



HAMILTON-WENTWORTH DISTRICT SCHOOL BOARD

EDUCATION DEVELOPMENT CHARGES BY-LAW NO. 13-1

A by-law for the imposition of education development charges in the City of Hamilton

WHEREAS

1. Section 257.54(1) of Division E of the *Education Act* (the "Act") enables a district school board to pass by-laws for the imposition of education development charges against land undergoing residential and non-residential development if there is residential development in its area of jurisdiction that would increase education land costs.
2. The Hamilton-Wentworth District School Board (the "Board") has determined that the residential development of land to which this by-law applies increases education land costs.
3. The Board has referred its estimates of the total number of new elementary and secondary pupils and its estimates of the number of elementary and secondary school sites used to determine the next education land costs to the Minister of Education for approval, and such approval was given on June 17, 2013 under section 10 of Ontario Regulation 20/98.
4. The Board has conducted a review of its education development charge policies and held a public meeting on May 13, 2013.
5. The Board has given notice and held public meetings on May 13, 2013 and June 17, 2013, in accordance with section 257.63(1) of the *Education Act* and permitted any person who attended the public meeting to make representations in respect of the proposed education development charges.
6. The Board has determined in accordance with section 257.63(3) of the Act that no additional public meeting is necessary in respect of this by-law.

NOW THEREFORE THE HAMILTON-WENTWORTH DISTRICT SCHOOL BOARD
HEREBY ENACTS AS FOLLOWS:

PART 1

APPLICATION

Defined Terms

1. In this by-law,
 - (a) "Act" means the *Education Act*, R.S.O. 1990 c. E2, as amended from time to time.

- (b) “agricultural building” means a building or structure located on an agricultural property which is necessary or ancillary to an active farm or agricultural operation including barns, tool sheds and silos and other farm related structures for such purposes as sheltering of farm related machinery and equipment used as part of a bona fide farming or agricultural operation but shall not include:
 - i. a dwelling unit or other structure used for residential accommodation; or,
 - ii. any buildings or parts thereof used for other commercial, agri-touristic, industrial or institutional purposes qualifying as non-residential development;
- (c) “Board” means the Hamilton-Wentworth District School Board;
- (d) “development” includes redevelopment;
- (e) “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, and shall include, but is not limited to, a dwelling unit or units in an apartment, group home, mobile home, duplex, triplex, semi-detached dwelling, row house, single detached dwelling, stacked townhouse and townhouse;
- (f) “education land costs” means costs incurred or proposed to be incurred by the Board,
 - (i) To acquire land or an interest in land, including a leasehold interest, to be used by the Board to provide pupil accommodation;
 - (ii) To provide services to the land or otherwise prepare the site so that a building or buildings may be built on the land to provide pupil accommodation;
 - (iii) To prepare and distribute education development charge background studies as required under the Act;
 - (iv) As interest on money borrowed to pay for costs described in paragraphs (i) and (ii); or
 - (v) To undertake studies in connection with an acquisition referred to in paragraph (i).
- (g) “education development charge” means charges imposed pursuant to this by-law in accordance with the Act;
- (h) “existing industrial building” means an existing building used for or in connection with,

- (i) manufacturing, producing, processing, storing or distributing something,
- (ii) research or development in connection with manufacturing, producing or processing something,
- (iii) 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,
- (iv) office or administrative purposes, if they are,
 - (A) carried out with respect to manufacturing, producing, processing, storage or distribution of something, or
 - (B) attached to the building or structure used for that manufacturing, producing, processing, storage or distribution;
- (i) “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, of all floors above the average level of finished ground adjoining the building at its exterior walls and, for the purpose of this definition, the non-residential portion of a mixed-use building is deemed to include one-half of any area common to the residential and non-residential portions of such mixed-use building or structure;
- (j) “local board” means a local board as defined in the *Municipal Affairs Act*, other than a district school board defined in section 257.53(1) of the Act;
- (k) “mixed use” means land, buildings or structures used, or designed or intended for use, for a combination of non-residential and residential uses, regardless of zoning designation;
- (l) “municipality” means the City of Hamilton constituted under the *City of Hamilton Act*, 1999 S.O. 1999 c.14 Schedule C.
- (m) “non-residential use” means lands, buildings or structures or portions thereof used, or designed or intended for all uses other than residential use, and includes, but is not limited to, an office, retail, industrial or institutional use;
- (n) “Regulation” means Ontario Regulation 20/98, as amended, made under the Act;
- (o) “residential use” means lands, buildings or structures used, or designed or intended for use as a dwelling unit or units, and shall include a residential use accessory to a non-residential use and the residential component of a mixed use or of an agricultural use.

2. Unless otherwise expressly provided in this by-law, the definitions contained in the Act or the Regulation shall have the same meanings in this by-law.

3. In this by-law where reference is made to a statute, a section of a statute, or a regulation, such reference shall be deemed to be a reference to any successor statute, section or regulation.

Jurisdiction

4.

- (a) Subject to section 4(b), this by-law applies to all lands in the geographic limits of the City of Hamilton;
- (b) This by-law shall not apply to lands that are owned by and are used for the purpose of:
 - (i) the municipality or a local board thereof;
 - (ii) a district school board;
 - (iii) a public hospital receiving aid under the *Public Hospitals Act* R.S.O. 1990, c. P.40;
 - (iv) a university, community college or a college of applied arts and technology established under the *Ontario Colleges of Applied Arts and Technology Act 2002*, S.O. 2002 c.8 Schedule F or a predecessor statute;
 - (v) Metrolinx, or a predecessor or successor corporation identified under the *Metrolinx Act, 2006* S.O. 2006, c.16 as amended from time to time ("GO Transit");
 - (vi) every place of worship that is used primarily as a place of public worship and land used in connection therewith, and every churchyard, cemetery or burying ground, if they are exempt from taxation under section 3 of the *Assessment Act*; and.
 - (vii) non-residential agricultural buildings.

PART II

EDUCATION DEVELOPMENT CHARGES

5. Subject to the provisions of this by-law, the Board hereby designates all categories of residential development and non-residential development and all residential and non-residential uses of land, buildings or structures as those upon which education development charges shall be imposed.

Residential Education Development Charges—Qualifying Development

6. (1) In accordance with the Act and this by-law, and subject to sections 8 and 9, the Board hereby imposes an education development charge against land undergoing residential

development or redevelopment in the area of the by-law if the residential development or redevelopment requires any one of the following actions:

- (a) the passing of a zoning by-law or of 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 50 of the *Condominium Act*; or
- (g) the issuing of a permit under the *Building Code Act, 1998* in relation to a building or structure,

where the first building permit issued in relation to a building or structure for below ground or above ground construction is issued on or after the date the by-law comes into force.

(2) In respect of a particular development or redevelopment an education development charge will be collected once, but this does not prevent the application of this by-law to future development or redevelopment on the same property. For greater certainty, an education development charge will be imposed on any additional dwelling unit to be built on the property that is not exempted under sections 8 and 9 of this by-law, and for which an action referred to in subsection (1) is required.

Residential Education Development Charge—Rate

7. Subject to the provisions of this by-law, the Board hereby imposes an education development charge of \$1,040.00 per dwelling unit upon the designated categories of residential development and the designated residential uses of lands, buildings, or structures, including a dwelling unit accessory to a non-residential use, and, in the case of a mixed-use building or structure, upon the dwelling units in the mixed-use building or structure.

Residential Education Development Charges—Exemptions

8. As required by subsection 257.54(3) of the Act, an education development charge shall not be imposed with respect to:
- (a) the enlargement of an existing dwelling unit or;
 - (b) the creation of one or two additional dwelling units in existing residential buildings as prescribed in section 3 of the Regulation as follows:

NAME OF CLASS OF RESIDENTIAL BUILDING	DESCRIPTION OF CLASS OF RESIDENTIAL BUILDINGS	MAXIMUM NUMBER OF ADDITIONAL DWELLING UNITS	RESTRICTIONS
Single detached dwellings	Residential buildings, each of which contains a single dwelling unit, that are not attached to other buildings	Two	The total gross floor area of the additional dwelling unit or units must be less than or equal to the gross floor area of the dwelling unit already in the building
Semi-detached dwellings or row dwellings	Residential buildings, each of which contains a single dwelling unit, that have one or two vertical walls, but no other parts, attached to other buildings	One	The gross floor area of the additional unit must be less than or equal to the gross floor area of the dwelling or unit already in the building
Other residential buildings		One	The gross floor area of the additional dwelling unit must be less than or equal to the gross floor area of the smallest dwelling unit already in the building

9. (1) An education development charge under section 8 shall not be imposed with respect to the replacement, on the same site, of a dwelling unit that was destroyed by fire, demolition or otherwise, or that was so damaged by fire, demolition or otherwise as to render it uninhabitable.

(2) Notwithstanding subsection (1), education development charges shall be imposed in accordance with section 8 if the building permit for the replacement dwelling unit is issued more than two years after,

- (a) the date the former dwelling unit was destroyed or became uninhabitable; or
- (b) if the former dwelling unit was demolished pursuant to a demolition permit issued before the former dwelling unit was destroyed or became uninhabitable, the date the demolition permit was issued.

(3) Notwithstanding subsection (1), education development charges shall be imposed in accordance with section 8 against any dwelling unit or units on the same site in addition to the dwelling unit or units being replaced. The onus is on the applicant to produce evidence to the satisfaction of the Board, acting reasonably, to establish the number of dwelling units being replaced.

(4) Subject to section 15, an education development charge shall be imposed under section 8 where a non-residential building or structure is replaced by or converted to, in whole or in part, a residential building or structure.

Non-Residential Education Development Charges—Qualifying Development

10. (1) In accordance with the Act and this by-law, and subject to sections 12 and 13 the Board hereby imposes an education development charge against land undergoing non-residential development or redevelopment in the area of the by-law which has the effect of increasing existing gross floor area of such development if the non-residential development or redevelopment requires any one of the following actions:

- (a) the passing of a zoning by-law or of 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 50 of the *Condominium Act*; or
- (g) the issuing of a permit under the *Building Code Act, 1998* in relation to a building or structure,

where the first building permit issued in relation to a building or structure for below ground or above ground construction is issued on or after the date the by-law comes into force.

(2) In respect of a particular development or redevelopment an education development charge will be collected once, but this does not prevent the application of this by-law to future development or redevelopment on the same property. For greater certainty, an education development charge will be imposed on any additional gross floor area to be built on the property that is not exempted under sections 12 and 13 of this by-law, and for which an action referred to in subsection (1) is required.

Non-residential Education Development Charges—Rate

11. Subject to the provisions of this by-law, the Board hereby imposes an education development charge of \$0.40 per square foot of gross floor area of non-residential development upon the designated categories of non-residential development and the designated non-residential uses of land, buildings or structures and, in the case of a mixed use building or structure, upon the non-residential uses in the mixed-use building or structure.

Non-Residential Education Development Charges—Exemptions

12. As required by section 257.55 of the Act, if a development includes the enlargement of a gross floor area of an existing industrial building, the amount of the education development charge that is payable in respect of the enlargement is determined in accordance with the following rules:

- (a) if the gross floor area is enlarged by 50 per cent or less, the amount of the education development charge in respect of the enlargement is zero;
- (b) If the gross floor area is enlarged by more than 50 per cent, the amount of the education development charge in respect of the enlargement is the amount of the education development charge that would otherwise be payable multiplied by the fraction determined as follows:
 - (i) Determine the amount by which the enlargement exceeds 50 per cent of the gross floor area before the enlargement;
 - (ii) Divide the amount determined under paragraph 1 by the amount of the enlargement.

13.

- (a) As required by section 5 of the Regulation and, subject to paragraphs (b) and (c) below, an education development charge under section 10 shall not be imposed with respect to the replacement, on the same site, of a non-residential building that was destroyed by fire, demolition or otherwise, or that was so damaged by fire, demolition or otherwise as to render it unusable.
- (b) Notwithstanding paragraph (a), an education development charge shall be imposed in accordance with section 10 against any additional gross floor area of any non-residential development on the same site in excess of the gross floor area of the non-residential building or structure being replaced, subject to the following calculation:

If the gross floor area of the non-residential part of the replacement building exceeds the gross floor area of the non-residential part of the building being replaced, the exemption applies with respect to the portion of the education development charge calculated in accordance with the following formula:

$$\text{Exempted portion} = \frac{\text{GFA (old)}}{\text{GFA (new)}} \times \text{EDC}$$

where,

“Exempted portion” means the portion of the education development charge that the Board is required to exempt;

“GFA (old)” means the gross floor area of the non-residential part of the building being replaced;

“GFA (new)” means the gross floor area of the non-residential part of the replacement building;

“EDC” means the education development charge that would be payable in the absence of the exemption;

- (c) The exemption in paragraph (a) does not apply if the building permit for the replacement building is issued more than five years after:
 - (i) the date the former building was destroyed or became unusable; or
 - (ii) if the former building was demolished pursuant to a demolition permit issued before the former building was destroyed or became unusable, the date the demolition permit was issued.
- (d) An education development charge shall be imposed in accordance with section 11 where the residential building or structure is replaced by or converted to, in whole or in part, a non-residential building or structure;

14. The education development charge to be imposed in respect of mixed use development shall be the aggregate of the amount applicable to the residential development component and the amount applicable to the non-residential development component.

Credit—Conversion

15. This section applies where an education development charge has been paid within the preceding eighteen month period in respect of development on land and the land is being redeveloped, except where sections 8 and 9, or sections 12 and 13, as the case may be, shall apply:

- (a) The education development charge payable in respect of the redevelopment shall be calculated under this by-law;
- (b) The education development charge determined under paragraph (a) shall be reduced by a credit equivalent to the education development charge previously paid in respect of the land, provided that the credit shall not exceed the education development charge determined under paragraph (a);
- (c) Where the redevelopment applies to part of the land, the amount of the credit shall be calculated on a proportionate basis having regard to the development being displaced by the new development. By way of example, if 20% of the non-residential gross floor area of a non-residential building is being displaced by residential development through conversion, the residential education development charge on the applicable number of units shall be calculated under section 7 of the by-law, and the credit shall be the education development charge originally paid on the gross floor area being converted, subject to the limit in paragraph (b);
- (d) In no event shall the amount of the credit exceed the amount of education development charges payable hereunder.

Credit—Payment by Services

16. Subject to the requirements of the Act, the Board may by agreement permit an owner to

provide land in lieu of the payment of all or any portion of an education development charge. In such event, the treasurer of the Board shall advise the treasurer of the municipality of the amount of the credit to be applied to the education development charge. In no event shall the amount of any such credit exceed the amount of education development charges payable hereunder.

PART III

ADMINISTRATION

Payment of Education Development Charges

17. The education development charge in respect of a development is payable to the municipality on the date that the first building permit is issued in relation to a building or structure on land to which the education development charge applies.

18. All education development charges payable shall be paid by cash, certified cheque or bank draft.

19. The Treasurer of the Board shall establish and maintain an education development charge account in accordance with the Act, the Regulation and this By-Law.

20. Withdrawals from the education development charge account established under section 19 above, shall be made in accordance with the Act, the Regulation and this By-Law.

Collection of Unpaid Education Development Charges

21. In accordance with section 257.96 of the *Act*, section 349 of the *Municipal Act, 2001* S.O. 2001, c.25 applies with necessary modifications with respect to an education development charge or any part of it that remains unpaid after it is payable.

Date By-Law In Force

22. This by-law shall come into force on June 22, 2013

Expiration

23. This by-law shall expire on August 30, 2014, unless it is repealed at an earlier date.

Severability

24. Each of the provisions of this by-law are severable and if any provision hereof should for any reason be declared invalid by a court or tribunal, the remaining provisions shall remain in full force and effect.

Capital Projects

25. Nothing in this by-law shall be construed so as to commit or require the Board to authorize or proceed with any particular capital project at any time.

Short Title

26. This by-law may be cited as the Hamilton-Wentworth District School Board Education Development Charges By-law No. 13-1.

ENACTED AND PASSED this 17th day of June, 2013.

Chairperson



Director of Education and Secretary

