

PROPOSED

C2021-1418
ATTACHMENT 5

BYLAW NUMBER 53M2021

BEING A BYLAW OF THE CITY OF CALGARY TO ESTABLISH A CLEAN ENERGY IMPROVEMENT PROGRAM

WHEREAS Council considers it desirable to create a Clean Energy Improvement Program;

AND WHEREAS section 390.3 of the *Municipal Government Act*, RSA 2000, c. M-26 (the “Act”) provides that a municipality may pass a Clean Energy Improvement Tax bylaw to establish a Clean Energy Improvement Program;

AND WHEREAS a Clean Energy Improvement Tax bylaw authorizes a municipality to make a borrowing for the purpose of financing Clean Energy Improvements and enables those improvements to be made to eligible properties;

AND WHEREAS the Clean Energy Improvement Tax bylaw authorizes Council to impose a Clean Energy Improvement Tax in respect of each qualified Clean Energy Improvement made to a property to raise revenue to pay the amount required to recover the costs of those Clean Energy Improvements;

AND WHEREAS the Minister of Environment and Parks has designated the Alberta Municipal Services Corporation as the Program Administrator for the purposes of the Clean Energy Improvements Regulation, A.R. 212/2018;

AND WHEREAS section 390.3 of the *Act* further permits a municipality to make a borrowing for the purpose of financing clean energy improvements, and may do so with the context of a Clean Energy Improvement Tax bylaw, notwithstanding the provisions contained in section 251 of the *Act*;

AND WHEREAS it is estimated that \$5 million of the cost of the Program (as defined herein), or such other amounts as may be available by grant providers, will be funded through sources other than debenture borrowing and Council has decided to pass a bylaw pursuant to Section 390.3(4)(b) of the *Act* to borrow the sum of \$15 million from the Province of Alberta or other financial institutions or capital markets by the issuance of debentures.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF CALGARY ENACTS AS FOLLOWS:

Short Title

1. This Bylaw may be cited as the “Clean Energy Improvement Program Bylaw”.

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PART 1 – DEFINITIONS AND INTERPRETATION

2. (1) In this Bylaw, unless context otherwise requires:
- (a) “Act” means the Municipal Government Act, RSA 2000 c. M-26;
 - (b) “Administration Fee” means an administration fee as defined in section 1(a) of the *Regulation*;
 - (c) “Agreement” means a clean energy improvement agreement executed between The City of Calgary and the *Owner* of a property under section 390.4 of the *Act* and section 10 of the *Regulation*;
 - (d) “City” means the municipal corporation of The City of Calgary, or where the context requires means the area contained within the boundaries of The City of Calgary;
 - (e) “City Manager” means the person appointed by The City of Calgary Council as its Chief Administrative Officer;
 - (f) “Clean Energy Improvement” means a permanent clean energy improvement as defined in section 390.1 of the *Act* and listed by the *Program Administrator* under section 3(1) of the *Regulation*;
 - (g) “Clean Energy Improvement Tax” means a tax imposed on a property in the *City* under Division 6.1 of the *Act* that is intended to repay the cost of a *Clean Energy Improvement* under an *Agreement*;
 - (h) “Owner” means a person or persons applying to take part in the *Program* and who are shown as the owner of a property on a certificate of title maintained by the Registrar under the Land Titles Act RSA 2000, c. L-4;
 - (i) “Person” means an individual or a business entity including a firm, partnership, association, corporation or society;
 - (j) “Program” means a clean energy improvement program established and operating under Division 6.1 of the *Act*;
 - (k) “Program Administrator” means the Alberta Municipal Services Corporation, or its successors or assigns, or any other entity designated by the Minister pursuant to section 2 of the *Regulation*;
 - (l) “Province” means the Province of Alberta; and
 - (m) “Regulation” means the *Clean Energy Improvements Regulation* AR 212/2018.

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- (2) Each provision of this Bylaw is independent of all other provisions and if any provision is declared invalid for any reason by a Court of competent jurisdiction, all other provisions of this Bylaw remain valid and enforceable.
- (3) Nothing in this Bylaw relieves a *Person* from complying with any provision of any federal or provincial law or regulation, other bylaw or any requirement of any lawful permit, order or licence.
- (4) Headings or sub-headings are inserted for ease of reference and guidance purposes only and do not form part of this Bylaw.
- (5) Where this Bylaw cites or refers to any act, regulation, code or other bylaw, the citation or reference is to the act, regulation, code or other bylaw as amended, whether amended before or after the commencement of this Bylaw, and includes reference to any act, regulation, code or other bylaw that may be substituted in its place.
- (6) All Schedules attached to this Bylaw form part of this Bylaw.

PART 2 – THE CITY’S CLEAN ENERGY PROGRAM

3. (1) A clean energy improvement *Program* for the *City* is established under this Bylaw and the *City Manager* is responsible for implementing the *Program*.
- (2) The *City Manager* may enter into *Agreements* on behalf of the *City* under the *Act* and *Regulation* respecting the *Program* including agreements with the *Program Administrator*.
- (3) The *City Manager* may delegate any of the powers, duties, or functions provided to the *City Manager* in this Bylaw to any employee of the *City*.

PART 3 – PROGRAM ELIGIBILITY

Applications to Program Administrator

4. (1) An *Owner* of a property that is eligible under this Bylaw may apply to the *Program Administrator* to finance a *Clean Energy Improvement* on that property.
- (2) The *Program Administrator* may charge a fee in relation to the application, pursuant to the *Regulation*.
- (3) An *Owner* may submit one application per year per eligible property.

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Eligible Properties

5. (1) The following privately owned residential properties located within the *City* are eligible to apply under the *Program*:
 - (a) single and semi-detached houses;
 - (b) row houses;
 - (c) townhomes; and
 - (d) residential portions of mix-use buildings and multi-unit residential buildings, provided that such buildings are both under three storeys and have a footprint of 600 meters squared (6,458 feet squared) or less.
- (2) For greater certainty, manufactured homes, mobile homes, non-residential properties, and designated industrial properties are not eligible for the *City's Program*.
- (3) A property that is exempt from taxation under Part 10 of the *Act* may apply to the *Program* and if approved for an *Agreement* must pay the *Clean Energy Improvement Tax* as set out on the statement of account provided to the *Owner* by the *City* or as otherwise set out on a tax bill or on the *City's* tax roll.

Eligible Improvements

6. The *Clean Energy Improvements* listed in Schedule "A" to this Bylaw are eligible for the *City's Program* unless that improvement has been removed from the list of eligible improvements maintained by the *Program Administrator*.

PART 4 – CLEAN ENERGY IMPROVEMENT AGREEMENT

7. (1) The *City Manager* may enter into an *Agreement* with an *Owner* whose application to the *Program Administrator* was approved.
 - (2) The *City Manager* may require information from an *Owner*, in the form and manner specified by the *City Manager*, to ensure an *Agreement* with that *Owner* would comply with the *Act, Regulation*, and this Bylaw.
 - (3) For greater certainty, the approval of an *Owner's* application by the *Program Administrator* does not require the *City Manager* to enter into an *Agreement* with that *Owner*.
8. The *City Manager* must not enter into an *Agreement* where:
 - (a) the *Owner* is in tax arrears on the property;
 - (b) there is an existing *Agreement* in place for the property and the costs of that *Agreement* have not been placed on the tax roll;
 - (c) the costs of a proposed *Agreement* would cause the *City* to exceed the amount of borrowing authorized under this Bylaw;

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- (d) the *Owner* is in bankruptcy or receivership;
 - (e) the property is going through foreclosure;
 - (f) there are development compliance issues or safety code issues associated with the property;
 - (g) the *Program Administrator* has not approved an *Owner's* application for a *Clean Energy Improvement*;
 - (h) the *Owner* has not confirmed that the property's mortgagors have approved participation in the *Program*;
 - (i) there is a dispute with the *Owner* about whether the *Owner* is abiding by the terms of any other grant of financial assistance that the *Owner* has received from any level of government;
 - (j) the *Owner* has fallen into tax arrears within the previous five years on the property; or
 - (k) the *Owner*, the property, or the terms of the proposed *Agreement*, do not otherwise meet any of the requirements under this Bylaw, the *Act*, or the *Regulation*.
9. The *City Manager* may consider the following when considering the proposed terms of an *Agreement*, or when considering whether to refuse to enter into an *Agreement*:
- (a) whether a *Person* related to the *Owner* is in bankruptcy, or receivership;
 - (b) whether the *Owner* owns any interest in another property that is going through foreclosure;
 - (c) whether a *Person* related to the *Owner* owns any interest in a property that is going through foreclosure;
 - (d) whether the property is the subject of some form of ongoing or anticipated litigation in relation to its ownership;
 - (e) whether the *Owner* is participating in the *City's* Property Tax Assistance Program or the Government of Alberta's Seniors Tax Deferral Program;
 - (f) whether the property is not being used primarily for residential housing purposes; or
 - (g) whether there is any other reason, in the *City Manager's* sole opinion, to refuse to enter into the *Agreement*.
10. A *Clean Energy Improvement* must be completed within the time limit set out in the *Agreement*.

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PART 5 – CLEAN ENERGY IMPROVEMENT TAX

11.
 - (1) The *City Manager* may impose a *Clean Energy Improvement Tax* on a property that is subject to an *Agreement* in order to raise revenue to recover the cost of that improvement.
 - (2) The *Clean Energy Improvement Tax* shall be displayed as a separate item on any tax notices.
 - (3) The *City Manager* may impose the *Clean Energy Improvement Tax* at any time following the signing of that *Agreement* but in no case later than the next annual tax notice following payment being authorized by the *City* to a contractor for the improvement.
 - (4) The amount of the tax must be calculated under the *Agreement* and recovered on an annual basis over a term comprised of the number years specified in the *Agreement*.
 - (5) The term in the *Agreement* must not exceed the probable lifespan of the *Clean Energy Improvement* as designated by the *Program Administrator* under section 3(2)(a) of the *Regulation*, to a maximum of 25 years.
 - (6) Where more than one *Clean Energy Improvement* is made to a property the *City Manager* must impose a *Clean Energy Improvement Tax* in respect of each improvement made to the property and the probable lifespan of the improvements may not be greater than a weighted average of the probable lifespan of each improvement as determined by the *Program Administrator*.
12. The following costs must be included in the calculation of the *Clean Energy Improvement Tax*:
 - (a) the outstanding capital cost of undertaking the *Clean Energy Improvements*;
 - (b) the cost of professional services needed for the *Clean Energy Improvements*;
 - (c) the *Administration Fee*;
 - (d) the cost of financing the *Clean Energy Improvements*; and
 - (e) any other incidental costs to the undertaking of the *Clean Energy Improvement* and to the raising of revenue to pay for it specified in the *Agreement*.
13. If an *Owner* wishes to make early, full repayment of an amount financed by a *Clean Energy Improvement Tax*, the amount owing must be calculated at the time of the request, based on the terms of the *Agreement*.
14. An *Owner* must append the *Agreement* to any contract of sale for the property but the failure to do so does not invalidate the *Agreement* or affect the imposition of the *Clean Energy Improvement Tax*.

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PART 6 – AUTHORIZED BORROWING

15. Pursuant to section 390.3(4)(b) of the *Act*:
- (a) For the purposes of the *Program*, the proper officers of the *City* are hereby authorized to issue one or more debentures on behalf of the *City* to a maximum sum of \$15 million.
 - (b) The *City* shall repay the indebtedness over a period not exceeding twenty-five (25) years, with interest being calculated at an interest rate fixed by the lender on the date of the borrowing, up to a maximum rate of 8% per annum.
 - (c) The indebtedness shall be repaid by the *City* through the *Clean Energy Improvement Tax* that shall be collected from *Owners* pursuant to the respective terms of their individual *Agreements*, and pursuant to the *Act*.
 - (d) The indebtedness shall be contracted on the credit and security of the *City*.
 - (e) The net amount borrowed under this Bylaw shall be applied only to the purposes specified by this Bylaw and for no other purpose.

COMING INTO FORCE

16. This Bylaw comes into force on the day it is passed.

READ A FIRST TIME ON _____

READ A SECOND TIME ON _____

READ A THIRD TIME ON _____

MAYOR

SIGNED ON _____

CITY CLERK

SIGNED ON _____

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SCHEDULE "A"

LIST OF ELIGIBLE CLEAN ENERGY IMPROVEMENTS

Air source heat pump replacing gas furnace
Attic or roof insulation
Combined heat and power
Drain water heat recovery
ECM motor for residential furnace
Foundation insulation
Ground source heat pump replacing natural gas furnace
Heat and energy recovery ventilation
Heat pump water heater
High-efficiency air source heat pump
High-efficiency central air conditioner
High-efficiency combination heater
Energy-efficient door
High-efficiency gas boiler
High-efficiency gas furnace
High-efficiency storage water heater
Energy-efficient window
Indoor lighting control
Lighting fixture
Solar PV systems
Pipe and duct insulation
Rim joist insulation
Smart thermostat
Solar thermal water heating
Tankless gas water heater
Wall insulation