# THE CITY OF WINNIPEG

# BY-LAW No. 127/2016

A By-law of The City of Winnipeg to impose fees on new development to assist with the costs associated with accommodating and managing growth and development.

**WHEREAS** subsection 5(1) of *The City of Winnipeg Charter* defines the purposes of The City of Winnipeg as follows:

(a) To provide good government for the city;
(b) To provide services, facilities or other things that council considers to be necessary or desirable for all or part of the city;
(c) To develop and maintain safe, orderly, viable and sustainable communities; and
(d) To promote and maintain the health, safety and welfare of the inhabitants;

**AND WHEREAS** accommodating and managing growth and development so that it is safe, orderly, viable and sustainable and so that it promotes and maintains the health, safety and welfare of the inhabitants requires urban planning, zoning and land use restrictions, enforcement of building codes and the creation of a variety of infrastructure and services, including (but not restricted to) transportation, sewer, water, land drainage, recreation and police, fire, paramedic and emergency services;

**AND WHEREAS** to date, the costs to The City of Winnipeg of accommodating and managing growth and development have been only partially paid through development agreements, zoning agreements and fees for the permits and approvals required to develop and construct buildings;

**AND WHEREAS** the Council of The City of Winnipeg has determined that the costs of accommodating and managing growth should be more fully paid for by the individuals and businesses directly benefitting from growth and development;

**AND WHEREAS** clause 210(1)(b) of *The City of Winnipeg Charter* provides as follows:

210(1) *The city may, if authorized by council, establish*

*…*

*(b) fees, and the method of calculating and the terms of payment of fees, for*

*(i) applications,*
*(ii) filing appeals under this Act or a by-law,*
*(iii) permits, licences, consents and approvals,*

*(iv) inspections,*
*(v) copies of by-laws and other city records including records of hearings, and*
*(vi) other matters in respect of the administration of this Act or the administration of the affairs of the city.*

**AND WHEREAS** subsection 6(1) of *The City of Winnipeg Charter* provides as follows:

6(1) *The powers given to council under this Act are stated in general terms*
*(a) to give broad authority to council to govern the city in whatever way council considers appropriate within the jurisdiction given to it under this or any other Act; and*
*(b) to enhance the ability of council to respond to present and future issues in the city.*

**AND WHEREAS** the imposition of fees under subsection 210(1) of *The City of Winnipeg Charter* promotes the purposes of the City of Winnipeg and enhances the ability of Council to respond to present and future issues in the City, as set out in subsection 5(1) and clause 6(1)(b) of the *The City of Winnipeg Charter.*

**NOW THEREFORE** the City of Winnipeg, in Council assembled, enacts as follows:

**Short title**
**1** This By-law may be cited as the Impact Fee By-law.

**Definitions and interpretation**
**2(1)** In this By-law

**Accessory structure** means a building or structure that is located on the same zoning lot as, and is subordinate or incidental to, a principal building, and includes an outbuilding, garage, gazebo, utility building, play structure, sign and structures supporting a sign, garbage enclosure, awning, fence, racking, storage unit or container, deck, antenna, canopy, marquee, satellite dish, mechanical penthouse, hot tub, fountain, water barrel, pond and swimming pool, but does not include an attached secondary suite or a detached secondary suite;

**Affordable housing** means any dwelling unit provided for persons of low or moderate income where the total shelter cost of the dwelling unit represents 30% or less of the median household total income for private households, as defined by Statistics Canada for the City of Winnipeg;

**Attached secondary suite** has the same meaning as “secondary suite, attached” in the Winnipeg Zoning By-law;

**Basement** has the same meaning as in the Neighbourhood Liveability By-law;

**Building** means any building used or intended to be used to support or shelter any use or occupancy;

**Building permit** means a permit issued pursuant to the Winnipeg Buildings By-law;

**City** means The City of Winnipeg continued under the Charter;

**Change in use** means a change of the use of a particular zoning lot under either the Winnipeg Zoning By-law or the Downtown Winnipeg Zoning By-law;

**Charter** means the "*The City of Winnipeg Charter*";

**Commercial and Retail Uses** means a development that falls within the following use categories, depending on the applicable zoning by-law:

(a) under the Winnipeg Zoning By-law:

(i) Recreation and Entertainment, Indoor;

(ii) Recreation and Entertainment, Outdoor;

(iii) Accommodation;

(iv) Animal Sales and Service;

(v) Food and Beverage Service;

(vi) Personal Services;

(vii) Retail;

(viii) Restricted; and

(ix) Private Motor Vehicle Related, and

(b) under the Downtown Winnipeg Zoning By-law:

(i) Commercial Sales & Service;

(ii) Private Motor Vehicle-Related;

(iii) Cultural and Entertainment, except Cultural centre, Gallery, and Museum; and

(iv) Restricted;

**Common area**, with respect to a mixed use development, means the portion of the total floor area which

(a) connects; or

(b) is used by

two or more areas within the development that fall into different fee categories;

**Construction** means the erection, placement, alteration, renovation, extension, or relocation of any building or part of a building for which a building permit is required;

**Conversion**, with respect to a building, means a change in use of all or part of the building under either the Winnipeg Zoning By-law or the Downtown Winnipeg Zoning By-law with the result that all or part of the building falls under a different fee category after the change in use;

**Designated employee** means the Director and any employee of the City to whom the Director has delegated a duty or authority under this By-law;

**Detached secondary suite** has the same meaning as "secondary suite, detached" in the Winnipeg Zoning By-law;

**Development** means construction, conversion, or both construction and conversion;

**Development permit** means a permit authorizing a development issued under either the Downtown Winnipeg Zoning By-law or the Winnipeg Zoning By-law;

**Director** means the Director of Planning, Property and Development for the City of Winnipeg;

**Dwelling** has the same meaning as in the Neighbourhood Liveability By-law;

**Dwelling unit** has the same meaning as in the Neighbourhood Liveability By-law;

**Expansion** means, with respect to a building, an increase in floor area of the building;

**Fee category** means one of the five fee categories set out in subsection 4(2);

**Floor area** means the sum of the gross horizontal areas of the several floors of all buildings on a zoning lot, measured from the exterior faces of exterior walls, or from the centre line of partitions, except:

(a) with respect to residential development:

(i) any accessory structure;

(ii) any basement, and

(iii) any part of the dwelling unit that is not habitable throughout the year, including porches and sun rooms;

(b) with respect to non-residential development:

(i) any space within the building used as a parking area or a loading area;

**Impact fee** means a fee applicable to a development which is imposed pursuant to clause 3(1)(b);

**Industrial Uses** means a development that falls within the following use categories, depending on the applicable zoning by-law:

(a) under the Winnipeg Zoning By-law:

(i) Industrial Service;

(ii) Manufacturing and Production;

(iii) Warehouse and Freight Movement; and

(iv) Waste and Salvage, and

(b) under the Downtown Winnipeg Zoning By-law:

(i) Light Industrial;

**Mixed use development** means a development which contains more than one fee category;

**Office Uses** means a development that falls within the following use categories, depending on the applicable zoning by-law:

(a) under the Winnipeg Zoning By-law:

(i) Office, and

(b) under the Downtown Winnipeg Zoning By-law:

(i) Office;

**Principal building** has the same meaning as in the Neighbourhood Liveability By-law;

**Public and Institutional Uses** means a development that falls within the following use categories, depending on the applicable zoning by-law:

(a) under the Winnipeg Zoning By-law:

(i) Community Facilities;

(ii) Education;

(iii) Park and Park-Related;

(iv) Other Public and Institutional;

(v) Cultural Facilities;

(vi) Transit and Transportation; and

(vii) Utility, and

(b) under the Downtown Winnipeg Zoning By-law:

(i) Public and Institutional;

(ii) Cultural and Entertainment – Cultural Centre, Gallery, and Museum only;

(iii) Park and Park-related; and

(iv) Transportation, Utility, & Communications;

**Renovation**, with respect to residential development, has the same meaning as in the Winnipeg Building By-law;

**Replacement**, with respect to a building, means the demolition or removal of a building and the construction of another building on the same zoning lot within 5 years following the demolition or removal;

**Residential development** means the development of dwelling units;

**Zoning lot** has the same meaning as “lot, zoning” in the Winnipeg Zoning By-law;

**Fee imposed**

**3(1)** Every person who is issued a building permit or a development permit must pay to the City

(a) the applicable fee or fees set out in the Planning, Development and Building Fees By-law; and

(b) an Impact Fee in accordance with this By-law.

**3(2)** The Impact Fee must be paid prior to the issuance of any building permit or development permit for the development in respect of which the Impact Fee applies.

**3(3)** For greater certainty, where both a building permit and a development permit are issued in respect of a development, only one Impact Fee is payable under clause 3(1)(b).

**3(4)** Where the Impact Fee in respect of a development:

(a) has been paid;

(b) has not been refunded by the City; and

(c) the development authorized by the building permit or development permit applicable to that development has not been completed,

the Impact Fee paid shall be credited towards any subsequent Impact Fee payable under this By-law in respect of a building permit or development permit issued for the land on which the original development was located within 5 years of the date the initial Impact Fee was paid.

**Impact Fee calculation**

**4(1)** Subject to subsection (3), the Impact Fee payable in respect of a development is the product of the total floor area that is being constructed or converted multiplied by the fee per square metre established by Council for the fee category applicable to the development.

**4(2)** For the purposes of subsection (1), the following fee categories are hereby established:

(a) Residential Uses;

(b) Office Uses;

(c) Commercial and Retail Uses;

(d) Public and Institutional Uses; and

(e) Industrial Uses.

**4(3)** Subject to subsection 6(1), where all or part of an existing building is being converted, expanded or replaced, the amount of the Impact Fee payable is the difference between the amount of the Impact Fee applicable to the converted, expanded or replacement building less the amount of the Impact Fee that would have been payable for the existing building prior to its conversion, expansion or replacement if the

Impact Fee determined in accordance with current rates were applicable to it. Where the difference is $0.00 or less, no Impact Fee is payable and no refund shall be issued.

**Mixed use development**

**5(1)** The Impact Fee payable in respect of mixed use development shall be calculated separately for the floor area of the development that falls within each fee category in accordance with subsection 4(1).

**5(2)** For the purposes of subsection (1), common areas within mixed use development shall be attributed proportionately to each fee category based on the proportion of the floor area of the entire development that falls within each fee category.

**Exemptions**

**6(1)** Notwithstanding subsection 4(1), no Impact Fee is payable in respect of residential development on land where

(a) one or more existing dwelling units are being renovated, expanded or, replaced; and

(b) there is no increase in the total number of dwelling units on that land.

**6(2)** Notwithstanding subsection 4(1), no Impact Fee is payable in respect of dwelling units which the following organizations have entered into a written agreement with the City, under such terms and conditions deemed necessary by the Director of Legal Services and City Solicitor to protect the interests of the City, to provide as affordable housing for a period of no less than 10 years:

(a) Winnipeg Housing Rehabilitation Corporation;

(b) The Manitoba Housing and Renewal Corporation;

(c) The Government of Canada or the Province of Manitoba; or

(d) any organization that has been approved to receive funding from the Government of Canada or the Province of Manitoba under an affordable housing program, as determined by that government.

**Withdrawals of and changes to permits**

**7(1)** Where an Impact Fee has been paid and the building permit or development permit to which the Impact Fee is applicable is voluntarily withdrawn prior to its expiration pursuant to the Winnipeg Building By-law, the person who paid the Impact Fee is entitled to a refund of the entire Impact Fee paid, less an administration fee established by Council.

**7(2)** Where, after being issued, a building permit or development permit is amended in a way that results in an increase in floor area or a change in the fee category applicable to all or part of the development, the person to whom the building permit or development permit has been issued must pay an additional Impact Fee which reflects the increase of floor area or change in fee category, as the case may be. The additional Impact Fee is the difference between the Impact Fee payable in respect of the development authorized by the amended permit less the Impact Fee that either was paid or would have been payable in respect of the development authorized by the original permit. Where the difference is $0.00 or less, no Impact Fee is payable and no refund shall be issued. The additional Impact Fee, if any, must be paid prior to the issuance of the amended building permit or development permit.

**Powers of designated employees**

**8** Designated employees have authority to conduct inspections and take steps to administer and enforce this By-law or remedy a contravention of this By-law in accordance with the Charter and, for those purposes, have the powers of a designated employee under the Charter.

**Director review**

**9(1)** Upon payment of a refundable application fee established by Council, a person may apply to the Director for a review of the application or interpretation of this By-law by a designated employee.

**9(2)** An application under subsection (1) must be submitted within 14 days following the date the Impact Fee in respect of a development is paid.

**9(3)** The requirement in subsection 3(1) to pay the Impact Fee as determined by a designated employee prior to a building permit or development permit being issued is not suspended because an application for a review has been made.

**9(4)** In conducting a review, the Director must give the applicant an opportunity to explain the basis for his or her conclusion that this By-law was misapplied or misinterpreted. This may be done in person, by telephone, in writing or by any other any media determined by the Director to be appropriate.

**9(5)** Where an application is made under subsection (1), the Director must make a decision with respect to the application within 90 days following the date the application is received and must notify the applicant of his or her decision in accordance with the Charter.

**9(6)** Where, after conducting his or her review, the Director determines that the designated employee erred in the application or interpretation of this By-law, resulting in an incorrect Impact Fee being paid or applied, the Director may refund all or part of the application fee and may also refund the Impact Fee paid in respect of a development in order to correct the error.

**Appeals**

**10(1)** An appeal

(a) from a decision of the Director in respect of issuing, granting, suspending or cancelling, or refusing to issue or grant, a licence, permit, approval or consent under this By-law; or

(b) any other matter for which an appeal is authorized by *The City of Winnipeg Charter*

may be made to the Executive Policy Committee.

**10(2)** An appeal must not be accepted until an appeal fee in an amount established by Council is paid. The appeal fee may be refunded by the Executive Policy Committee if the committee considers that the appeal has been made in good faith and has merit.

**10(3)** The requirement in subsection 3(1) to pay the Impact Fee as determined by a designated employee prior to a building permit or development permit being issued is not suspended because an appeal has been made.

**Development without paying fee an offence**

**11** The owner of land must not permit development in respect of which an Impact Fee is payable to occur on the land prior to the Impact Fee being paid.

**Penalties for non-compliance**

**12(1)** Any person who contravenes any section of this By-law is guilty of an offence and liable upon conviction to a fine in the amount of:

(a) not less than double the amount of the applicable Impact Fee for a contravention of subsection 3(1) or section 11; and

(b) not less than $5,000.00 for any other contravention.

**12(2)** Where development in respect of which an Impact Fee is payable occurs prior to the Impact Fee being paid, the owner of the land on which development has taken place must pay to the City:

(a) the Impact Fee; and

(b) a monetary penalty, that is in addition to a fine under subsection (1), for the contravention of this by-law in an amount equal to the Impact Fee.

**Transition**

**13(1)** The Impact Fee applies only to those areas identified on Map 1, and further depicted in detail on Maps 2 to 10, inclusive, all attached as Schedule “A”.

**13(2)** Notwithstanding subsection 3(1), no Impact Fee is payable at the time a building permit or development permit is issued if

(a) an application for the building permit or development permit is made prior to May 1, 2017;

(b) the building permit or development permit is issued within 6 months following the date of the application, or such later date as determined by the Director to be reasonable in the circumstances; and

(c) the construction of the development begins, or the conversion of the development takes place, prior to November 1, 2017.

**13(3)** Notwithstanding that a development meets the criteria set out in clauses (2)(a) and (b), a building permit or development permit that has been issued in respect of the development expires when a designated employee determines and provides notice to the permit holder that the development does not meet the requirement set out in clause (2)(c). A new permit in respect of that development is required and is subject to payment of the Impact Fee.

**DONE AND PASSED**, this day of , 2016.

_____

Mayor

_____

City Clerk

Approved as to content:

_____

Director of Planning, Property and Development

Approved as to form:

_____

For Director of Legal Services/City Solicitor

## SCHEDULE “A”