



# **The Municipal Corporation of the Town of Fort Erie By-law No. 87-2023**

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## **Being a By-law to Amend the Development Charges Payment Deferral Policy for The Town of Fort Erie**

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**Whereas** By-law No. 111-2022 was passed by the Municipal Council of the Town of Fort Erie on September 19, 2022 to adopt a Development Charges Payment Deferral 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, to 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 Payment Deferral 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 **That** Schedule "A" of By-law No. 111-2022 is repealed and replaced with Schedule "A" attached hereto as Schedule "A" and forming part of this by-law, is adopted and approved.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 29<sup>th</sup> day of May 2023.**

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Mayor

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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. 87-2023 of the said Town. Given under my hand and the seal of the said Corporation, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

# Development Charges Payment Deferral Policy

September 19, 2022

(as amended, May 29, 2023)



The Corporation of  
The Town of Fort Erie

## Development Charges Payment Deferral Policy

### 1. **Article 1 – Purpose**

This policy will establish guidelines related to applications for, and the administration and issuance of, Town development charge deferral agreements pursuant to section 27 of the *Development Charge Act, 1997* c. 27, as amended.

### 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.

CAO: means the Chief Administrative Officer of the Town from time to time, or the holder of the office exercising the functions presently performed by the said CAO, and includes his or her designate.

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.

Interest Rate(s): means the interest rate(s) authorized in this policy used for application under Section 27 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;
- 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

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

Treasurer: means the Director, Corporate Services of the Town from time to time, or the holder of the office exercising the functions presently performed by the said Director, and includes his or her designate.

**3. Article 3 – Policy Statement**

A policy governing the payment deferral of Town-wide development charges in support of specific types of development.

**4. Article 4 – Application**

This Policy will apply to all landowners, developers and/or builders who apply to the Town for a deferral of development charges applicable to their proposed development. The Policy is intended to assist applicants to proceed with their proposed development and also assist in the provision of services that contribute to a strategic goal of the Town (e.g. affordable and special needs housing). An application for approval of a deferral request is required in accordance with this Policy. For the purpose of this Policy, an addition or alteration to a building which has the effect of substantially increasing the size or usability thereof shall mean an addition or alteration which is greater than 46.5 square metres (500 square feet).

**5. Article 5 - Background**

Development charges are calculated and collected on land and structures being developed in accordance with the Act and the Town's Development Charges By-law. The collection of development charges typically occurs at the issuance of a building permit. Section 27(1) of the Act allows for the deferral of development charges beyond the timeline stipulated in the Town's Development Charges By-law.

**6. Article 6 – Policy**

This policy establishes principles and practices for deferral of Town's development charges.

**ELIGIBILITY REQUIREMENTS**

- 6.1. The following development types will be eligible for Town's development charges deferral under this policy:
  - 6.1.1. Affordable housing developments that received funding through an agreement with Niagara Regional Housing or designated agency of Niagara Region, the Canada Mortgage and Housing Corporation (CMHC) or other affordable housing provider as outlined in the Town's DC By-law.
  - 6.1.2. Developments that have received conditional/pending approval for Town Development Charge grants and where the total Town development charges for the project exceeds the minimum threshold.

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The deferral amount under this clause will be capped at the amount of the conditional/pending grant.

- 6.1.3. Developments that Town staff have identified as eligible for a future Municipal Capital Facility Agreement for which Town Development Charges will be exempted (subject to conditions under *Municipal Act, 2001*, section 110 and subsequent Town Council approval).
- 6.1.4. Development charges deferrals may be available if there is a strategic and significant direct economic benefit to the Town from the proposed development, the Treasurer and Director, Planning and Development Services or their designate can recommend a deferral of the development charges to Council. Determination of the strategic and significant direct economic benefit is at the discretion of the Treasurer and CAO or their designate.
- 6.1.5. Total development charges eligible for deferral must not be less than \$50,000 and to a maximum of \$1,000,000.
- 6.2. Notwithstanding the aforementioned eligibility criteria, a deferral request may be refused if actual net Development Charges reserve is in a deficit.
- 6.3. Any Development to which section 26.1 of the Act applies (upon the date that the section is proclaimed) and that opts to pay Town development charges in installment in accordance with section 26.1 of the Act, shall not be entitled to also avail itself of the deferral under this Policy.
- 6.4. Applicants for a deferral of development charges must comply with all the conditions that are determined as necessary for development (e.g., Planning Act), agree to any other conditions imposed by the Treasurer on the deferral authorization and enter into an agreement with the Town, which the Town may register on title.

### DEFERRAL APPLICATION PROCESS

- 6.5. Under the terms of this Policy, an individual that is required to make payment of Town Development Charges may submit a complete application package to the Treasurer requesting a Town development charges deferral agreement prior to the payment of development charges for the development.
- 6.6. The complete application shall include the following:
  - 6.6.1. Explanation for deferral request;
  - 6.6.2. Evidence of compliance with eligibility criteria;

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- 6.6.3. Drawing of each level within the building, including the Gross Floor Area;
- 6.6.4. Proposed building uses and timing of occupancy;
- 6.6.5. The applicant will fill out a Development Charges Deferral Agreement Information Form; and
- 6.6.6. Any other additional materials as requested by the Treasurer.
- 6.7. An application made under this Policy will only be accepted if complete and the prescribed administrative fee has been provided to Town as outlined in the Town's Fee and Charges By-law as amended from time to time.
- 6.8. If the request does not comply with the Policy, the Town will refuse the application and advise the applicant accordingly.
- 6.9. If approved, a deferral agreement will be prepared to include the terms and conditions required by both the Treasurer and Director, Planning and Development Services or designate and to secure payment of the deferred charges by providing an irrevocable Letter of Credit with a financial institution, acceptable to the Treasurer.
- 6.10. If the Town Development Charges have already been paid by the applicant, the applicant is not eligible for a deferral agreement under this Policy.
- 6.11. In the event that the development charges become payable, the development charges deferred shall be payable in accordance with the deferral agreement executed with Town and shall be based on the development charge rate that is in effect at the time of building permit issuance.

### **INTEREST**

- 6.12. An annual interest rate shall apply to the amount of Town development charges deferred. The interest rate used for the purposes of section 27(1) as allowed under Section 27(3) is attached as Appendix "A" to this policy.
  - 6.12.1. All interest shall be calculated using the development charges calculated at the time of building permit issuance, until the date upon which the development charges have been paid.
  - 6.12.2. All interest shall accrue and be non-compounded.

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- 6.12.3. Interest that will be generated from section 6.12.1 will be fully allocated to the Town's Development Charges Reserve and prorated by category.

### TERMS

- 6.13. The maximum deferral term shall not exceed the period as outlined below:
  - 6.13.1. Developments eligible for deferral under 6.1.1 shall see the deferral period capped at the length of time that the units remain affordable housing (as outlined in the funding agreement).
  - 6.13.2. Developments eligible for deferral under 6.1.2 shall not see the deferral period exceed 2 years from the date that the Town Development Charges are otherwise payable.
  - 6.13.3. Developments eligible for deferral under 6.1.3 shall not see the deferral period exceed the length of time anticipated for the Town to designate the development (or any part thereof) as a Municipal Capital Facility.
  - 6.13.4. A Development Charge deferral agreement will be executed detailing the duration and interim payments (if any) due over the deferral period and any other conditions or terms required. The approved deferral of development charges may be set out in other development agreements if appropriate.
- 6.14. Authority to execute deferral agreements on behalf of Town resides jointly with the Treasurer and Town Solicitor (or their respective designates authorized in writing to act on their behalf in their absence).
- 6.15. Approval for a Town development charge deferral under this Policy will be rescinded and associated agreement terminated if the building permit for the development is not issued within 6 months of the date of execution of the agreement.
- 6.16. The applicant must register the executed agreement on title of the subject lands at their expense within 30 days of agreement execution or risk default or cancellation of the agreement. Proof of agreement registration on title must be provided within 30 days of the agreement being executed by all parties.
- 6.17. All future deferral requests and agreements entered into by Town after the effective date of this Policy must conform to this Policy. All previous deferral

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agreements will be grandfathered under the terms and conditions under which they were approved and executed.

### 6.18. Termination of the Deferral Agreement

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

- a. Change of use from the use approved for the deferral.
- b. Sale or transfer of ownership, unless an assumption agreement is entered into with the Town.
- c. Any other material default as defined in the agreement(s).
- d. Any late payment would deem the agreement in default.

### 6.19. Unpaid Development Charges

6.19.1. If any development charges (including interest) are unpaid, those development charges (including interest) may be recovered by either drawing on the Letter of Credit or (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). All uncollected development charges added to the tax roll will be subject to a Town administration fee as per the Town's Fees and Charges by-law.

6.19.2. 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*).

## 7. **Article 7 – Roles and Responsibilities**

### 7.1. Corporate Services Department and Planning and Development Services Department

7.1.1. Reviews and updates Development Charges Payment Deferral 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.

7.1.2. Determining whether a request meets the deferral criteria.



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- 7.1.3. Ensuring the preparation of the deferral agreement in conjunction with the Town Solicitor.
  - 7.1.4. Determining the amount to be secured by letter of credit, if necessary.
- 7.2. Treasurer and Director, Planning and Development Services or their designate shall be responsible for:
  - 7.2.1. Make decisions on applications for a deferral in accordance with this Policy.
  - 7.2.2. Calculate the development charges due on the proposed development.
- 7.3. Treasurer or designate shall be responsible for:
  - 7.3.1. Ensuring the preparation of the deferral agreement to the satisfaction of the Treasurer.
  - 7.3.2. Overall administration of the deferral agreements and letter of credit(s).
  - 7.3.3. Ensuring that instalments and final development charges payments are made, in accordance with the agreement.
  - 7.3.4. Approving department operating procedures and processes under this Policy.
  - 7.3.5. Is delegated authority to be responsible for developing and implementing forms for this policy.
- 7.4. Town Solicitor and Town's Law Clerk or their designate shall be responsible for:
  - 7.4.1. Preparing the deferral agreement, and if appropriate, the necessary clauses within a subdivision, site plan or other development agreement.
  - 7.4.2. Registering the deferral agreement on title if applicable.
  - 7.4.3. Ensuring the deferral is adequately secured in a form satisfactory to the Treasurer.

## Appendix "A" to Development Charges Payment Deferral Policy

### Town of Fort Erie Development Charges Interest Rate

Interest Rate Type	Interest Rate to Be Applied
As permitted under Section 27(3) of the DCA - Agreement, early or late payment	Maximum of prime plus 1%, per annum, non-compounding