



## BY-LAW

### BY-LAW NO. 2019 - 048

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#### A BY-LAW TO ESTABLISH DEVELOPMENT CHARGES FOR THE ONTARIO PENINSULA FARM (OPF) LANDS OF THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE

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**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 Municipality of Kincardine (“Municipality of Kincardine”) has given Notice in accordance with Section 12 of the *Development Charges Act, 1997*, of its intention to pass a by-law under Section 2 of the said Act;

**AND WHEREAS** the Council of the Municipality of Kincardine has heard all persons who applied to be heard no matter whether in objection to, or in support of, the development charge proposal at a public meeting held on February 20, 2019;

**AND WHEREAS** the Council of the Municipality of Kincardine had before it a report entitled Area-Specific Development Charges Background Study – Ontario Peninsula Farm (OPF) Lands dated November 2, 2018 (the “Area-Specific Development Charges Background Study”) prepared by Hemson Consulting Ltd., wherein it is indicated that the development of the OPF lands within the Municipality of Kincardine will increase the need for services as defined herein;

**AND WHEREAS** the Council of the Municipality of Kincardine on March 18, 2019 approved the applicable Area-Specific Development Charges Background Study, dated November 2, 2018, in which certain recommendations were made relating to the establishment of a development charge policy for the Municipality of Kincardine pursuant to the *Development Charges Act, 1997*;

**AND WHEREAS** by resolution adopted by Council of The Corporation of the Municipality of Kincardine on March 18, 2019, Council determined that the increase in the need for services attributable to the anticipated development as contemplated in the Area-Specific Development Charges Background Study dated November 2, 2018, as amended including any capital costs, will be met by updating the capital budget and forecast for the Municipality, where appropriate.

**AND WHEREAS** by resolution adopted by Council on March 18, 2019, Council approved the Study and determined that no further public meetings were required under Section 12 of the Act;

**AND WHEREAS** by resolution adopted by Council of The Corporation of the Municipality of Kincardine on March 18, 2019, Council determined that the future excess capacity identified in the Area-Specific Development Charges Background Study dated November 2, 2018, shall be paid for by the development charges contemplated in the said Study, or other similar charges;

**AND WHEREAS** the Council of the Municipality of Kincardine has given consideration of the use of more than one development charge by-law to reflect different needs for services in different areas, also known as area rating or area-specific DCs, and has determined that for the services, and associated infrastructure proposed to be funded by DCs under this by-law, that it is fair and reasonable that the charges be calculated on an area-specific basis;

**AND WHEREAS** the Area-Specific Development Charges Background Study dated November 2, 2018 includes asset management considerations for new infrastructure that deals with all assets whose capital costs are intended to be funded under the development charge by-law and that such assets are considered to be financially sustainable over their full life-cycle.

**AND WHEREAS** the Council of the Municipality of Kincardine will give consideration to incorporate the asset management considerations outlined in the Area-Specific Development Charges Background Study within the Municipality's ongoing practices and corporate asset management strategy.

**NOW THEREFORE** the Council of The Corporation of the Municipality of Kincardine **ENACTS** as follows:

### **DEFINITIONS**

1. In this by-law,

- (1) "Act" means the *Development Charges Act, 1997*, c. 27;
- (2) "Agricultural use" means a bona fide farming operation;
- (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) "Board of education" means a board defined in s.s. 1(1) of the *Education Act*;
- (5) "Bona Fide Farm Use" means the proposed development will qualify as a farm business operating with a valid Farm Business Registration Number issued by the Ontario Ministry of Agriculture, Food and Rural Affairs and be assessed in the Farmland Realty Tax Class by the Municipal Property Assessment Corporation;
- (6) "Building" means a structure consisting of a wall, roof, and floor or any of them or a structural system servicing the function thereof, and includes, but is not limited to, an above grade storage tank, airsupported structures and industrial tents
- (7) "Building Code Act" means the *Building Code Act*, R.S.O. 1992, as amended;
- (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
    - (iii) materials acquired for circulation, reference or information purposes by a library board as defined in the *Public Libraries Act*, 1984, S.O. 1984, c. 57, 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) as 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) "Council" means the Council of The Corporation of the Municipality of Kincardine;
- (10) "Development" means any activity or proposed activity in respect of land that requires one or more of the actions referred to in section 7 of this by-law and including the redevelopment of land or the redevelopment, expansion, extension or alteration of a use, building or structure except interior alterations to an existing building or structure which do not change or intensify the use of land;
- (11) "Development charge" means a charge imposed pursuant to this By-law;
- (12) "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;
- (13) "Farm building" means a building or structure actually used as part of or in connection with a bona fide farming operation and includes barns, silos and other buildings or structures ancillary to a bona fide farming operation, but excluding a residential use;
- (14) "Garden Suite" means a detached single storey residential dwelling unit accessory to a principal residence that offers alternative accommodation to a senior or disabled family member, and is removable
- (15) "Grade" means the average level of finished ground adjoining a building or structure at all exterior walls;
- (16) "Gross floor area" means the sum total of the total areas of all floors in a building or structure whether at above or below grade measured between the exterior faces of the exterior walls of the building or structure or from the centre line of a common wall separating two uses or from the outside edge of a floor where the outside edge of the floor does not meet an exterior or common wall, and:

- (a) includes the floor area of a mezzanine atrium or air supported structure and the space occupied by interior wall partitions; and
- (b) where a building or structure does not have any walls the gross floor area of the building or structure shall be the total of the area of all floors including the ground floor that are directly beneath the roof of the building or structure.
- (17) “Industrial Building” means a building used for or in connection with,
- (a) manufacturing, producing, processing, storing or distributing something,
  - (b) research or development in connection with manufacturing, producing or processing something,
  - (c) retail sales by a manufacturer, producer or processor of something they manufactured, produced or processed, if the retail sales are at the site where the manufacturing, production, or processing takes place,
  - (d) office or administrative purposes, if they are,
    - (i) carried out with respect to manufacturing, producing, processing, storage or distributing of something, and
    - (ii) in or attached to the building or structure used for that manufacturing, producing, processing, storage or distribution.
- (18) “Institution” means any land, building, structure, or part thereof, used by any organization, group, corporation or association, for the promotion of charitable, educational, religious or benevolent objectives and not for profit or gain;
- (19) “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;
- (20) “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*;
- (21) “Major office” means a building primarily used for offices that comprises a total gross floor area exceeding 25,000 square feet;
- (22) “Municipality” means The Corporation of the Municipality of Kincardine;
- (23) “Multiple dwelling” means all dwellings other than single detached dwellings, semi-detached dwellings, and apartment dwellings;
- (24) “Net Hectare” means the gross area of land less the area of lands conveyed or to be conveyed into public ownership for the purpose of open space, parks, woodlots, environmentally protected areas, storm water management facilities, buffers and road allowances and Ontario Hydro utility corridors.
- (25) “Non-profit housing” means housing which is or is intended to be offered primarily to persons or families of low income on a leasehold

or co-operative basis and which is owned or operated by i) a non-profit corporation being a corporation, no part of the income of which is payable to or otherwise available for the personal benefit of a member or shareholder thereof; or ii) a non-profit housing co-operative having the same meaning as in the Co-operative Corporations Act, R.S.O. 1990, c.C.35, as amended

- (26) "Non-residential uses" means a building or structure used for other than a residential use;
- (27) "Official plan" means the Official Plan of the Municipality of Kincardine and any amendments thereto;
- (28) "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;
- (29) "Place of worship" means a building or structure, or part thereof, that is exempt from taxation as a place of worship pursuant to paragraph 3 of the Assessment Act, R.S.O. 1990, c. A. 31, as amended, or successor legislation;
- (30) "Planning Act" means the *Planning Act, 1990*, R.S.O. 1990, c.1, as amended;
- (31) "Row dwelling" means a building containing three or more attached dwelling units in a single row, each of which dwelling units has an independent entrance from the outside and is vertically separated from any abutting dwelling unit;
- (32) "Redevelopment" means the construction, erection or placing of one or more buildings or structures on land where all or part of a building or structure has previously been demolished on such land, or changing the use of a building or structure from a residential use to a non-residential use or from a non-residential use to a residential use, or changing a building or structure from one form of residential use to another form of residential use or from one form of non-residential use to another form of non-residential use;
- (33) "Regulation" means any regulation made pursuant to the Act;
- (34) "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;
- (35) "Semi-detached dwelling" means a building divided vertically into two dwelling units each of which has a separate entrance and access to grade;
- (36) "Service" means services set out in Schedule "A" to this By-law, and "services" shall have a corresponding meaning;
- (37) "Single detached dwelling" means a completely detached building containing only one dwelling unit.

**DESIGNATION OF SERVICE**

2. It is hereby declared by the Council of the Municipality that all development and redevelopment of land within the OPF lands will increase the need for services.
3. (1) The categories of service for which development charges are imposed under this By-law are as follows:
  - a) Storm Sewer
  - b) Sanitary Sewer
  - c) Watermains
  - d) Additional Internal Site Costs

#### **CALCULATION OF DEVELOPMENT CHARGES**

4. (1) Subject to the provisions of this By-law, development charges against lands identified in "Schedule C" shall be imposed, calculated and collected in accordance with the base rates set out in Schedules "B" which relate to the services set out in Schedule "A".
  - (2) The development charge with respect to the use of any land, buildings or structures shall be calculated as follows:
    - (a) in the case of a residential use and a non-residential use development, based upon the number of net hectares of land related to the development, as set out in "Schedule B";
    - (b) in the case of redevelopment on lands previously subject to a development charge, the development charge shall be charge based upon the number of net hectares of land related to the development, as set out in Schedule "B".
  - (3) Council hereby determines 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".

#### **APPLICABLE LANDS**

5. (1) This by-law applies to the lands in the municipality as shown on "Schedule C", whether or not the land or use is exempt from taxation under Section 3 of the *Assessment Act*, R.S.O. 1990, c.A.31.
  - (2) This by-law shall not apply to land that is owned by and used for the purposes of:
    - (a) a board of education;
    - (b) any municipality or local board thereof.

#### **RULES WITH RESPECT TO EXEMPTIONS FOR INTENSIFICATION OF EXISTING HOUSING**

6. (1) Notwithstanding Section 4 above, no development charge shall be imposed with respect to developments or portions of developments as follows:
  - (a) the enlargement of an existing residential dwelling unit;
  - (b) the creation of one or two additional residential dwelling units in an existing single detached dwelling where the total gross

floor area of each additional unit does not exceed the gross floor area of the existing dwelling unit;

- (c) 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.
- (2) Notwithstanding subsection 7(1)(b), development charges shall be calculated and collected in accordance with Schedule “B” where the total residential gross floor area of the additional one or two dwelling units is greater than the total gross floor area of the existing single detached dwelling unit.
- (3) Notwithstanding subsection 7(1)(c), development charges shall be calculated and collected in accordance with Schedule “B” where the additional dwelling unit has a residential gross floor area greater than,
- (a) in the case of semi-detached house or multiple dwelling, the gross floor area of the smallest existing dwelling unit, and
  - (b) in the case of any other residential building, the residential gross floor area of the smallest existing dwelling unit.

#### **DEVELOPMENT CHARGES IMPOSED**

7. (1) Subject to subsection (2), development charges shall be calculated and collected in accordance with the provisions of this by-law and be imposed on land to be developed for residential and non-residential use, where, the development requires:
- (i) the passing of a zoning by-law or an amendment thereto under Section 34 of the *Planning Act*, R.S.O. 1990, c.P. 13;
  - (ii) the approval of a minor variance under Section 45 of the *Planning Act*, R.S.O. 1990, c.P.13;
  - (iii) a conveyance of land to which a by-law passed under subsection 49(7) of the *Planning Act*, R. S.O. 1990, c.P.13 applies;
  - (iv) the approval of a plan of subdivision under Section 51 of the *Planning Act*, R.S.O. 1990, c.P. 13;
  - (v) a consent under Section 53 of the *Planning Act*, R.S.O. 1990, c.P. 13;
  - (vi) the approval of a description under Section 50 of the *Condominium Act*, R.S.O. 1980, c.84; or
  - (vii) the issuing of a permit under the *Building Code Act*, in relation to a building or structure.
- (2) 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*, R.S.O. 1990, c.P. 13;

- (b) local services installed or paid for by the owner as a condition of approval under Section 53 of the *Planning Act*, R.S.O. 1990, c.P. 13.

### **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 7(1) 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 7(1) 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 net hectares of land related to the development, shall be calculated and collected in accordance with the provisions of this by-law.

### **SERVICES IN LIEU**

- 10. (1) Council may authorize an owner, through an agreement under Section 38 of the Act, to substitute such part of the development charge applicable to the owner's development as may be specified in the agreement, by the provision at the sole expense of the owner, of services in lieu. Such agreement shall further specify that where the owner provides services in lieu in accordance with the agreement, Council shall give to the owner a credit against the development charge in accordance with the agreement provisions and the provisions of Section 39 of the Act, equal to the reasonable cost to the owner of providing the services in lieu. In no case shall the agreement provide for a credit which 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 11(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 11 (2) shall not be charged to any development charge reserve fund.

### **RULES WITH RESPECT TO RE-DEVELOPMENT**

- 11. In the case of the demolition of all or part of a residential or non-residential building or structure:
  - (1) a credit shall be allowed, provided that the land was improved by occupied structures within the five years prior to the issuance of the



building permit, and the building permit has been issued for the development or redevelopment within five years from the date the demolition permit has been issued; and

- (2) if a development or redevelopment involves the demolition of and replacement of a building or structure, or the conversion from one principal use to another, a credit shall be allowed equivalent to:
  - (a) the existing net hectares of land related to the development multiplied by the applicable development charge per net hectare in place at the time the development charge is payable.
12. A credit can, in no case, exceed the amount of the development charge that would otherwise be payable, and no credit is available if the existing land use is exempt under this by-law.

### **TIMING OF CALCULATION AND PAYMENT**

13. (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 and defined by various references in the Development Charges 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.
- (4) Notwithstanding subsection (1), the development charge shall be payable with respect to an approval of a plan of subdivision under Section 51 or the *Planning Act* immediately upon entering into an agreement and with respect to a consent under Section 53 of the *Planning Act*, immediately upon entering into a consent agreement and prior to final approval of the consent.

### **RESERVE FUNDS**

14. (1) Monies received from payment of development charges under this by-law shall be maintained in a separate reserve fund and shall be spent for capital costs determined under paragraphs 2 to 8 of subsection 5(1) of the Act.
- (2) Monies received for the payment of development charges shall be used only in accordance with the provisions of Section 35 of the Act.
- (3) 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 as taxes.
- (4) Where any unpaid development charges are collected as taxes under subsection (3), the monies so collected shall be credited to the development charge reserve funds referred to in subsection (1).
- (5) The Treasurer of the municipality shall, in each 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 43 of the Act and section 12 of O.Reg. 82/98.

**BY-LAW AMENDMENT OR APPEAL**

15. (1) Where this by-law or any development charge prescribed thereunder is amended or repealed either by order of the Local Planning Appeal Tribunal 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 16(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 16(1) shall include the interest owed under this section.

**BY-LAW INDEXING**

16. The development charges set out in Schedules “B” to this by-law shall be adjusted annually, as of January 1, 2020, without amendment to this by-law, in accordance with the most recent twelve-month change in the Statistics Canada Quarterly, “Construction Price Statistics”, Catalogue Number 62-007.

**SEVERABILITY**

17. 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**

18. 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.

**BY-LAW REGISTRATION**

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

**BY-LAW ADMINISTRATION**

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

**SCHEDULES TO THE BY-LAW**

21. The following Schedules to this by-law form an integral part of this by-law:
- Schedule “A” - Designated Municipal Services OPF Lands
- Schedule “B” - Schedule of Development Charges
- Schedule “C” - Map of Area to which this By-law applies

**DATE BY-LAW EFFECTIVE**

22. This By-law shall come into force and effect on March 18, 2019.

**DATE BY-LAW EXPIRES**

23. This By-law expires five years after the day on which it comes into force.

**SHORT TITLE**

24. This by-law may be cited as the “Municipality of Kincardine Area-Specific Development Charges (2019) By-law,”

**READ a FIRST and SECOND TIME** this 18<sup>th</sup> day of March, 2019.

**READ a THIRD TIME and FINALLY PASSED** this 18<sup>th</sup> day of March, 2019

Original Signed By  
Mayor – Anne Eadie

Original Signed by  
Clerk – Donna MacDougall

**SCHEDULE "A"**  
**TO BY-LAW NO. 2019 - 048**  
**DESIGNATED MUNICIPAL SERVICES**  
**OFF LANDS**

- 1) Storm Sewer
- 2) Sanitary Sewer
- 3) Watermains
- 4) Additional Internal Site Costs

**SCHEDULE "B"**  
**TO BY-LAW NO. 2019 - 048**  
**SCHEDULE OF DEVELOPMENT CHARGES**

Development Charge per Net Hectare	\$258,500
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**SCHEDULE "C"**  
**TO BY-LAW NO. 2019 - 048**  
**MAP OF AREA TO WHICH THIS BY-LAW APPLIES**

