

City of Kingston By-Law Number 2025–XX

***A By-Law to Provide for Site Plan Control in the City of
Kingston***

1st Reading date

2nd Reading date

3rd Reading date

Passed date

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Site Plan Control By-Law

1.0	Interpretation	3
2.0	Administration.....	9
3.0	Development Subject to Site Plan Control.....	10
4.0	Exemptions.....	10
5.0	Approval of Plans and Drawings.....	12
6.0	Site Plan Control Agreements.....	13
7.0	Performance and Maintenance Securities	14
8.0	Acceptable Forms of Securities	15
9.0	Security for Multi-Phase Developments.....	15
10.0	Draws on Financial Security to Remedy Defaults.....	16
11.0	Enforcement	16
12.0	General.....	17

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A By-Law to Provide for Site Plan Control in the City of Kingston

Passed: Date

WHEREAS:

Subsection 41(2) of the *Planning Act* provides that where an area is described in the municipality's **Official Plan** as a site plan control area, council may, by by-law, designate such area as a site plan control area; and

The **Official Plan** for the City of Kingston describes the whole of the City of Kingston as an area subject to site plan control; and

The City deems it desirable to designate all of the lands within the municipal boundaries of the City of Kingston as a site plan control area;

THEREFORE, Council enacts:

1.0 Interpretation

1.1 This by-law may be cited as the "**Site Plan Control By-Law**".

1.2 In this by-law:

"**adjacent lands**" means those lands contiguous to a specific **natural heritage feature or area** where it is likely that **development** or site alteration would have a negative impact on the feature or area. The extent of the **adjacent lands** may be recommended by the Province of Ontario or determined by the City based on approaches that achieve the same objectives.

"**agricultural use**" means the use of any **lot** or **building** for the growing of crops, including nursery, biomass, and horticultural crops; raising of livestock; raising of other animals for food, fur or fibre, including poultry and fish; aquaculture; apiaries; agro-forestry; maple syrup production; and riding stables, including, livestock facilities, manure storages, value-retaining facilities; or other agricultural activities such as the packaging, selling, sorting or storage of goods grown or raised on the lands.

"**agriculture-related use**" means the use of any **lot** or **building** for farm-related commercial and/or farm-related industrial uses that are directly related to

agricultural uses in the area, support **agricultural uses**, benefit from being in close proximity to **agricultural uses** and provide direct products and/or services to **agricultural uses** as a primary activity. Examples of **agriculture-related uses** may include:

- (a) storage and distribution centres serving farm operations in the area;
- (b) farmers markets primarily selling locally grown products;
- (c) processing of produce grown in the area (for example, cider making, or the canning, quick-freezing and packing of food);
- (d) grain dryers;
- (e) agricultural research centres;
- (f) wineries using locally grown grapes;
- (g) abattoirs for processing and selling meat from animals raised in the area;
- (h) flour mills for locally grown grain;
- (i) farm equipment repair stores;
- (j) livestock assembly yards or stock yards;
- (k) agricultural auction grounds; and
- (l) farm supplier store (for example, feed, seeds or fertilizer).

“**agri-tourism**” means the use of any **lot** or **building** which is complementary to a principal **agricultural use** on a **lot** and which provides education and active activities to experience and enjoy the agricultural way of life in the rural area. Such activities may include farm machinery and equipment exhibitions, farm-tours, petting zoos, corn mazes, hayrides, sleigh rides, processing demonstrations, pick your own produce/products, farm-themed playgrounds, educational facilities that focus on farming instruction or other similar activities. **Agri-tourism** may include accessory retail sales but excludes restaurants and all other uses that are considered under the broader **on-farm diversified use** definition.

“**building**” means anything that is comprised of components joined together and that stands more or less permanently in one place. A **building** includes all components such as walls, roof, floors, structural systems, columns, plumbing, fixtures, service systems, private sewage systems, decks, porches, canopies, architectural features, chimneys, mechanical systems and any component that is attached to a **building**. The following are considered to be **buildings**:

- (a) a shipping container, sea can or similar storage container when placed on the ground for any purpose other than loading and unloading a shipment in

conjunction with an industrial or commercial use for up to maximum of 28 consecutive calendar days.

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

“**co-living unit**” means the use of a **building** intended for residential accommodation where private bedrooms and/or living spaces share the use of one common kitchen and may share common washroom facilities or living spaces. For the purposes of this by-law, every 4 bedrooms within a **co-living unit** is considered to be one **residential unit**.

“**commercial parking lot**” means the principal use of any **lot** or **building** for the parking of motor vehicles, with or without a fee being charged. A **commercial parking lot** includes drive aisles, parking spaces and components necessary to support the use, and excludes any area where motor vehicles for sale or repair are kept or stored.

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

“**day care centre**” means the use of any **lot** or **building** licensed pursuant to the *Child Care and Early Years Act, 2014*, S.O. 2014, c.11, Sched. 1, for the purpose of providing temporary care for or supervision of children for a child’s safety, well-being or development, in the absence of the child’s parent or guardian and for a continuous period that does not exceed 24 hours. A **day care centre** may also include care offered or supplied on a regular schedule to adults for a portion of a day, but which does not provide overnight accommodation.

“**development**” means:

- (a) the construction, erection or placing of one more **buildings** or structures on land;
- (b) the making of an addition or alteration to a **building** or structure that has the effect of substantially increasing the size or usability thereof;
- (c) the laying out and establishment of a **commercial parking lot**;
- (d) the laying out and establishment of sites for the location of three or more trailers as defined in subsection 164(4) of the *Municipal Act, 2001*, or of sites for the location of three or more mobile homes as defined in subsection 46(1) of the *Planning Act*; or

- (e) the construction, erection or location of three or more **land lease community homes** on a **lot** that will contain any number of **residential units**.

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

“**dwelling unit**” means the use of a **building**, comprised of one or more habitable rooms designed to provide at least one washroom and kitchen for residential accommodation. This definition may include a short-term rental as defined in the Short-Term Rental Licensing By-Law where it is comprised of one or more habitable rooms designed to provide at least one washroom and kitchen for residential accommodation. This definition excludes bunkhouses, recreational vehicles, travel trailers, tent trailers or motor homes.

“**Environmental Protection Area**” means an area of natural and scientific interest, fish habitat or significant wildlife habitat areas, provincially significant wetlands, significant coastal wetlands and locally significant wetlands, rivers, streams and small inland lake systems and the Snake and Salmon Islands, located in Lake Ontario, all of which are shown in the **Official Plan**.

“**finished grade**” means the average elevation of the ground surface at the base of the main wall, measured at the four most distant points representing the outermost corners of the **building**.

When used in reference to a round **building** or another **building** that does not have corners, means the average elevation of the ground surface at the base of the **building**, measured around the perimeter.

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

- (a) Areas of enclosed malls used as a common area between stores;
- (b) Areas used for mechanical equipment, electrical equipment or similar service areas such as garbage or recycling rooms;

- (c) Areas used for stairways and elevator shafts;
- (d) Areas used as storage lockers;
- (e) Areas used for loading spaces, bike spaces and parking spaces;
- (f) Any floor area with a floor to ceiling height of less than 1.8 metres;
- (g) Area in an attic having headroom of 2.1 metres or less for at least half the attic floor area, unless otherwise specified; and
- (h) Balconies, porches, decks and mezzanines.

“**group home**” means the use of a **lot** or **building** to provide supervised living accommodation as per the requirements of its residents, licensed and/or funded by the Province of Ontario or the Government of Canada, generally limited to 10 persons or fewer, exclusive of staff, living together as a single housekeeping unit, but does not include a special needs facility, as defined in By-Law Number 2022-62.

“**land lease community home**” has the meaning as set out in the *Planning Act*.

“**lot**” means a single parcel, tract of land or parcel of tied land, in each case that may be conveyed in compliance with the provisions of the *Planning Act* or the *Condominium Act, 1998*, S.O. 1998, c. 19, excluding a unit, as that term is defined in the *Condominium Act, 1998*. Where a lot is divided in a stratified manner to allow for separate ownership of different levels of a building, it is still considered to be one lot for the purpose of this By-law, with the lot lines that exist at the level of the ground being the applicable boundaries for zoning interpretation purposes.

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

“**natural heritage features or areas**” means features and areas, including significant wetlands, significant coastal wetlands, other coastal wetlands, fish habitat, waters supporting aquatic species at risk, significant woodlands, significant valleylands, habitat of endangered species and threatened species, significant wildlife habitat, and significant areas of natural and scientific interest, which are important for their environmental and social values as a legacy of the natural landscapes of an area.

“**Official Plan**” means the Official Plan for the City of Kingston.

“**on-farm diversified uses**” means the use of any **lot** or **building** which is complementary to the principal **agricultural use** on a **lot**. **On-farm diversified uses** may include but are not limited to **agri-tourism** or other similar uses that produce value-added agricultural products. Examples of **on-farm diversified uses** may include, but are not limited to:

- (a) value-added uses that use feedstock from outside the surrounding agricultural area (for example, processor, packager, winery, cheese factory, bakery, abattoir);
- (b) office, creativity centre, personal service shop, day care centre that exceed home occupation permissions;
- (c) sawmill, welding or woodworking shop, manufacturing/fabrication, equipment repair that exceed home occupation permissions;
- (d) retail store; and
- (e) restaurant, tasting room or cooking classes.

“**on-site improvements**” means paving (base and top course asphalt, excluding granular materials); final site grading; hard and soft landscaping; walkways; retaining walls; fencing (screening and acoustic); lighting; signage; stormwater treatment units; and any above ground stormwater works such as a pond, if required on-site. **On-site improvements** do not include **buildings**, structures and underground storm, sanitary and water services.

“**owner**” means the **person** appearing as the registered owner of the land according to the records of the Land Registry Office and includes a purchaser under a valid Agreement of Purchase and Sale, and the authorized agent of any such purchaser or owner of land.

“**person**” means any individual, association, proprietorship, partnership, company, firm, corporation, business, authorized agent, trustee and heirs, executors or other legal representatives.

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

“**Provincial Offences Act**” means the *Provincial Offences Act*, R.S.O. 1990, c. P.33.

“**provincial offences officer**” has the meaning as set out in the *Provincial Offences Act*.

“**qualified person**” means an individual with a combination of education and experience in the field of study to conduct a study and/or provide subject matter expertise and opinion that has been required by the **City**. The qualifications and credentials of the **qualified person** may include certifications or designations registered in Ontario such as Landscape Architect (OALA), Architect (OAA), Certified Engineering Technologist (C.E.T.), Professional Engineer (P.Eng.), or Professional Geoscientist (P.Geo.) depending on the subject matter of the work and must be to the satisfaction of the **City**, or where appropriate, as defined by Provincial legislation, regulations and standards.

“**residential unit**” has the meaning as set out in the *Planning Act*.

“**site plan control agreement**” means an agreement between the **owner** and the **City** pursuant to subsection 41(7)(c) of the *Planning Act*.

1.3 For the purposes of interpreting this by-law:

- (a) a reference to any legislation, regulation, by-law, or plan, or to a provision thereof, includes a reference to any legislation, regulation, by-law, or plan enacted, made or passed in substitution thereof or amendment thereof;
- (b) any reference to legislation includes all of the regulations made thereunder; and
- (c) “include”, “includes” and “including” indicate that the subsequent list is not exhaustive.

1.4 This by-law is not to be interpreted as exempting any **person** from the requirement to comply with any other **City** by-law or federal or provincial legislation. In the event of a conflict between the provisions of this by-law and any other **City** by-law, the provision that is the most restrictive will apply.

2.0 Administration

2.1 The **Director** is responsible for the administration of this by-law.

- 2.2 Where this by-law provides that the **Director** may do an act, the **Director** may, when doing the act, seek and consider information or documents from any **person**, and may consult with other **City** employees, legal counsel, or other advisors, all as the **Director** considers necessary.
- 2.3 Where this by-law provides that the **Director** may do an act, it may be done by a **person** authorized by the **Director** to do the act.

3.0 Development Subject to Site Plan Control

- 3.1 All lands within the municipal boundaries of the City of Kingston are hereby designated as a site plan control area.

4.0 Exemptions

- 4.1 The following classes of **development** are exempt from site plan control and may be undertaken without the approval of plans and drawings otherwise required under section 41 of the **Planning Act**:

- (a) the construction, erection or placing of a **building** or structure for residential purposes on a **lot** if that **lot** will contain no more than 10 **residential units**, unless:
 - (i) site plan control has been applied as a condition of another **Planning Act** approval for a **lot** that will contain between 5 and 10 **residential units** and which includes any lands in an area prescribed by regulation pursuant to subsection 41(1.2) of the **Planning Act**; or
 - (ii) the **lot** includes the construction, erection or placing of a **land lease community home** that will contain any number of **residential units**;
- (b) **group homes**;
- (c) any **building** or structure accessory to the uses described in clauses (a) and (b) of this by-law;
- (d) new non-residential **development** which contains less than 300 square metres of **gross floor area**, at the sole discretion of the Director, where:

- (i) the **lot** is not located within an **Environmental Protection Area** or **adjacent lands**;
 - (ii) the **development** does not have the effect of altering the grading or drainage of the **lot**; and
 - (iii) the **development** does not adversely affect a **natural heritage feature** or **adjacent lands**;
- (e) minor modifications or additions to existing **development**, or any **building** or **structure** accessory to existing **development**, at the sole discretion of the **Director**, where:
- (i) the **lot** is not located within an **Environmental Protection Area** or **adjacent lands**; and
 - (ii) the minor modification or addition does not have the effect of:
 - a. substantially increasing the size or useability of any **building** or structure;
 - b. altering the grading or drainage; or
 - c. adversely affecting a **natural heritage feature** or **adjacent lands**;
- (f) interior **building** alterations which do not involve a change of use as defined in the *Building Code Act, 1992*, S.O. 1992, c. 23 or which, at the sole discretion of the **Director**, do not impact the grading, drainage, parking or access on the **lot**;
- (g) a temporary **building** or structure that is designed, constructed and placed on a **lot** in a manner which permits its removal after a period of time not to exceed 120 consecutive days, as determined in the sole discretion of the **Director**;
- (h) any sheds, scaffolds or other structures incidental to a permitted **building** construction for so long as the same is necessary for work in progress which has neither been finished nor abandoned;

- (i) any outdoor patio which is accessory to an industrial or institutional use and is not associated with commercial use;
- (j) any outdoor patio located on **City** property which has been expressly permitted in writing by the **City**;
- (k) **agricultural uses**;
- (l) **on-farm diversified uses, agri-tourism uses and agriculture-related uses**, at the sole discretion of the **Director**, except where site plan control approval is required as a condition of provisional consent, a condition of a minor variance decision or included as a condition of removal of a holding overlay;
- (m) **day care centres**; or
- (n) a portable classroom on a school site of a district school board if the school site was in existence on January 1, 2007.

5.0 Approval of Plans and Drawings

5.1 Subject to section 4.0 of this by-law, no **person** will undertake any **development**, and no building permit may be issued for any **development**, on lands located within the **City**'s site plan control area, unless the **City** has approved in writing, plans and drawings for the following:

- (a) plans showing the location of all **buildings** and structures to be erected and the location of all facilities and works to be provided in conjunction therewith and of all facilities and works required under clause 41(7)(a) of the **Planning Act**, including facilities designed to have regard for accessibility for person with disabilities; and
- (b) drawings showing plan, elevation and cross-section views for each **building** to be erected, except a **building** to be used for residential purposes containing less than 25 **dwelling units**, for which drawings are sufficient to display:
 - (i) the massing and conceptual design of the proposed **building**;

- (ii) the relationship of the proposed **building** to adjacent **buildings**, streets, and exterior areas to which members of the public have access;
- (iii) the provision of interior walkways, stairs, elevators and escalators to which members of the public have access from street, open spaces and interior walkways in adjacent **buildings**;
- (iv) matters relating to **building** construction required under a by-law referred to in section 97.1 of the ***Municipal Act, 2001***;
- (v) the sustainable design elements on any adjoining road under the **City's** jurisdiction, including trees, shrubs, hedges, plantings or other ground cover, permeable paving materials, street furniture, curb ramps, waste and recycling containers and bicycle parking facilities; and
- (vi) facilities designed to have regard for accessibility for persons with disabilities.

5.2 Plans and drawings submitted pursuant to this by-law must:

- (a) bear a drawing number, date or date of revision; and
- (b) be submitted in a manner and to a scale that shows with clarity and accuracy all **buildings**, structures, facilities and works described in clauses 6.1 (a) and (b) of this by-law.

5.3 The **City** may require the applicant to submit additional studies, plans and calculations completed by a **qualified person** that validate the location, dimensions and nature of the **buildings**, structures, facilities and works proposed in the plans and drawings.

5.4 The cost of any required studies, plans and calculations, including additional studies, plans and calculations, will be the sole responsibility of the **owner**.

6.0 Site Plan Control Agreements

6.1 Subject to section 4.0, an **owner** who undertakes **development** in the **City's** site plan control area may, as determined by the **Director**, be required to enter into one or more **site plan control agreements** with the **City** dealing

with, and ensuring the provision of, any or all of the facilities, works or matters set out in subsection 41(7) of the **Planning Act** and the maintenance thereof or with the provision and approval of plans and drawings referred to in section 5.0 of this by-law.

- 6.2 At the **owner's** sole expense, any agreement or amendment thereto entered into under this by-law will be registered by the **City** against the land to which it applies. The **City** is entitled to enforce the agreement against the **owner** and all subsequent **owners** of the land.

7.0 Performance and Maintenance Securities

- 7.1 Where the **owner** is required to enter into a **site plan control agreement**, and the **site plan control agreement** requires the submission of a financial security in order to guarantee compliance with the provisions of the **site plan control agreement**, including satisfactory completion and/or maintenance of the facilities and works required by the **site plan control agreement** and the approved plans and drawings listed therein, the **owner** must file with the **City**, financial securities in an amount as determined by the **City** in accordance with this by-law.
- 7.2 The **owner** must submit to the **City** for written approval a cost estimate prepared by a **qualified person** for the approved facilities and works. The cost estimate approved by the **City** must be appended to the **site plan control agreement**.
- 7.3 The amount of the security will be determined by the **City** based on the cost estimate submitted pursuant to subsection 7.2 of this by-law. The amount of security required will be calculated as follows:
- (a) the amount of security will equal 50% of the estimated cost of the **on-site improvements** to a maximum amount of \$250,000; and
 - (b) for all facilities and works on **City-owned** property, the amount of security will equal 100% of the cost of the approved facilities and works.
- 7.4 If lands subject to a **site plan control agreement** are transferred, the **City** will not return any securities required pursuant to this by-law until the new **owner** provides substitute securities in the required amounts to the satisfaction of the **City**.

7.5 In accordance with the provisions of the **site plan control agreement**, the **City** may conduct site inspections to confirm the satisfactory completion of facilities and works in accordance with the approved site plans and drawings.

8.0 Acceptable Forms of Securities

8.1 Any security required in accordance with this by-law must be submitted to the **City** prior to the execution of the **site plan control agreement**.

8.2 Any security must be provided to the **City** in the form of cash, certified cheque, surety bond or an irrevocable letter of credit in the amount as determined by the **City** and in a form satisfactory to the **City**. Without limiting the generality of the foregoing, all letters of credit must be issued by a Schedule 1 Canadian Chartered Bank. Any security will be held and released by the **City** in accordance with the **site plan control agreement**, without interest.

9.0 Security for Multi-Phase Developments

9.1 Where a multi-phase **development** is proposed, the **City**, in its sole discretion, may permit a security to be submitted for the initial phase of the **development**. The security may be applied to subsequent phases of the **development** provided that:

- (a) all phases of the **development** are being undertaken by the same **owner** and are located on contiguous lands;
- (b) the proposed phasing is reflected on the approved plans and drawings and in the approved cost estimate;
- (c) if a letter of credit is provided as security, the letter of credit applies to all phases of the **development**;
- (d) the amount of the security is calculated based on the estimated cost of the most expensive phase of **development**; and
- (e) **development** of the phase to which the security applies must be substantially complete to the satisfaction of the **City** before the security may be applied to any subsequent phase.

10.0 Draws on Financial Security to Remedy Defaults

- 10.1 Where the **owner** has entered into a **site plan control agreement** in accordance with the provisions of this by-law and has received notice from the **City** of a default with respect to any of the obligations, terms, covenants or provisions of the **site plan control agreement** or the approved plans and drawings therein, then the **City** may enter upon the **owner's** lands to complete any outstanding works to remedy the default at the **owner's** sole expense.
- 10.2 The **City**, at its sole discretion, may recover any costs incurred, including interest and administration costs, to provide, maintain or complete any works by drawing down on the financial security provided pursuant to the **site plan control agreement** and this by-law. If there is no security, or if the amount of security held by the **City** is not sufficient to cover the costs incurred by the **City**, then without limiting the **City's** remedies, the **City** may recover any costs incurred by adding the costs to the tax roll of the **owner's** lands and collecting them in the same manner as property taxes.
- 10.3 Where the **City** exercises its discretion to draw on the financial securities to remedy any default related to a **site plan control agreement** or the approved plans and drawings, the **owner** will be charged an administration fee equal to 20% of the costs to remedy said default. Where deemed appropriate by the **Director** in their sole discretion, the administration fee may be waived.

11.0 Enforcement

- 11.1 This by-law may be enforced by a **provincial offences officer**, or other authorized employees or agents of the **City**.
- 11.2 No **person** will obstruct or hinder, or attempt to obstruct or hinder, a **provincial offences officer** or other authorized employees or agents of the **City** in the exercise of a power or the performance of a duty under this by-law.
- 11.3 Every **person** who contravenes any provision of this by-law is guilty of an offence as provided for in the **Provincial Offences Act**.
- 11.4 Every officer or director of a corporation who permits a contravention of any provision of this by-law is guilty of an offence as provided for in the **Provincial Offences Act**.

- 11.5 Every **person**, officer or director who contravenes any provision of this by-law is liable for a fine as provided for in the ***Provincial Offences Act*** upon conviction.
- 11.6 When a **person** has been convicted of an offence under this by-law, the Ontario Court of Justice or any court of competent jurisdiction may, in addition to any other penalty imposed on the **person** convicted, make an order:
- (a) prohibiting the continuation or repetition of the offence by the **person** convicted; and
 - (b) requiring the **person** convicted to correct the contravention in the manner and within the period that the Ontario Court of Justice considers appropriate.

12.0 General

- 12.1 If a court of competent jurisdiction declares any provision, or any part of a provision, of this by-law to be invalid, or to be of no force and effect, it is the intention of **Council** in enacting this by-law that each and every one of the then remaining provisions hereof shall remain in full force and effect.
- 12.2 By-Law Number 2010-217, "A By-Law to Designate the Whole of the City of Kingston as a Site Plan Control Area, Pursuant to Section 41 of the *Planning Act*, R.S.O. 1990, Chapter P.13, as amended, and to Adopt Certain Procedures for the Processing of Site Plan Control Applications, and to Exempt Certain Classes of Development from Approval of Plans and Drawings", is repealed in its entirety.
- 12.3 The **City** may provide Site Plan Control Guidelines intended to provide guidance on the site plan control process and design standards, but which do not form part of this by-law and may be amended from time to time.
- 12.4 This by-law will come into force and take effect on the date it is passed.

1st Reading date

2nd Reading date

3rd Reading date

Passed date

Janet Jaynes
City Clerk

Bryan Paterson
Mayor