

**CORPORATION OF THE CITY OF NEW WESTMINSTER
BYLAW NO. 8269, 2021**

A Bylaw to Establish the Sapperton District Energy System

The Council of The Corporation of the City of New Westminster in open meeting assembled ENACTS AS FOLLOWS:

1. This Bylaw may be cited for all purposes as “Sapperton District Energy System Bylaw No. 8269, 2021.”
2. Council hereby adopts Appendix A attached to this Bylaw as “Sapperton District Energy System Bylaw No. 8269, 2021.”
3. The schedules attached to this Bylaw form part of this Bylaw.
4. Each provision of this Bylaw is intended to be severable and if any provision is determined by a court of competent jurisdiction to be illegal or invalid or unenforceable for any reason whatsoever such provision shall be severed from this Bylaw and will not affect the legality, validity or enforceability of the remainder of or any other provision of this Bylaw.
5. This Bylaw will come into force and take effect on the date of its enactment.

GIVEN FIRST READING THIS _____ day of _____ 2021.

GIVEN SECOND READING THIS _____ day of _____ 2021.

GIVEN THIRD READING THIS _____ day of _____ 2021.

ADOPTED THIS _____ day of _____ 2021.

Mayor Jonathan X. Cote

Jacque Killawee, City Clerk

Appendix A to Bylaw No. 8269, 2021
Sapperton District Energy System Bylaw

CITY OF NEW WESTMINSTER



SAPPERTON DISTRICT ENERGY SYSTEM BY-LAW 8269, 2021.

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SECTION ONE: INTERPRETATION

1.1. Name of By-law

This By-law shall be known and cited for all purposes as “Sapperton District Energy System By-law No. XXXX”.

1.2. Definitions

In this By-law,

“building” means any structure used or intended for supporting or sheltering any use or occupancy either of a temporary or permanent nature;

“Building By-law” means the City of New Westminster’s “Building By-law No. 8125, 2019”, as amended from time to time;

“Building Inspector” means the Chief Building Official, Development Services Building Division, or his or her duly appointed representatives and assistants;

“building mechanical system” includes the internal space heat energy and domestic hot water distribution system for a building;

“charge” means a variable consumption fee based on the amount of heat energy measured in watt-hours used in, and recorded at the meter or estimated by the Collector under this By-law for, a designated property as shown in Schedule C;

“City” means City of New Westminster;

“Collector” means the individual appointed by Council to be the Collector of Taxes or a person duly authorized to carry out the powers and duties of the Collector of Taxes;

“cooling” means the energy transferred from the district energy system through the distribution system for the purpose of lowering the ambient air temperature in a designated property;

“Council” means the council of the City of New Westminster;

"delivery point" means the outlet of the heat exchanger at a designated property;

“designated building” means a building to which this By-law applies by virtue of section 2.1 or 2.2;

“designated property” means a parcel of real property on which a designated building is situated;

“distribution system extension” means that part of the distribution system that is situate on, over, under, or in a parcel of real property on which a designated building is situate or in a designated building;

“district energy system” means the district energy system referred to in section 3.1, and consists collectively of the community energy centre, distribution system and energy transfer station in each designated building, and all necessary appliances and equipment;

“energy transfer station” means equipment owned by the City and used to meter, for billing purposes, the amount of energy consumed in a designated building, and to transfer heat energy from the distribution system to the building mechanical system in a designated building, and includes pipes for the supply and return of hot water, valves, controls, meters, and separate heat exchangers for domestic hot water and space heating;

“entry points” mean two openings in an exterior wall of a designated building for the passage of the supply and return pipes connecting the distribution system extension and energy transfer station;

“floor area ratio” means the figure obtained when the area of all the floors of the buildings constructed or proposed to be constructed on a parcel is divided by the area of the parcel;

“full DES compatibility” means a building for which all space heating and domestic hot water needs are serviced by the district energy system;

“General Manager” means the General Manager of the Electric Utility or Utility Commission;

“heating” means the energy transferred for the purpose of raising the ambient air or domestic hot water temperature in a designated property;

“heat exchanger” means the equipment, including ventilation systems and electrical pumps, installed at a designated property transfer of energy from the district energy system to a designated property;

“levy” means a fixed capacity fee based on the design, and the estimated peak heat energy demand, approved or varied by the General Manager under this By-law for a designated building as shown in Schedule X;

“meter” means a thermal energy meter at an energy transfer station consisting of a water flow meter, temperature sensors, and associated electronics used to measure and record the heat energy supplied to the designated building which houses the energy transfer station;

“owner” means an owner of a parcel of real property including the registered owner of an estate in fee simple, the tenant for life under a registered life estate, the registered holder of the last registered agreement for sale, the holder or occupier of land held in the manner referred to in the definition of "Owner" in the Schedule to the *Community Charter*, S.B.C. 2003, c.26, and a strata corporation established or continued under the *Strata Property Act*, S.B.C. 1998, c.43.

“parcel” means any lot, block, or other area in which land is held or into which it is subdivided, but does not include a highway.

“peak heat energy demand” means the maximum amount of heat energy, measured in kilowatts, required for a designated building, after completion of the installation or alteration of the building mechanical system, at any one point in time in a calendar year;

“person or persons” means any individual, corporation, limited-liability company, partnership, firm, joint venture, association, trust, or other entity or organization, including a government authority;

“points of delivery” mean the valves on the building side of the heat exchangers at an energy transfer station;

“rates” means, collectively, the fixed monthly charges, capacity charges and volumetric charges specified in Schedule C for services, as amended from time to time;

“registered professional” means an architect or engineer registered in the Province of British Columbia, as a member in good standing in the Architectural Institute of British Columbia or the Association of Professional Engineers and Geoscientists of British Columbia;

“service” means the delivery by the City to a designated building of heat energy by way of the district energy system;

“Service Area” means the geographic location or area for which the service is or will be available from the City and is defined in Schedule A;

“service connection” means that portion of the district energy system that extends from the distribution system to the delivery point;

“service provider” means the company that the City has designated to operate the district energy system. If the City has not appointed a service provider, the City will be deemed to be the service provider.

1.3. Office and Authority of the General Manager, Utility Commission

1.3.1 The General Manger has sole authority to designate and determine the position of all distribution structures and the relative distance to other objects; and

1.3.2 The General Manger has sole authority to regulate all additions or alterations to the City’s district energy system and the points at which services may enter any building.

1.3.3 The General Manager may at all reasonable times enter on any property to ascertain whether the provisions of this Bylaw have been and are being complied with. A person employed from time to time by the City may be designated to act in the place of the General Manager for the purposes of this subsection.

1.3.4 No person shall interfere with or obstruct the entry to any property by the General Manager or the designate, while either person is performing the duties described in this by-law.

1.3.5 Where the General Manager is of the opinion that any work or equipment located on any premises is of immediate danger to any person or property, he may without notice to anyone, disconnect or cause to be disconnected such equipment from any source of energy, provided that he shall, upon doing so, give notice in writing to the owner of the premises upon which the electrical equipment is located, within a reasonable time thereafter.

1.3.6 No person shall make any attachment whatever to any district energy related infrastructure located on or in the City streets or elsewhere without the express written permission of the General Manager.

1.4. Application of and conflict with other By-laws

The requirements of this By-law are in addition to the requirements of the Building By-law and other City By-laws, except that in case of conflict between the Building By-law or other City By-laws and this By-law, this By-law will prevail.

1.5. Table of contents

The Table of contents and section headings of this By-law are for convenience of reference only and shall not affect the interpretation or enforcement of this By-law.

1.6. City Equipment and Facilities

1.6.1 All meters and other facilities furnished by the City shall be and remain the City's property and the right to remove, replace, or repair the same is expressly reserved.

1.6.2 It shall be unlawful for any persons to in any manner injure, mutilate, destroy, remove, disconnect or in any way interfere or tamper with any equipment belonging to or in any manner included in the district energy plant of the City or any other associated equipment related to the district energy distribution network.

1.6.3 Notwithstanding the provisions set out in any sub-clause, the General Manager may give special permission to any person to do work deemed necessary and proper in the circumstances.

SECTION TWO: APPLICATION OF THE BY-LAW

2.1. Compulsory use of district energy system

Each owner in the Service Area of:

- (a) a new Part 3 buildings (as defined by the BC Building Code) proposed for construction or under construction for which the Building By-law requires submission of a building permit and issuance of an occupancy permit to which the owner, as at the date of enactment of this By-law, is not yet entitled; or
- (b) an existing building where the estimated value of proposed alterations or alterations under construction which require submission under the Building By-law of a building permit application is more than the greater of \$100,000 or 100% of the building's latest assessed value according to the records of the British Columbia Assessment Authority; or
- (c) an existing building where the square footage is greater than 10,000 square feet;

must make use of the district energy system in accordance with the terms and conditions of this By-law.

2.2. Permissive use of district energy system

An owner of property located outside the Service Area but within the City may apply to the General Manager, to utilize the district energy system if:

- (d) the General Manager is of the opinion that the district energy system is capable of servicing the building that is the subject of the application;
- (e) the General Manager is of the opinion that servicing the building is necessary or desirable; and
- (f) the owner enters into an agreement with the City, in form and substance satisfactory to the General Manager, undertaking, among other matters, to wholly or partially, in the City's sole discretion, fund the capital cost of extending the district energy system to the owner's property in an amount and at a time determined by the General Manager,

the General Manager may approve the application, in which case the owner must utilize the district energy system in accordance with the terms and conditions of this By-law.

2.3. Exemption from compulsory use of district energy system

Despite sections 2.1 and 2.2, certain buildings may be exempt from the provisions of this By-law as identified in the partnering agreement entered into by the building owner and the City. Exemptions from the provisions of this By-law will be determined at the sole discretion of the General Manager.

SECTION THREE: ESTABLISHMENT OF THE DISTRICT ENERGY SYSTEM

3.1. Authorization for district energy system

Council hereby authorizes the design, construction, installation, operation, maintenance, repair, and management of a district energy utility system for the generation, storage, transmission, and distribution of energy for the heating and cooling of space and water at any designated property within the Service Area.

3.2. Ownership of district energy system

Ownership of the district energy system, including any expansion or extension of the district energy system, is to remain vested in the City or its successors and assigns, and is not to pass to any owner, or other person who has an interest in a designated property, and, despite any attachment or annexation to a designated property or other real property, the distribution system extension and energy transfer station are not to become part of a designated property or other real property.

3.3. Role of the Collector and General Manager

For the purposes of this By-law, the Collector shall have charge of the levies, charges and fees and their collection and the General Manager shall have charge and control of all properties and works in connection with the district energy system and of all connected engineering and mechanical work.

3.4. Authority for policies and criteria

The Collector and the General Manager may establish or amend policies and criteria relating to the district energy system.

SECTION FOUR: BUILDING PERMIT REQUIREMENTS FOR BUILDING MECHANICAL SYSTEM

4.1. Application to designated buildings

All conditions of Section 4 apply to designated buildings.

4.2. Building permit application

A person who applies, under the Building By-law, for a permit to authorize the installation or alteration of a building mechanical system must include in, or submit with, the application:

- (a) an acknowledgment signed by the owner that the building is a designated building;
- (b) a certificate, signed by the registered professional who is responsible for design of the building mechanical system, estimating
 - i. peak heating load for space heating
 - ii. peak heating load for domestic hot water
 - iii. combined peak heating load for any uses other than space heating and domestic hot water
 - iv. average annual heating energy demand for space heating
 - v. average annual heating energy demand for domestic hot water
 - vi. annual average heating energy demand for any uses other than space heating and domestic hot water;
- (c) a cheque in the amount of the excess demand fee referred to in section 10.1;
- (d) the proposed location of the energy transfer station;
- (e) the proposed location of the distribution system extension;
- (f) the proposed location of the distribution system extension entry points;
- (g) the proposed schedule for installation or alteration of the building mechanical system;
- (h) the proposed commencement date for the delivery of heat energy by the City to the energy transfer station; and
- (i) such other information as the Building Inspector or General Manager, Utility Commission may require.

4.3. Submission of copy of application

The owner must submit a copy of the building permit application described in section 4.2 to the General Manager.

4.4. Approval of estimated maximum heating energy load

The estimated peak heating energy load submitted under section 4.2(b) is subject to approval by the General Manager.

4.5. Approval of locations

The proposed location of each of the:

- (a) energy transfer station, submitted under section 4.2(d);
- (b) distribution system extension, submitted under section 4.2(e); and
- (c) entry points, submitted under section 4.2(f),

is subject to approval by the Building Inspector and General Manager.

4.6. Approval of alternate locations

If:

- (a) the location which the owner proposes for the energy transfer station, distribution system extension, or entry points would be acceptable to the Building Inspector and General Manager except for increased costs the City would incur to install the energy transfer station or distribution system extension in that location; and
- (b) before issuance of the building permit, the owner:
 - i. pays the City the estimated increased costs calculated by the General Manager, and
 - ii. agrees to pay the City on demand any amount by which the actual increased costs calculated by the General Manager, exceed the estimated increased costs,

the Building Inspector and General Manager, may approve the alternate location.

4.7. Approval of schedule

The proposed schedule for installation or alteration of the building mechanical system is subject to approval by the General Manager.

4.8. Design of building mechanical system

The design of the building mechanical system is subject to approval by the Building Inspector and General Manager.

4.9. Approval of building permit

The building permit is subject to approval by the:

- (a) Building Inspector under the Building By-law; and
- (b) Building Inspector and General Manager under this By-law.

4.10. No work before permit issuance

A person must not begin to install or alter a building mechanical system until the Building Inspector has issued the building permit.

SECTION FIVE: DESIGN AND INSTALLATION OR ALTERATION OF BUILDING MECHANICAL SYSTEM

5.1. Site preparation

Owners of designated buildings will be responsible for all necessary site preparation including but not limited to clearing building materials, construction waste, equipment, and soil and gravel piles over the proposed service line route, to standards established by the service provider. The City may recover from owners any additional costs associated with delays or site visits necessitated by inadequate or substandard site preparation.

5.2. Integration with district energy system

The design and installation or alteration of the building mechanical system must integrate the building mechanical system and district energy system in a manner that enables the building mechanical system to derive the most benefit possible from the district energy system and the district energy system to operate at peak efficiency.

5.3. Prohibited components

A building mechanical system must utilize the district energy system for all the space heating and domestic hot water requirements for a designated building, and must not incorporate any heat production equipment including but not limited to boilers, furnaces, hot water heaters, heat pumps, or make-up air heaters, except that:

- (a) an owner who is constructing a new building or altering an existing building may incorporate, as part of the building mechanical system, equipment to acquire waste heat energy from the refrigeration or cooling system of the building or of another building in the vicinity, for the purpose of supplementing the heat energy provided by the district energy system;
- (b) a solar system to generate heat energy may be considered at the discretion of the General Manager; and
- (c) a person who is altering an existing building may retain components otherwise prohibited under this section 5.3 to the extent permitted by the Building Inspector under the Building By-law or by the Building Inspector and General Manager, under this By-law.

For further details, owners should consult *the Technical Design Guide for Compatibility with the Sapperton District Energy System*.

5.4. Technical and design requirements

The building mechanical system must comply with the following design and technical requirements:

- (a) the City's Technical Design Guide for Compatibility with District Energy, or as stipulated by the General Manager;

- (b) the Building By-law; and
- (c) the applicable edition of the BC Building Code; and
- (d) the design must not incorporate features that increase the difficulty of efficiently integrating the building mechanical system and energy utility system.

5.5. Installation of energy transfer station

The City will install the energy transfer equipment up to and including the isolation valves on the building side of the heat exchangers.

5.6. Scheduling

An owner must:

- (a) ensure that installation of the building mechanical system proceeds in accordance with the schedule approved under section 5.7, and any changes to the schedule approved under this section 5.6; and
- (b) advise the Building Inspector and General Manager within 24 hours of any proposed changes to the schedule for installation or alteration of the building mechanical system, which proposed changes are subject to approval by the Building Inspector and General Manager.

5.7. Approval of installation or alteration of work

Completion of the installation or alteration of a building mechanical system in a designated building or future designated building is subject to approval by General Manager under this By-law.

5.8. Adjustment of increased installation costs

Upon completion by the City, if installation of the energy transfer station and distribution system extension or either of them in an alternate location under section 4.6:

- (a) after notice from the General Manager of the amount by which the actual increased costs calculated by the General Manager, Utility Commission exceed the estimate, the owner referred to in section 4.6 must pay the City the difference; or
- (b) the City must pay the owner the amount by which such actual increased costs are less than the estimate.

5.9. No occupancy permit

An owner is not entitled to issuance of an occupancy permit under the Building By-law for a designated building until the General Manager has given approval under section 5.7, and, where applicable, the owner has paid the City any shortfall under section 5.6(a).

SECTION SIX: ENTRY ONTO AND ACCESS TO REAL PROPERTY

6.1. Entry with respect to district energy system

The General Manager and other authorized employees, contractors or agents of the City, may enter onto real property at any reasonable time for the purpose of installation, maintenance, repair, or removal of a district energy system.

6.2. Entry with respect to building mechanical system

The General Manager and other authorized employees, contractors or agents of the City, may enter onto real property at any reasonable time to inspect the real property and appliances and equipment, including any building mechanical system, and to enforce this By-law.

6.3. Work on entry

Without limiting the generality of sections 6.1 and 6.2, the General Manager and other authorized employees, contractors or agents of the City, for the purposes of those sections, may conduct investigations, expose pipes, calibrate instruments, and read and test meters.

6.4. Access to designated property

The owner of a designated property that is to receive the service must sign and deliver to the City a Section 219 covenant and a statutory right of way to be registered against title to the designated property, in the format specified by the City, for the installation, operation and maintenance on the designated property of all necessary facilities for supplying the service to the designated property.

6.5. Access to intervening property

If one or more privately-owned intervening properties are located between the designated property and the district energy system, then the owner of the designated property will obtain, at the owner's sole cost, a registered easement and a statutory right of way in favour of the City, in a form specified by the City, for the installation, operation and maintenance on each intervening property of all necessary facilities for supplying the service to the designated property.

SECTION SEVEN: OPERATION OF DISTRICT ENERGY SYSTEM AND BUILDING MECHANICAL SYSTEMS

7.1. Operation of district energy system

The City will maintain, repair, and manage the district energy system including the energy transfer station in each designated building up to and including the points of delivery.

7.2. No obligation to provide service

Nothing in this By-law shall obligate the City to provide the service to any person when:

- (a) the cost of laying the piping and any other equipment necessary to service a building or development would be excessive and create an additional burden upon the revenues of the district energy system, unless the Owner shall pay to the City the cost of such works; or
- (b) the capacity of the district energy system is insufficient to provide the service.

7.3. No guarantee of service

The City does not guarantee service, or any particular level of service, to any designated building.

7.4. Tampering with district energy system

A person must not tamper, interfere with, damage, or destroy any part of the district energy system. All costs associated with repairing the damaged infrastructure will be attributed back to the perpetrator.

7.5. Operation of building mechanical system

An owner of a designated property must maintain and repair the building mechanical system to the points of delivery including:

- (a) keeping the building mechanical system free of foreign material so as to prevent fouling of the energy transfer station; and
- (b) treating water in the building mechanical system sufficiently to prevent corrosion of the heat exchangers at the energy transfer station, and in accordance with the minimum criteria set out in the City's *Technical Design Guide for Compatibility with the Sapperton District Energy System*.

7.6. Damage to district energy system components

An owner of a designated property must advise the City immediately of any damage to the energy transfer system or distribution system extension. Cost associated with any and all repairs will be born by the property owner.

7.7. No obstruction

An owner of a designated property must not construct any structure, which in the sole opinion of the General Manager, Utility Commission, obstructs access to a distribution system extension, energy transfer station, or any part of the district energy system above ground or underground.

7.8. Protection of equipment

An owner of a designated property must take reasonable care of and protect all equipment installed by the City on the owner's designated property.

7.9. No unauthorized changes

No equipment such as heat exchangers, meters or related equipment will be installed, connected, moved or disconnected except by the City's authorized employees, contractors or agents or by other persons acting with the City's written permission.

7.10. Removal of equipment

If the supply of services to an owner's designated property is discontinued or terminated for any reason then, the service provider may, but is not required to, remove the energy transfer station and related equipment from the owner's designated property.

7.11. Service calls

An owner of a designated property may apply to the General Manager to temporarily interrupt service to a designated building by closing the appropriate valves or by such other means as the General Manager, Utility Commission may find appropriate.

7.12. Changes to energy transfer station or distribution system extension

An owner of a designated property may apply to the General Manager to remove, relocate, or alter the energy transfer station or distribution system extension servicing a designated building.

7.13. Cost of changes to energy transfer station or distribution system extension

If the General Manager agrees to remove, relocate, or alter the energy transfer station or distribution system extension referred to in section 7.12:

- (a) the General Manager will give the owner an estimate of the cost;
- (b) the owner must pay the City the amount of the estimate before commencement of the work;
- (c) after completion of the work, the General Manager will notify the owner of the actual cost;
- (d) if the actual cost is more than the estimated cost, the owner must pay the City the shortfall within 30 days after demand by the City; and
- (e) if the actual cost is less than the estimated cost, the City must pay the owner the excess except that if the owner owes the City money under this By-law at that time, the City may apply the excess against such debt.

7.14. Removal of Service Connection

If the supply of services to an owner's designated property is discontinued or terminated for any reason then, the service provider may, but is not required to, remove the service connection from the owner's designated property.

SECTION 8: METERING

8.1. Meter test

When an owner of a designated property notifies the General Manager in writing that a past charge for service is excessive the General Manager will arrange to have the meter tested at the expense of the owner.

8.2. Payment of meter testing fee

Before the City conducts the test outlined in section 8.1, the owner of the designated property requesting the test must pay the fee set out in Schedule B.

8.3. Accuracy of meter

A meter will be considered to be accurate unless the meter testing result indicates that the percentage accuracy of the meter is outside the tolerable range as stipulated by Measurement Canada.

8.4. Meter found to be not accurate

If the test outlined in section 8.1 shows that the meter is not accurate, the meter testing fee will be refunded to the owner, the meter will be replaced or repaired by the City, and the excess charge for service will be refunded to the owner.

8.5. Meter found to be accurate

If the test outlined in section 8.1 shows that the meter is accurate, the meter testing fee will be retained by the City, no refunds or adjustments will be made in favour of the owner and the meter will not be replaced or repaired by the City.

SECTION NINE: APPLICATION REQUIREMENTS AND FEES

9.1. Application for services

An owner of a designated property must apply to the General Manager to commence service to a designated building at least 120 days before the earlier of:

- (a) the date the owner requires service; and
- (b) the date of issuance of any occupancy permit for occupancy of the building.

9.2. Required documents

An owner applying for services is required to sign an application form and an Energy Services Agreement provided by the service provider.

9.3. Fee for application

Each person who submits an application under this By-law must pay the applicable fee set out in Schedule B.

9.4. Returned cheques

If a person's cheque is returned to the City, that person must pay to the City on demand the amount set out in Schedule B.

9.5. Separate properties

If an owner is requesting services from the service provider at more than one designated property, then the owner will be considered a separate Customer for each designated property.

SECTION TEN: LEVIES AND CHARGES AND OTHER COSTS

10.1. Excess demand fee

Pursuant to section 4.2(c), a building owner must pay the City the excess demand fee set out in Schedule B.

10.2. Imposition of levy

From and after the earlier of the date the owner of a designated building requires service, as indicated in the application referred to in section 8.1, and the date of issuance of any occupancy permit for occupancy of the building, the owner must pay the City the levy set out in Schedule C.

10.3. Imposition of charge

From and after the date upon which service to a designated building begins, the owner of the designated property must pay the City the charge set out in Schedule C.

10.4. Billing for levy or charge

The Collector will send a bill for the amount of each levy or charge to each owner according to the frequency set out in Schedule C and the bill will include:

- (a) the date when payment of the amount of each levy or charge is due and payable;

- (b) the number of megawatt hours of heat energy supplied to the energy transfer station; and
- (c) the number of megawatt hours of heat energy returned from the energy transfer station.

10.5. Payment of levy or charge

The owner of a designated property must pay the City the amount of each levy or charge on or before the due date set out in each bill referred to in section 10.4.

10.6. Amount added for late payment

Council hereby imposes a penalty or loss of discount of an amount equal to 5% of any levy or charge that remains unpaid after the date it is due under this By-law.

10.7. Insertion in tax roll

The Collector may insert each levy or charge in the real-property tax roll of the designated property.

10.8. Adjustment for partial period

The Collector may pro rate the amount of a levy or charge for a partial billing period on a daily basis.

10.9. Non-registering meter

If a meter for a designated building fails to register accurately the consumption of heat energy, the Collector will estimate the consumption, and render a bill based on the average previous consumption adjusted to take into account seasonal variations, changes in occupancy, or other factors which, in the opinion of the Collector or the General Manager, may affect the consumption of heat energy in the designated building.

10.10. Variation in matters affecting levy

With respect to a designated building:

- (a) the owner must give the General Manager written notice at least 30 days in advance of any variation in use, occupancy, building alteration, or other matter that may affect the amount of the levy, and must include in the notice the date the owner anticipates such variation to take effect;
- (b) the owner may apply to the General Manager to vary the estimated peak heat energy demand;
or
- (c) the General Manager may notify the owner that the General Manager is varying the estimated peak heat energy demand,

and, if the General Manager is of the opinion that, as a result of any such variation, the amount of the levy for the designated building should increase or decrease, the General Manager may order such increase or decrease to take effect on a date specified by the General Manager after taking into account the incremental costs to the City as a consequence of the variation.

10.11. Calculation of City's costs

Calculation of the costs or estimated costs the City incurs or expects to incur under this By-law will include, without duplication, amounts spent by the City using its own work force or engaging an independent contractor for gross wages, employee fringe benefits, materials, equipment rentals at rates

paid by the City or set by the City for its own equipment, and fees and other charges payable to an independent contractor, plus an amount equal to 20% of those costs to cover the City's overhead and administrative expenses.

10.12. Back-billing

On discovery that service provided in the past by the City has not been billed yet to a designated property, the City may bill the cost associated to the owner of the designated property, providing details and, on submission of the bill to the owner, the amount billed will be due.

10.13. Historical billing information

An owner who requests historical billing information may be charged the cost of processing and providing the information. The cost will be charged based on the actual hours of work performed by the City in retrieving and preparing the information.

SECTION ELEVEN: OFFENCES AND PENALTIES AND ENFORCEMENT

11.1. Termination of service for failure to pay

Without limiting the City's other rights or remedies under this By-law, if an owner of designated property fails to pay to the City any levy, charge, fee, or cost for more than 30 days after the due date:

- (a) the Collector may serve notice upon the owner; and
- (b) such notice will:
 - i. set out the amount owing,
 - ii. demand payment of that amount within 10 days from the date of such notice,
 - iii. notify the owner that failure to pay that amount within such 10 days will result in the City ceasing service to the owner's building, and
 - iv. notify the owner that the City will not restore such service until the owner has paid to the City the amount owing together with any additional costs incurred by the City in connection with such cessation and restoration of service.

11.2 Notice of violation

An inspector or official of the City, or a By-law Enforcement Officer, may give notice to any person ordering or directing that person to:

- (a) discontinue or refrain from proceeding with any work or doing anything that contravenes this By-law; or
- (b) carry out any work or do anything to bring a building mechanical system into conformity with this By-law,

within the time specified in such notice.

11.3. Service of notice

An inspector or official of the City, or a By-law Enforcement Officer, may serve a notice under this By-law:

- (a) by mailing it by registered post to an owner at the address of the owner shown on the real property assessment roll prepared pursuant to the *BC Assessment Act*;
- (b) by handing it to the owner or other person who is the addressee of the notice; or
- (c) if the notice refers to real property, by posting it on the real property.

11.4. Offences under By-law

A person who:

- (a) violates any provision of this By-law, or does any act or thing which violates any provision of this By-law, or suffers or allows any other person to do any act or thing which violates any provision of this By-law;
- (b) neglects to do or refrains from doing anything required to be done by any provision of this By-law; or
- (c) fails to comply, or suffers or allows any other person to fail to comply, with an order, direction, or notice given under any provision of this By-law,

is guilty of an offence against this By-law, and liable to the penalties imposed under this Section 10.

11.5. Fine for offence

Every person who commits an offence against this By-law is punishable on conviction by a fine of not less than \$250.00 and not more than \$10,000.00 for each offence, except that:

- (a) a person who commits an offence under section 8.10 that results in fouling of the heat exchangers is liable to a fine of not less than \$2000.00 for each offence; and
- (b) a person who fails to comply, or suffers or allows any other person to fail to comply, with an order, direction, or notice given under any provision of this By-law is liable to a fine of not less than \$500.00 for each offence.

11.6. Fine for continuing offence

Every person who commits an offence of a continuing nature against this By-law is liable to a fine for each day such offence continues.

11.7. Termination of service for failure to comply

Without limiting the City's other rights or remedies under this By-law, the City may enforce compliance with the requirements of this By-law against the owner by discontinuing the service to the designated building.

11.8. Transfer of Outstanding Fees and Fines

Without limiting the City's other rights or remedies under this By-law, the City may transfer any and all outstanding fees and/or fines to the owner's property tax statement.

SECTION TWELVE: LIMITATIONS ON LIABILITY

12.1. City not liable for failure of the district energy system

The City will not be liable for the failure of the district energy system in consequence of any accident or damage to the district energy system, breakdown or malfunction of the district energy system, or any temporary stoppage from breaks, alterations or repairs, whether the failure arises from the negligence of any person in the employ of the City or any other person or through natural deterioration or obsolescence of the district energy system, or otherwise.

12.2. City's ability to change operating conditions without liability

The City reserves the right at any and all times, without notice, to change operating conditions of the service, for the purposes of making repairs, extensions, alterations or improvements, or for any other reason, and neither the City, its officers, employees, contractors or agents shall incur any liability of any kind whatever by reason of the cessation in whole or in part of the district energy system or changes in operating conditions.

12.3. Responsibility before and after points of delivery

An owner of a designated property is responsible for all expense, risk and liability for:

- (a) the use or presence of energy being delivered from the district energy system to the owner's property before it passes the points of delivery;
- (b) the use or presence of energy being returned from an owner's property to the district energy system after it passes the points of delivery; and
- (c) the City-owned facilities serving the owner's property,

if any loss or damage caused by or resulting from failure to meet that responsibility is caused, or contributed to, by the act or omission of the owner or a person for whom the owner is responsible.

12.4. Responsibility after points of delivery

The owner of a designated property is responsible for all expense, risk and liability with respect to the use or presence of energy being delivered to the owner's property after it passes the points of delivery.

12.5. Responsibility for energy transfer station

The owner of a designated property is responsible for all expense, risk and liability with respect to all energy transfer station related equipment at the owner's property unless any loss or damage is:

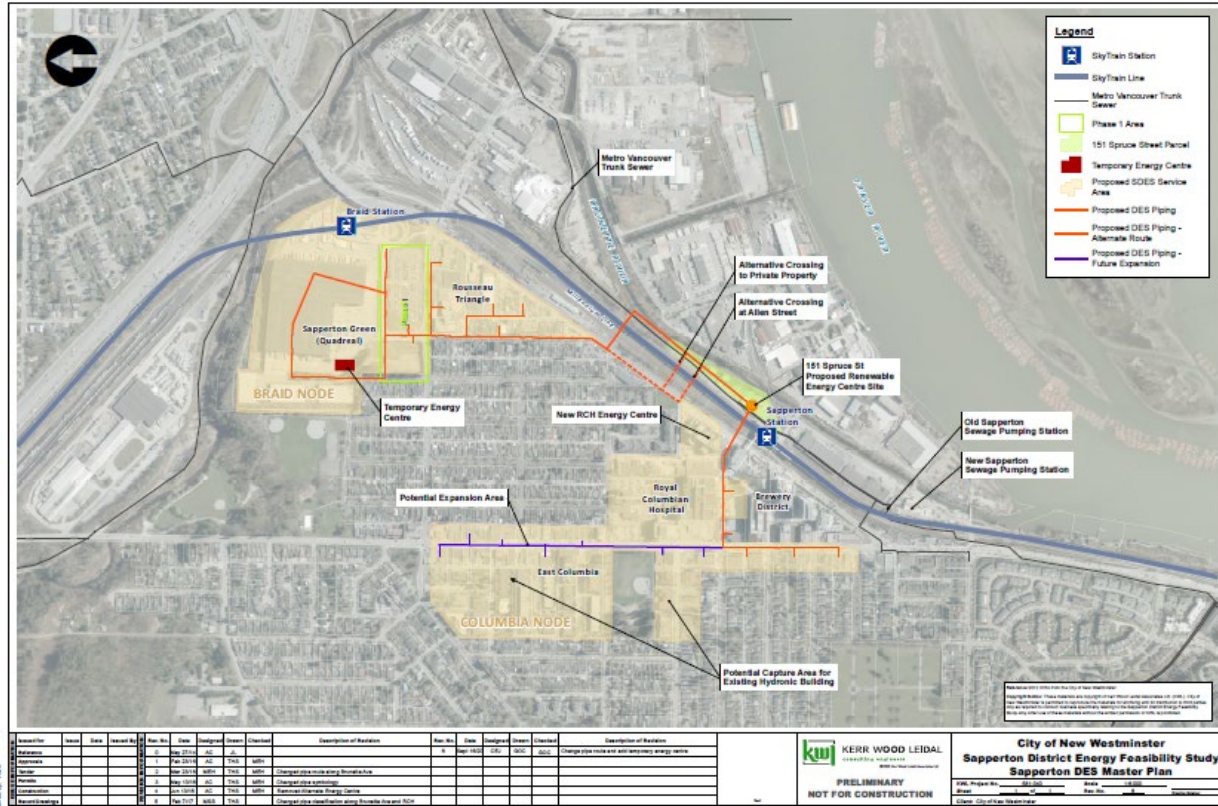
- (a) directly attributable to the negligence of the City, its employees, contractors or agents; or
- (b) caused by or resulting from a defect in the equipment, and the owner must prove that negligence or defect.

For greater certainty and without limiting the generality of the foregoing, the owner is responsible for all expense, risk and liability arising from any measures required to be taken by the City to ensure that the energy transfer station related equipment on the owner's property are adequately protected, as well as any updates or alterations to the distribution system extension on the owner's property necessitated by changes to the grading or elevation of the owner's property or obstructions placed on such distribution system extension.

12.6. Owner indemnification

The owner of a designated property will indemnify and hold harmless the City and its elected and appointed officials, employees, contractors and agents from all claims, loss, damage, costs or injury (including death) suffered by the owner or any person claiming by or through the owner or any third party caused by or resulting from the use of energy by the owner or the presence of energy in the owner's property, or from the owner or owner's employees, contractors or agents damaging the City's facilities.

SCHEDULE A
Map of Service Area



SCHEDULE B
Application and Other Fees

[TBD]

SCHEDULE C
Rate Schedule (Residential/Commercial)

[TBD]