

**CONSOLIDATION FOR INFORMATION PURPOSES ONLY
FOR ORIGINAL BY-LAWS CONTACT CITY CLERK**

Authority: Item 6, General Issues Committee
Report 11-021 (FCS11053(a))
CM: June 29, 2011

Bill No. 174

Item 5, General Issues Committee
Report 12-004 (FCS 12015)
CM: February 15, 2012

Bill No. 053

Item 5, Audit, Finance &
Administration Committee
Report 18-011 (FCS18054(a))
CM: August 17, 2018
Ward: City Wide

Bill No. 228

**THE CITY OF HAMILTON
BY-LAW NO. 11-174 (Consolidated with 12-053 and 18-228)**

Being a By-law to impose development charges against lands to pay for increased capital costs required because of increased needs for GO Transit Service arising from development within the City of Hamilton

WHEREAS the *Development Charges Act*, 1997, S.O.1997, Chapter 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 need for service, the deductions required under the Act, estimated capital costs to provide for such increased needs, including the long term capital and operating costs for capital infrastructure required for the service, as well as the attribution related to new residential development.

AND WHEREAS, as required by Section 11 of the Act, this By-law is being enacted within one year of the May 2011 completion of the said development charge background study, titled “*City of Hamilton 2011 Development Charge Background Study for Water, Wastewater, Storm Water and GO Transit Services*,” prepared by Watson and Associates dated May 20, 2011;

AND WHEREAS in advance of passing this By-law the Council of the City of Hamilton has made the background study available to the public at least two weeks prior to the public meeting and given notice of and held a public meeting on June 9, 2011 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 General Issues 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 post 2031 capacity will be paid for by future development charges;

AND WHEREAS the Council of the City of Hamilton, at its meeting of June 15, 2011, has adopted and approved the said background study and the development charges and policies recommended by the General Manager of the Finance and 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 FCS11 respecting “*2011 City of Hamilton Water, Wastewater and Stormwater Development Charge By-law; Amendment to Development Charge By-law 09-143, and Development Charge By-law for Go Transit Services*”, thereby updating its capital budget and forecast where appropriate;

AND WHEREAS the Council of the City of Hamilton, at its meeting of February 22, 2012, has approved the enactment of a Bylaw to expand the Downtown Hamilton Community Improvement Project Area as set out therein; and approved policies to be included in the said Development Charges By-laws 09-143, 11-174 and 11-175 by way of amendments thereto;

AND WHEREAS, in advance of passing this amending Bylaw, the Council of the City of Hamilton has given notice of and held a public meeting on February 15, 2012 in accordance with Section 12 of the Act regarding its proposals for this Development Charges Bylaw;

AND WHEREAS the Council of the City of Hamilton, through its General Issues Committee, has received written submissions and heard all persons who applied to be heard no matter whether in objection to, or in support of, this bylaw, and has determined that no further public meetings are required under Section 12 of the Act;

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

Definitions

1. In this By-law,

- (c) “Act” means the Development Charges Act, 1997, S.O. 1997, Chapter 27, as amended.
- (b) “Adaptive Reuse” means the alteration of an existing heritage building 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 housing accommodations and incidental facilities primarily for persons of low and moderate income.
- (d) “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.
- (e) “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.
- (f) “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.
- (g) “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.
- (h) “Board of Education” means a board as defined in sub-section 1(1) of the *Education Act* 1997, S.O. 1997, c. 27, as amended.

- (i) “Council” means the Council of the City of Hamilton.
- (j) “development” has the meaning set out in sub-section 41(1) of the *Planning Act*, 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 provided for the exclusive use of such person or persons.
- (m) “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.
- (n) “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.
- (o) “grade” means the average level of proposed or finished ground adjoining a building at all exterior walls.
- (p) “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 599/06 under the *Municipal Act, 2001*, S.O. 2001, c.15, or successor legislation.
- (q) “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 (2) or more lots consolidated under a single ownership.
- (r) “mixed use development” means a building or structure used, designed or intended for use for both residential and non-residential uses.
- (s) “mobile home”, means a building recognized in the Building Code as a “Mobile Home” in accordance with the standard for mobile homes in CONICS-Z240.2.1 “Structural requirements for Mobile Homes”.

- (t) “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.
- (u) “non-residential development” is any development other than a residential development.
- (v) “Planning Act” means the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, and any successor legislation.
- (w) “Protected Heritage Properties” means properties that are designated under Part IV of the *Ontario Heritage Act*; or designated under Part V of the *Ontario Heritage Act*; or subject to a Heritage Easement under Part II of the *Ontario Heritage Act*; or 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.”
- (x) “Regulation” means Ontario Regulation 82/98 under the *Development Charges Act, 1997*, as amended.
- (y) “residential development” means:
 - (i) a single detached dwelling; or
 - (ii) a semi-detached dwelling; or
 - (iii) a residential facility; or
 - (iv) a mobile home; or
 - (v) a multiple unit dwelling; or
 - (vi) an apartment; or
 - (vii) a semi-detached dwelling, multiple unit dwelling and/or apartment in a mixed use development.

- (z) “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*. 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, but shall include such facilities as student dormitories, rooming and boarding houses, lodging houses, long-term care facilities, nursing homes, retirement homes, and group homes.
- (aa) “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.
- (bb) “service” means service defined in the by-law or designated in an agreement under Section 44 of the Act.
- (cc) “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.

Schedules

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

Schedule “A”: GO Transit Development Charges

Schedule “B”: Downtown Community Improvement Plan (CIP) Area

Schedule “C”: Height Restrictions for Downtown Hamilton CIPA Exemption

Lands Affected

- 3. This By-law applies to all land within the City of Hamilton, with respect to the GO Transit Service provided within and outside of the City.
- 4. The development of land in the City is also subject to By-law 09-143, as amended and any successor by-law, and any additional development charge by-laws that may be enacted from time to time by the City.

Designation of Services

- 5. All residential development of land within the area to which this By-law applies will increase the need for GO Transit service.
- 6. The development charges applicable to a development as determined pursuant to this By-law shall apply without regard to the service required or used by an individual development.

7. The service for which development charges are imposed under this by-law is the GO Transit service.

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*.
 - (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 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. If 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 8 of this By-law, development charges shall nonetheless 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*, that the owner, at his or her own expense, shall install such local services related to or within a lot or lots, or a plan of subdivision, as Council may require, in accordance with the City’s applicable local services policies in effect at the time.

Calculation of Development Charges

13. A development charge imposed pursuant to this By-law is applicable only to residential development and shall, subject to any other applicable provision hereof, be calculated as follows:
- (a) subject to (b), (c) and (d) below, in the case of residential development or the residential portion of mixed use development, based on the number and type of dwelling units;
 - (b) in the case of a residential facility, based upon the number of bedrooms;
 - (c) 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
 - (d) 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.
14. Subject to the provisions of this By-law, development charges against land are to be calculated and collected in accordance with the rates set out in Schedule “A” of 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 an enlargement to an existing dwelling unit;
 - (b) permit one or two additional dwelling units in an existing single detached dwelling; or
 - (c) permit one additional dwelling unit in any other existing residential building.
- (2) Notwithstanding sub-section (1), development charges shall be imposed if the total gross floor area of the additional one or two units exceeds the gross floor area of the existing dwelling unit.

- (3) Notwithstanding sub-section (1), development charges shall be imposed if the additional unit has a gross floor area greater than:
- (a) in the case of a semi-detached or row dwelling, the gross floor area of the existing dwelling unit; and
 - (b) in the case of any other residential building, the gross floor area of the smallest dwelling unit contained in the residential building.

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.

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) an agricultural use; and
 - (b) an affordable housing project that receives funding from the City’s Community Rental Housing program through a municipal housing project facilities agreement and by-law, or any such similar City housing program delivered by the City, provided the development charge liabilities of the affordable housing project are not eligible for funding by senior levels of government.

Downtown Hamilton Community Improvement Project Area (CIPA) Exemption

18. All 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, 2014 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 |

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” 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 “H” attached to this By-law.

- (b) receive an additional dollar for dollar exemption on any remaining development charges payable based on the amount of voluntary contributions to a Downtown Public Art Reserve, except and provided that no exemption under this Section 22(b) may exceed ten percent (10%) of the development charges otherwise payable.

Partial Exemptions

19. The following types of residential development will be partially exempt from development charges under this By-law in the manner and to the extent set out below:
- (a) 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;

- (b) development of student residences by a university, college of applied arts and technology or other accredited post-secondary institution is exempt from 50% of the development charge otherwise payable pursuant to this By-law. Notwithstanding anything else contained in this By-law, save and except paragraph 20(d) and Section 24, the credit applicable to any redevelopment involving an increase in the number of student residences contained within an existing building envelope shall be based on 100% of the residential facility rate in effect at the time of receipt by the Chief Building Official of a complete building permit application for the said redevelopment within the meaning of Section 33 of this By-law.
- (c) redevelopment of an existing residential development for the purpose of creating residential facilities within the existing building envelope is exempt from 50% of the development charge otherwise payable pursuant to this By-law;
- (d) redevelopment of an existing residential facility for the purpose of creating more residential facility units within the existing building envelope shall be exempt from 50% of the development charge otherwise payable pursuant to this By-law. Notwithstanding anything else contained in this By-law, save and except paragraph 20(d) and Section 24, the credit applicable to any such redevelopment shall be based on 100% of the residential facility rate in effect at the time of receipt by the Chief Building Official of a complete building permit application for the said redevelopment within the meaning of Section 33 of this By-law;
- (e) the Adaptive Reuse of Protected Heritage Properties is exempted from Development Charges within the existing building envelope.

Rules with Respect to Redevelopment - Demolitions

20. 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 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

- 21. Where an existing non-residential building or structure is converted to a residential use, the residential development charge payable for the residential units created shall not be reduced.
- 22. Where an existing residential building is converted to non-residential uses, there is no development charge payable under this By-law.
- 23. Development charges payable for the conversion of uses in a mixed use building or structure shall be determined in accordance with sections 21 and 22.
- 24. 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

- 25. 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 27 of this By-law and/or submit security satisfactory to the General Manager of Finance and 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

- 26. Subject to the provisions of Sections 25 and 27 of this By-law, development charges are payable at the time a building permit is issued with respect to a development.

Credit for Services-in-lieu Agreement

27. In accordance with Sections 38, 39, 40 and 41 of the Act, a person may perform work that relates to the 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

28. 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

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

Indexing

30. The development charges set out in Schedule “A” 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 Quarterly Construction Price Statistics, Catalogue number 62-007. 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

31. The General Manager of Finance and Corporate Services shall, in each year prior to June 30 thereof, commencing June 30, 2012 for the 2011 year, furnish to Council a statement in respect of the reserve fund required by the Act for the service 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

32. The development charge rates payable are the rates in effect on the date a completed building permit application is received and accepted by the City, provided that the permit is issued within 6 months of the effective date of a rate increase. Where the said building permit is revoked by the Chief Building Official on or after the date of the rate increase, any subsequent application for a building permit on the lands or site will be subject to the rates in effect on the date of 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.

General

33. This By-law may be referred to as the “*City of Hamilton GO Transit Development Charges By-law, 2011*”.

Date By-law Effective

34. This By-law shall come into force and take effect at 12:01 a.m. on July 06, 2011.

Date By-law Expires

35. This By-law expires five (5) years after the date on which it comes into force.

By-law Registration

36. 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

37. 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

38. If, for any reasons, 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 4th DAY OF JULY 2011.

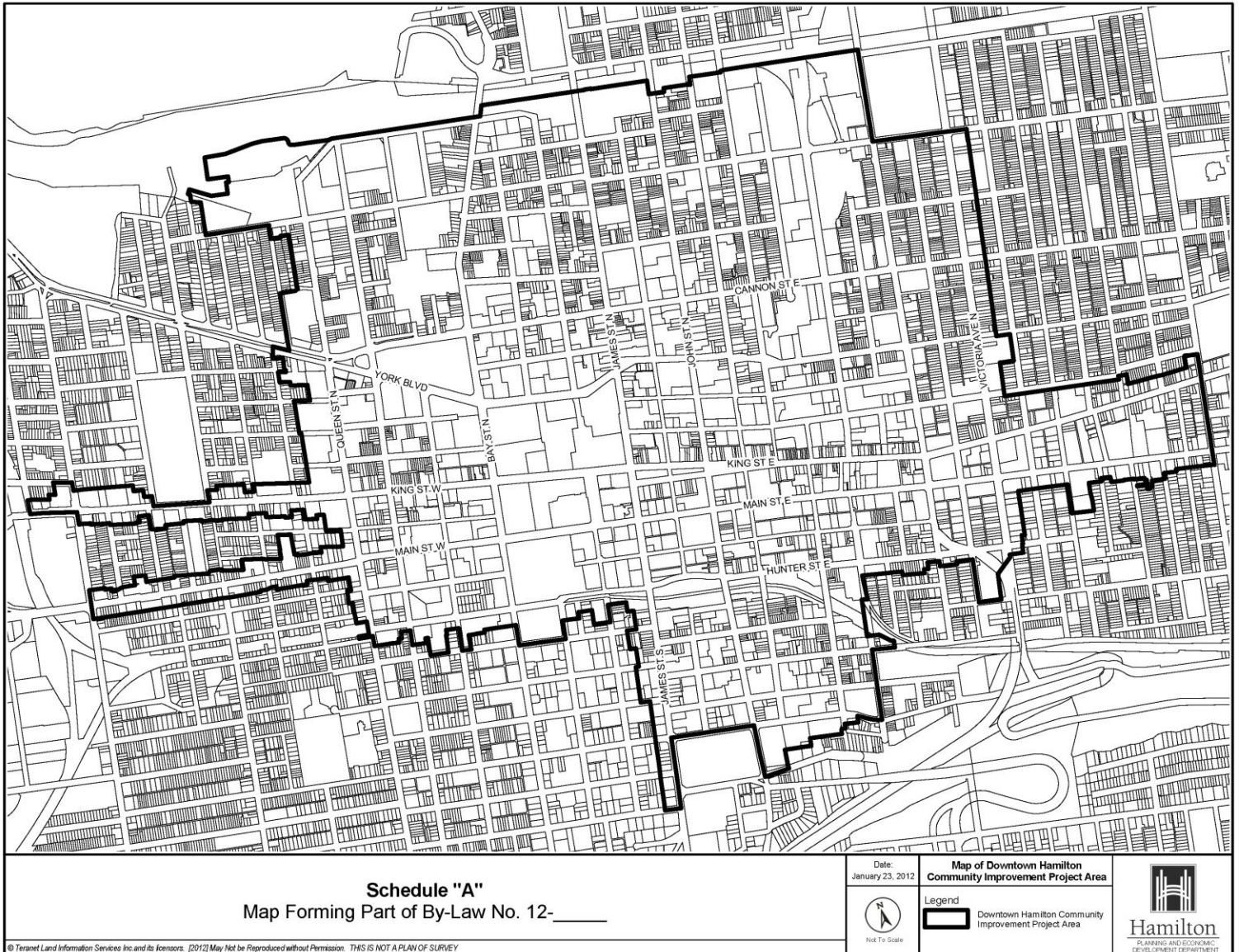
"B. Morelli"
ACTING MAYOR

"M. Gallagher"
ACTING CITY CLERK

SCHEDULE “A”
GO TRANSIT DEVELOPMENT CHARGES

| Residential Development Type | Charge |
|------------------------------|------------------|
| Single and Semi-Detached | \$215 per unit |
| Apartments | |
| - 2 Bedrooms+ | \$133 per unit |
| - Bachelor and 1 Bedroom | \$89 per unit |
| Residential Facility | \$70 per bedroom |
| Other Multiples | \$154 per unit |

SCHEDULE "B"
DOWNTOWN COMMUNITY IMPROVEMENT PROJECT AREA (CIPA)



SCHEDULE "C"

Height Restrictions for Downtown Hamilton CIPA Exemption

