



The Municipal Corporation of the Town of Fort Erie By-law No. 86-2023

Being a By-law to Amend the Development Charges Interest Policy for The Town of Fort Erie

Whereas By-law No. 110-2022 was passed by the Municipal Council of the Town of Fort Erie on August 22, 2022 to adopt a Development Charges Interest Policy for the Town of Fort Erie, and

Whereas Report No. CS-03-2023 was considered at the Council-in-Committee Meeting held on May 8, 2023, change the interest rate charged from 5% to a maximum of prime plus 1%, and

Whereas it is deemed desirable to amend the Development Charges Interest Policy for the Town of Fort Erie;

Now Therefore the Council of The Corporation of the Town of Fort Erie enacts as follows:

1. **That** Schedule "A" of By-law No. 110-2022 is repealed and replaced with Schedule "A" attached hereto as Schedule "A" and forming part of this by-law, is adopted and approved.
2. **That** the Clerk of the Town is authorized to affect any minor modifications corrections or omissions solely of an administrative, numerical, grammatical, semantical or descriptive nature to this by-law or its schedules after the passage of this by-law.

Read a first, second and third time and finally passed this 29th day of May 2023.

Mayor

Deputy Clerk

I, _____, the Clerk, of The Corporation of the Town of Fort Erie certify the foregoing to be a true copy of By-law No. 86-2023 of the said Town. Given under my hand and the seal of the said Corporation, this _____ day of _____, 20__.

Development Charges Interest Policy

August 22, 2022

(as amended, May 29, 2023)



The Corporation of
The Town of Fort Erie

1. Article 1 – Purpose

The purpose of this policy is to preserve the Town's ability to fund the cost of growth related capital needs with Development Charges (DC), to promote the Town's objective for growth to pay for growth as much as the *Development Charge Act* (Act) allows and to establish the form and timing of interest applicable to DC payable in accordance with section 26.1 and 26.2 of the Act on setting and calculating interest rates.

2. Article 2 – Definitions

For this policy, the following terms are defined:

Act: means the *Development Charges Act*, 1997, S.O. 1997, c. 27, as amended, revised, re-enacted or consolidated from time to time, and any successor statute.

Development Charge Installment Payments: means the timing of payment and collection of development charges for rental housing, institutional and non-profit housing as required under section 26.1 of the Act.

Development: means the construction, erection or placing of one or more buildings or structures on land or the making of an addition or alteration to a building or structure that has the effect of substantially increasing the size or usability thereof according to one or more of the actions referred to in subsection 2(2) of the Act, and includes redevelopment.

Development Charge(s): means the Town's development charges, including any area-specific development charges.

Institutional Development: means the use of land, buildings or structures for religious, charitable, educational, health or welfare purposes, and without limiting the generality of the foregoing includes churches, places of worship, public or private schools, day nursery, public or private hospital, children's home, nursing home, home for the aged or infirm, monastery, convent, and training school.

Interest Rate(s): means the interest rate(s) authorized in this policy used for application under Section 26.1(7) and or Section 26.2(3) of the Act.

Non-profit Housing Development: means development of a building or structure intended for use as residential premises by,

- a) a corporation to which the Not-for-Profit Corporations Act, 2010 applies, that is in good standing under that Act and whose primary object is to provide housing;

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- b) a corporation without share capital to which the Canada Not-for-profit Corporations Act applies, that is in good standing under that Act and whose primary object is to provide housing; or
- c) a non-profit housing co-operative that is in good standing under the Co-operative Corporations Act. O. Reg. 454/19, s. 3

Rental Housing Development means: development of a building or structure with four or more dwelling units all of which are intended for use as rented residential premises. O. Reg. 454/19, s. 3 (1).

Town: means The Corporation of the Town of Fort Erie.

3. Article 3 – Policy Statement

The fundamental principle of funding growth-related capital costs is that ‘growth should pay for growth.’ This policy serves to ensure that there is compensating interest income to fund the lost revenue that will result from the DC rate freeze and deferred payment requirements in accordance with the Act.

4. Article 4 – Application

This Policy applies to development applications that are eligible for the regulated development charges freeze and/or deferral provided in Section 26.2 and Section 26.1 of the Act.

5. Article 5 - Background

The Town of Fort Erie collects development charges under the authority of the Act in order to fund growth related capital expenditures resulting from new development. In December 2019, certain sections of Schedule 3 of Bill 108 *More Homes, More Choice Act*, 2019 (as amended by Bill 138) were proclaimed and came into force on January 1, 2020 which amended certain sections of the Act. The DC amendments include changes to when the DC is calculated, when it becomes payable and gives municipalities the authority to apply interest to DC amounts owing.

Section 26.2 (3) of the Act permits a municipality to charge interest from the date the DC is calculated to the date the DC is paid in full.

Section 26.1 (7) of the Act permits a municipality to charge interest on the instalments required by subsection (3) from the date the DC would have been payable in accordance with section 26 to the date the instalment is paid.

6. Article 6 – Legislative Framework – Calculation of Development Charges

6.1 Timing for development charge calculation amount under section 26.2 of the Act:

The current Development Charge By-law requires development charges to be calculated and paid at the time of building permit issuance. However, recent amendments to the legislation that have occurred since the passage of the Town's current Development Charges By-law now requires the development charge to be calculated as follows:

Under subsection 26.2 (1) of the Act, the total amount of a development charge (i.e. rate) is determined under The Town of Fort Erie's Development Charge By-law in effect on:

- 6.1.1. The day an application for an approval of development in a site plan control area under subsection 41 (4) of the Planning Act was made in respect of development that is the subject of the DC, or
- 6.1.2. If clause 6.1.1 does not apply, the day an application for an amendment to a bylaw passed under section 34 of the Planning Act was made in respect of the development that is the subject of the DC, or
- 6.1.3. If neither clause 6.1.1 nor 6.1.2 applies, the date the development charges would have been payable under section 26 of the Act which is normally building permit issuance unless permitted otherwise through section 26.1 of the Act.

6.2. DC By-law not in effect

- 6.2.1. Under subsection 26.2 (2) of the Act, subsection 26.1 (1) applies even if the by-law under which the development charge would be determined is no longer in effect on the date the development charge is payable.

6.3. Interest under section 26.2 of the Act

- 6.3.1. Under subsection 26.2 (3) of the Act, a municipality may charge interest on the development charge, at a rate not exceeding the prescribed maximum interest rate, from the date of the application referred to in clause 6.1.1 or 6.1.2 to the date the development charge is payable.

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6.3.2. The prescribed maximum interest rate is prime plus one percent as calculated under subsections 26.2 of the Act.

6.4. More than one application

If a development was the subject of more than one application referred to in 6.1.1 and 6.1.2 the later one is deemed to be the applicable application for the purposes of section 26.2 of the Act.

6.5. Exception, prescribed amount of time elapsed

The dates as determined under sections 6.1.1 and 6.1.2 do not apply if any part of a development to which section 26.1 applies if, on the date the first building permit is issued for the development, more than 2 years has elapsed since the application referred to in clause 6.1.1 or 6.1.2 was approved as defined in section 11.2 O. Reg. 82/98.

7. **Article 7 - Legislative Framework – Development Charge Installments**

7.1. Installment payments under section 26.1 of the Act and as defined in O. Reg 82/98.

Bill 108 amends the Act so that certain types of development qualify for deferred payment of development charges as follows:

Under subsections 26.1 (1), (2) and (3) of the Act, development charges shall be paid in equal annual installments, beginning at the earlier of first occupancy or occupancy permit issuance date under *the Building Code, Act, 1992* for:

7.1.1. Rental housing development that is not non-profit housing as defined under section 11.1 (1) of O. Reg 82/98 as per section 3 (a) of the Act;

7.1.2. Institutional development as defined under section 11.1 (2) if O. Reg. 82/98 as per section 3 (a) of the Act; and

7.1.3. Non-profit housing development as defined under section 11.1 (3) of O. Reg. 82/98 as per section 3 (b) of the Act.

7.2. A non-profit housing development under 7.1.3 shall pay their first payment at occupancy and the following 20 anniversaries after that date (21 equal payments).

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- 7.3. Both a Rental housing development and institutional development as described under 7.1.1 and 7.1.2 shall pay their first payment at occupancy and the following five anniversaries after that date (six equal payments).
- 7.4. All other development shall pay their development charges upon the issuance of a building permit unless an early or late payment agreement has been entered into under subsection 27 (1) of the Act.
- 7.5. Interest under section 26.1 of the Act:
 - 7.5.1. Subsection 26.1 (7) of the Act allows a municipality to charge interest on the installments from the date the development charges would have been payable under section 26 of the Act, to the date the installment is paid, at a rate not exceeding the prescribed maximum interest rate.
 - 7.5.2. The prescribed maximum interest rate is prime plus one percent as calculated under subsections 26.1 of the Act.

8. **Article 8 – Policy**

- 8.1. The application made date for the purposes of 6.1 of this Policy and 26.2 of the Act shall be determined by the Town of Fort Erie and provided to the Region as information.
- 8.2. The applicant shall be notified of the application approval date for the purposes of Section 26.2 of the Act by the Town of Fort Erie.
- 8.3. Application Appeal

Should any decision by the Town on the application(s) as noted under section 6.1.1 (Site Plan Control Area application) and 6.1.2 (Zoning By-law Amendment application) be appealed, The Town's decision regarding how interest charges were calculated will stand until final resolution of the appeal.

 - 8.3.1. Should a decision on an unapproved application be successfully appealed, the application made date will apply to section 6.1.1 or 6.1.2 of this policy and the application approval date shall be the date the appeal is approved.
 - 8.3.2. Should a decision on an approved application be upheld, the application made date will apply to section 6.1.1 or 6.1.2 of this policy and the application approval date shall be the date the decision is upheld.

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- 8.3.3. Should a decision on an approved application be successfully appealed or a decision on an unapproved application be upheld, the application made date will not apply to sections 6.1.1 and 6.1.2 of this policy.

8.4. Interest on Development Charges for Subsection 26.2(3) of the Act

Interest will be charged at the rate established in Appendix “A” to this Policy on the development charge, from the date of the application referred to in clause 6.1.1 or 6.1.2 of this policy, to the date the development charge is payable. The non-compounding interest calculation will be used to determine the accrued interest to be charged.

8.5. Final Determination of Total Payable Development Charges

On the day the development charge(s) is first payable, the final determination of the total payable development charge(s) shall be made.

8.6. Transition

Clauses 6.1.1 and 6.1.2 do not apply in the case of an application made before January 1, 2020 as per subsection 26.2 (6) of the Act.

8.7. Acknowledgment Letter

For all eligible development under section 26.1 of the Act an Acknowledgement Letter will be provided to the applicant / property owner at the time of building permit issuance outlining the terms of the development charge annual installments as per the Act and Town policy.

8.8. Notice of Occupancy

- 8.8.1. The person responsible to pay development charges shall notify both the Town of Fort Erie and Niagara Region in writing within five business days of the building first being occupied unless an occupancy permit has been issued by The Town of Fort Erie for the purposes of section 26.1 of the Act.

- 8.8.2. Under subsection 26.1 (6) of the Act, failure to comply with the occupancy notice requirement under 8.7.1 will result in the development charge including any interest payable becoming payable immediately.

- 8.8.3. If the person responsible to pay development charges receives an occupancy permit issued by The Town of Fort Erie, the Town will

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notify the Niagara Region within five business days for the purposes of section 26.1 of the Act.

8.9. Interest on Installments for Subsection 26.1 (7) of the Act

8.9.1. Interest will be charged on installments at the rate found in section 8.13 from the date the development charge would have been payable in accordance with section 26 of the Act and The Town's Development Charges by-law.

8.9.2. Interest that will be generated from section 8.8.1 will be fully allocated to the Town's DC reserves and prorated by category.

8.10. Schedule of Installment Payments

8.10.1. The Town of Fort Erie will provide an Installment Payment Schedule to the person required to pay development charges for the Town's portion of Development Charges once notified of occupancy. The Niagara Region will provide a separate schedule for Regional Development Charges.

8.10.2. Acknowledgement of the Installment Payment Schedule and the first installment payment shall be due within 15 days of the Installment Payment Schedule being provided. It will be the responsibility of the person responsible to pay development charges to provide payment in a prompt and timely manner as per the schedule, no further notification of upcoming payments will be given.

8.11. Development Charge Grants

For developments that are in receipt of a Town development charge grant or credit, the amount that shall be used for the purpose of determining installment payments shall be the net amount of Town development charges payable.

8.12. Termination of the Installment Schedule

The remaining balance of all development charges shall be payable within 15 days immediately following the notification / determination of any of these trigger events:

- a. Change of use to a development type that is not eligible for development charge installments under the Act, as of the day the change is made.
- b. Sale or transfer of ownership.

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- c. If the balance of Town development charges owing plus any accrued interest as per the installment schedule is paid to The Town of Fort Erie.

8.13. Unpaid Development Charges

- 8.13.1. If any development charges (including interest) are unpaid, those development charges (including interest) may (at the discretion of the Treasurer) be added to the tax roll and collected in the same manner as taxes, in accordance with section 32 of the Act.
- 8.13.2. Interest on late payments added to the tax roll shall incur the applicable taxation interest rate (as provided under section 345 of the *Municipal Act, 2001*).

8.14. Interest Rates Used

- 8.14.1. An interest rate shall be used for the purposes of section 26.1 and 26.2 attached as Appendix "A" to this policy and shall be made available on the Town's website under the development charges page.
- 8.14.2. The established interest rate in an Agreement which has been entered into, shall remain in effect until the final payment under the Agreement is received.

8.15. Late Payment Penalty and Interest on unpaid Development Charge

- 8.15.1. All development charge installment (including interest) that are unpaid as per the criteria established under section 26.1 of the Act, will be subject to a Town administration fee as per the Town's Fees and Charges by-law and may also be added to the tax roll and collected in the same manner as taxes, in accordance with section 32 of the Act.
- 8.15.2. Interest on late payments added to the tax roll shall incur the applicable taxation interest rate (as provided under section 345 of the *Municipal Act, 2001*).

8.16. Agreements

- 8.16.1. Under section 26.1 of the Act, the development charges shall be paid in equal annual installments for eligible development.

9. Article 9 – Roles and Responsibilities

9.1. Treasurer or designate shall:

9.1.1. Administer this policy, including but not limited to:

- a. Reviews and updates Development Charges Interest Policy as necessary every five years or upon the expiry of a Town's Development Charge By-law and submits any necessary changes for Council Approval.
- b. Monitor compliance and adherence to this policy.
- c. Prepare the agreement and execution with applicant.
- d. Perform all interest calculations.
- e. Creates necessary guiding strategies, supporting frameworks and procedures as required to administer this policy, which may be amended from time-to-time.

9.2. Chief Building Official or designate shall:

9.2.1. Enforce this policy, including but not limited to:

- a. Inform the Treasurer when the total amount of the development charge excluding interest is determined under this policy.
- b. Inform the Treasurer if a development qualifies to have their development charge rate frozen under section 26.2 of the Act.
- c. Inform the Treasurer if a development qualifies to have their payments deferred under section 26.1 of the Act.

Appendix "A" to Development Charges Interest Policy

Town of Fort Erie Development Charges Interest Rates

Interest Rate Type	Interest Rate to Be Applied
As permitted under Section 26.2 of the Act - DC Freeze Interest Rate	Maximum of prime plus 1%, per annum, non-compounding
As permitted under Section 26.1 of the Act - DC Deferral Interest Rate	Maximum of prime plus 1%, per annum, non-compounding
Non-profit housing development as defined under section 11.1 (3) of O. Reg. 82/98 for purposes of Section 26.1 and 26.2 of the Act	0%