determined in accordance with Schedule “A” to this by-law.
- 8.2 Where **development** or **redevelopment** proposes multiple uses within a **building** or **structure** and the **owner** has provided satisfactory evidence to the **Director** that it includes one (1) or more of the exempted types described in section 7.2 of this by-law, the **community benefits charge** otherwise payable for the **development** or **redevelopment** will be reduced by an amount attributed to the number of **residential units** in the exempted types of **development**.

9.0 In-kind Contributions

- 9.1 At the **City’s** sole discretion, an **owner** may provide to the **City services** in lieu, or partially in lieu, of a **community benefits charge**, that would otherwise be payable.
- 9.2 In order for in-kind contributions to be considered, an application for consideration of in-kind contributions must be submitted to the **City** with supporting documentation as to the suggested value thereof.
- 9.3 In-kind contributions pursuant to this section 9.0 are subject to approval by **Council**. The determination of **Council** as to whether in-kind contributions will be accepted in lieu of a **community benefits charge** is final and binding.
- 9.4 The value attributed to an in-kind contribution will be determined based on one (1) or more valuations prepared by an independent professional third party at the **owner’s** expense and in a form satisfactory to the **City**.
- 9.5 The value attributed to an in-kind contribution determined under subsection 9.4 of this by-law will be deducted from the total **community benefits charge** the **owner** would otherwise be required to pay under this by-law.
- 9.6 The **owner** will be required to enter into an agreement with the **City**, to the **City’s** satisfaction, addressing the provision of the in-kind contribution. At the **owner’s** sole expense, the agreement will be registered by the **City** against the land to which it applies, and the **City** is entitled to enforce the agreement against the **owner** and all subsequent owners of the land.

10.0 Time of Payment of Community Benefits Charge

- 10.1 A **community benefits charge** imposed under this by-law will be payable by the **owner** prior to the issuance of any building permit for the proposed **development or redevelopment**.
- 10.2 If a **development or redevelopment** is to be constructed in phases, each phase is deemed to be a separate **development or redevelopment** for the purposes of this by-law and the amount of the **community benefits charge** for each phase will be payable prior to the issuance of a building permit for that phase.

11.0 Transition

- 11.1 Any exemptions and/or direction provided by **Council** with respect to site-specific **community benefits charges** prior to the enactment of this by-law will continue to apply.
- 11.2 Where an increase in the previously approved number of **residential units** is proposed on lands that are subject to a by-law described in the repealed subsection 37(1) of the **Planning Act**, the amount of **community benefits charge** payable to the **City** under this by-law will be calculated in accordance with this by-law based on the number of net new **residential units**.

12.0 Interest on Refunds

- 12.1 Where the **City** is required to make a refund pursuant to subsection 37(27) of the **Planning Act**, the **City** will pay interest on the refund in accordance with subsections 37(28) and 37(29) of the **Planning Act** at the **prescribed** minimum interest rate, from the day the amount was paid to the **City** to the day it is refunded.

13.0 Prohibition

- 13.1 No person will construct a **building or structure** on land proposed for **development or redevelopment** as described in this by-law, and no building permit will be issued, unless the **community benefits charge** required by this by-law, including any approved in-kind contributions, have been made or satisfactory arrangements for the payment or their provision have been made.

14.0 Miscellaneous

- 14.1 If a court of competent jurisdiction declares any provision, or any part of a provision, of this by-law to be invalid, or to be of no force and effect, it is the intention of **Council** in enacting this by-law that each and every provision of this by-law authorized by law be applied and enforced in accordance with its terms to the extent possible according to law.
- 14.2 Except as otherwise set out in this by-law, this by-law will come into force and take effect on the date of its passing.

This By-Law received three readings and Passed: July 11, 2023.

Schedule "A"

Calculation of a Community Benefits Charge

Table 1- Schedule of Community Benefits Charge

Residential Unit Type	Community Benefit Charge per Residential Unit
2 Bedrooms or more	\$856.00
1 Bedroom or less	\$598.00