

THE REGIONAL MUNICIPALITY OF NIAGARA

BY-LAW NO. 62 -2009

A BY-LAW TO ESTABLISH DEVELOPMENT CHARGES
FOR THE REGIONAL MUNICIPALITY OF NIAGARA AND TO REPEAL BY-LAWS 90-2004, 84-
2006, 19-2007 AND 47-2007

WHEREAS the *Development Charges Act, 1997*, S.O. 1997, c. 27, as amended, provides that the council of a municipality may by by-law impose development charges against land to pay for increased capital costs required because of increased needs for services arising from development of the area to which the by-law applies;

AND WHEREAS the Council of The Regional Municipality of Niagara completed a development charge background study in June 2009;

AND WHEREAS the Council of The Regional Municipality of Niagara gave notice, made available this proposed by-law and the background study, and on July 16, 2009 held a public meeting;

NOW THEREFORE the Council of The Regional Municipality of Niagara enacts as follows:

DEFINITIONS

1. In this By-law:

"Act" means the *Development Charges Act, 1997*, S.O. 1997, c. 27, as amended;

"agricultural use" means use or intended use for bona fide farming purposes:

(a) including (but not limited to):

(i) cultivation of crops, whether on open land or in greenhouses, including (but not limited to) fruit, vegetables, herbs, grains, field crops, sod, trees, shrubs, flowers, and ornamental plants;

(ii) raising of animals, including (but not limited to) cattle, horses, pigs, poultry, livestock, fish; and

(iii) animal husbandry, dairying, equestrian activities, horticulture, fallowing, pasturing, and market gardening;

(b) but excluding:

(i) retail sales activities; including but not limited to restaurants, banquet facilities, hospitality facilities and gift shops;

"apartment dwelling" means a residential building containing two or more dwelling units, of which not all dwelling units have a separate entrance to grade;

"board of education" means a board as defined in the *Education Act*, R.S.O. 1990, c. E.2, as amended;

"brownfield" means land located within the boundaries of the designated central urban areas as set out in Schedule "D" to this By-law, or within the boundaries of the urban

areas as defined from time to time in the Region's Policy Plan, upon which there has been previous industrial or commercial development (although such development may have been demolished) and for which a Phase I Environmental Site Assessment and Record of Site Condition have been completed pursuant to the *Guideline for Use at Contaminated Sites in Ontario* (Ontario Ministry of the Environment);

"building permit" means a permit pursuant to the *Building Code Act, 1992*, S.O. 1992, c. 23, as amended;

"calculation date" means the date on which the Chief Building Official of the local municipality has received:

- (a) the application for the building permit; and
- (b) all accompanying information, approvals and documents required to be provided by the applicant seeking the building permit and within the control of the applicant,

even if such Chief Building Official has not yet received:

- (c) payment of all fees and charges (including development charges) in respect of the issuance of the building permit; and /or
- (d) all information, approvals and documents required for the building permit, but:
 - (i) not within the control of the applicant; and
 - (ii) for which the applicant has taken all necessary and reasonable steps to obtain;

"commercial purpose" means used, designed or intended for use for or in connection with the purchase and/or sale and/or rental of commodities; the provision of services for a fee; or the operation of a business office;

"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 increasing the size or usability thereof, and includes redevelopment; notwithstanding the foregoing, development does not include temporary structures, including but not limited to, seasonal hoop structures, seasonal fabric structures, tents, or produce sales stands;

"duplex dwelling" means a residential building containing two dwelling units separated by horizontal division, each of which units has a separate entrance to grade;

"dwelling unit" means one or more rooms used, designed or intended to be used by one or more persons as a residence and which has access to culinary and/or sanitary facilities. A "dwelling unit" does not include a Park Model Trailer conforming to National Standard of Canada #CAN/CSA - Z241.0-92 or similar standard;

"existing industrial building" means a building used for or in connection with:

- (a) manufacturing, producing, processing, storing or distributing something;
- (b) research or development in connection with manufacturing, producing or processing something;

- (c) retail sales by a manufacturer, producer or processor of something they manufactured, produced or processed, if the retail sales are at the site where the manufacturing, production or processing takes place;
- (d) office or administrative purposes, if they are:
 - (i) carried out with respect to manufacturing, producing, processing, storage or distributing of something; and
 - (ii) in or attached to the building or structure used for that manufacturing, producing, processing, storage or distribution;

“granny flat” means a one-unit detached, temporary residential structure, containing culinary and sanitary facilities that is ancillary to an existing residential structure and that is designed to be temporary;

“gross floor area” means the total floor area, measured between the outside of exterior walls, virtual walls or between the outside of exterior walls or virtual walls and the centre line of party walls dividing the building from another building, of all floors and mezzanines above the average level of finished ground adjoining the building at its exterior walls;

“industrial use” means land, buildings or structures used for or in connection with:

- (a) manufacturing, producing, processing, storing or distributing something;
- (b) research or development in connection with manufacturing, producing or processing something;
- (c) retail sales by a manufacturer, producer or processor of something they manufactured, produced or processed, if the retail sales are at the site where the manufacturing, production or processing takes place;
- (d) office or administrative purposes, if it is:
 - (i) carried out with respect to manufacturing, producing, processing, storage or distributing of something; and
 - (ii) in or attached to the building or structure used for that manufacturing, producing, processing, storage or distribution;
- (e) self storage facilities;

“local board” means a municipal service board, transportation commission, public library board, board of health, police services board, planning board, or any other board, commission, committee, body or local authority established or exercising any power or authority under any general or special Act with respect to any of the affairs or purposes of one or more local municipalities or the Region, but excluding a board of education, a conservation authority, any municipal services corporation that is not deemed to be a local board under O. Reg. 599/06 made under the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended;

“local municipality” means any one of the municipalities of the Town of Fort Erie, Town of Grimsby, Town of Lincoln, City of Niagara Falls, Town of Niagara-on-the-Lake, Town of Pelham, City of Port Colborne, City of St. Catharines, City of Thorold, Township of Wainfleet, City of Welland, and the Township of West Lincoln;

“mezzanine” means an intermediate floor assembly between the floor and ceiling of any room or storey and includes an interior balcony;

“mixed-use building” means a building or structure used for both residential and non-residential use;

“multiplex dwelling” means a residential building containing three or more dwelling units, each of which unit has a separate entrance to grade;

“municipal housing project facilities” has the same meaning as that specified in the Region’s *Municipal Housing Facility By-law* (No. 34-2004), as may be amended;

“non-residential building” means a building or structure used exclusively for non-residential use;

“non-residential use” means use or intended use for any purpose other than human habitation and ancillary purposes and includes, but is not limited to, short stay rental use and commercial use;

“other multiple” means all residential units other than a single detached dwelling or apartment dwelling, including, but not limited to, semi-detached, row, multiplex and duplex units;

“parking structure” means buildings or structures uses for the parking of motor vehicles;

“place of worship” means any building or part thereof that is exempt from taxation as a place of worship pursuant to the *Assessment Act*, R.S.O. 1990, c. A.31, as amended;

“premise” means one or more dwelling units and/or one or more square feet used for non-residential use;

“Region” means The Regional Municipality of Niagara;

“Regulation” means O. Reg. 82/98 under the Act, as amended;

“residential building” means a building used exclusively for residential use, including a single detached dwelling, a semi-detached dwelling, a row dwelling, a duplex dwelling, a multiplex dwelling, or an apartment dwelling;

“residential use” means use or intended use for human habitation and ancillary purposes, and includes such use related to agricultural use, but does not include such use related to short stay rental use; for purposes of this definition “ancillary purposes” includes (but is not limited to) vehicle storage and equipment storage;

“row dwelling” means a residential building containing three or more dwelling units separated by vertical division, each of which units has a separate entrance to grade;

“semi-detached dwelling” means a residential building containing two dwelling units separated by vertical division each of which units has a separate entrance to grade;

“short stay rental use” means use or intended use for human habitation on a temporary basis for profit (such as a hotel, motel, guest cabin, bed and breakfast and boarding, lodging and rooming house, student residence);

“single detached dwelling” means a residential building containing one dwelling unit and not attached to another structure; and

“use” means either residential use or non-residential use.

RULES

2. For the purposes of complying with section 6 of the Act:
 - (a) The rules for determining if a development charge is payable in any particular case and for determining the amount of the charge shall be in accordance with sections 4 through 10, and 21 through 24.
 - (b) The rules for determining exemptions, relief, credits and adjustments shall be in accordance with sections 11 through 18.
 - (c) The rules for determining the phasing in of development charges shall be in accordance with section 9.
 - (d) The rules for determining the indexing of development charges shall be in accordance with sections 21 through 24.
 - (e) The rules respecting the redevelopment of land shall be in accordance with sections 19 and 20.

LANDS AFFECTED

3. This By-law applies to all lands in the geographic area of the Region, being all of the lands shown on Schedule “A”.

APPROVALS FOR DEVELOPMENT

4. Development charges under this By-law shall be imposed against all development if the development requires:
 - (a) the passing of a zoning by-law or of an amendment to a zoning by-law under section 34 of the *Planning Act*, R.S.O. 1990, c. P.13, as amended;
 - (b) approval of a minor variance under section 45 of the *Planning Act*;
 - (c) a conveyance of land to which a by-law passed under subsection 50(7) of the *Planning Act* applies;
 - (d) the approval of a plan of subdivision under section 51 of the *Planning Act*;
 - (e) a consent under section 53 of the *Planning Act*;
 - (f) the approval of a description under section 50 of the *Condominium Act, 1998*, S.O. 1998, c. 19, as amended; or
 - (g) the issuing of a permit under the *Building Code Act* in relation to a building or structure.

DESIGNATION OF SERVICES

5. The categories of services (from among those for which the Region is responsible) for which a development charge is calculated under this By-law are as follows:

<u>Category</u>	<u>Principal Components</u>
General Government	growth-related studies
Police Services	facilities
Roads	roads road related structures
Water	supply storage treatment distribution
Wastewater	collection treatment

6. A development charge shall include:
- (a) a charge in respect of general government, police services and roads;
 - (b) if water service is available, a charge in respect of water; and
 - (c) if wastewater service is available, a charge in respect of wastewater.

AMOUNT OF CHARGE

Amount of Charge – Residential

7. For development for residential purposes, development charges shall be imposed on all residential development, including a dwelling unit accessory to a non-residential development and the residential component of a mixed-use building, according to the number and type of dwelling units on the lands as set out in Schedule “B”.

Amount of Charge – Non-residential

8. For development for non-residential purposes, development charges shall be imposed on all non-residential development and, in the case of a mixed-used building, on the non-residential component of the mixed-use building, according to the gross floor area of the non-residential component as set out in Schedule “B”.

Phasing In of Development Charges

9. (1) From September 1, 2009 to August 31, 2010, the amount of the development charge shall be as shown on Schedule “B”.
- (2) From September 1, 2010 to August 31, 2011, the amount of the development charge shall be as shown on Schedule “B”, plus the annual indexation adjustment made pursuant to sections 21 to 24.

- (3) From September 1, 2011 to August 31, 2012, the amount of the development charge shall be as shown on Schedule "B", plus the accumulated indexation adjustment and the annual indexation adjustment made pursuant to sections 21 to 24.
- (4) From September 1, 2012 to August 31, 2013, the amount of the development charge shall be as shown on Schedule "B", plus the accumulated indexation adjustment and the annual indexation adjustment made pursuant to sections 21 to 24.
- (5) From September 1, 2013 to August 31, 2014, the amount of the development charge shall be as shown on Schedule "B", plus the accumulated indexation adjustment and the annual indexation adjustment made pursuant to sections 21 to 24.

TIMING OF CALCULATION AND PAYMENT

10. (1) The development charge under this By-law shall be calculated using the rate effective on the calculation date with respect to such development and shall be payable on the issuance of a building permit with respect to such development.
- (2) No Chief Building Official of any local municipality shall issue a building permit in respect of a development for which a development charge is payable pursuant to this By-law, until such development charge is paid.

EXEMPTIONS

11. The following are exempt from the payment of development charges under this By-law by reason of section 3 of the Act:
 - (a) lands and buildings owned by and used for the purposes of any local municipality or the Region or any local board unless such buildings or parts thereof are used, designed or intended for use primarily for or in connection with any commercial purpose; and
 - (b) land and buildings owned by and used for the purposes of a board of education unless such buildings or parts thereof are used, designed or intended for use primarily for or in connection with any commercial purpose.
12. Notwithstanding any other provision of this By-law, no development charge is imposed under this By-law respecting:
 - (a) granny flats;
 - (b) parking structures;
 - (c) lands and buildings used for agricultural use; notwithstanding this provision, a development charge shall be imposed in relation to agricultural use unless the owner of the fee simple of the land intends to actually use and occupy the land for such respective agricultural use;
 - (d) that portion of building or structure owned by a church or religious organization which is used exclusively as a place of worship; and
 - (e) lands and buildings which are used or intended to be used as municipal housing project facilities, as set out in section 110 of the *Municipal Act, 2001*, S.O. 2001,

c. 25, O. Reg.603/06 under the *Municipal Act, 2001*, and the Region's *Municipal Housing Facility By-law* (No. 34-2004), all as may be amended.

SPECIAL SITUATIONS

13. No development charge is payable for those lands and buildings for the Healthcare Complex on Fourth Avenue, St. Catharines owned by the Niagara Health System, being all of the lands more particularly described on Schedule "C1", save and except such buildings or parts thereof used, designed or intended for use primarily for or in connection with any commercial purpose.
14. No development charge is payable for those lands and buildings for the hospital on Main Street East, Grimsby, owned by West Lincoln Memorial Hospital, being all of the lands more particularly described on Schedule "C2", save and except such buildings or parts thereof used, designed or intended for use primarily for or in connection with any commercial purpose.

Rules With Respect to Designated Central Urban Areas

15. (a) The applicable development charge shall be reduced by 50% for any development in relation to uses other than agricultural use or industrial use that will be located within the boundaries of the designated central urban areas as set out in Schedule "D" to this By-law or located on a brownfield.
- (b) The applicable development charge shall be reduced by 50% for any development in relation to uses other than agricultural use or industrial use that will be located within the boundaries of the designated central urban areas as set out in Schedule "D" to this By-law or located on a brownfield where, in the opinion of Council of the Region, the development includes three or more of the following features:
 - "Intensification of an existing use," meaning redevelopment or building addition so as to add floor area and/or a residential unit or units.
 - "Creation of mixed uses," meaning redevelopment, addition or conversion so as to add a new compatible use or uses to a building or property. "Creation of mixed uses" also means new development that proposes a mixed use building or a mix of uses on the site.
 - "Contribution towards the creation of a walkable neighbourhood character," meaning development, redevelopment, addition or conversion within a neighbourhood context that features one or more of the following: safe and clearly demarcated pedestrian access to and within the development site, building orientation and pedestrian access oriented toward the street, site and building access directly from the street without requiring passage across a driveway or parking area, street-oriented building façade that features fenestration and entranceways to create a sense of permeability and movement between the street and the building interior, contribution to the quality of the public space on the street by the provision of space for public assembly, street furniture, artworks and/or landscaping.
 - "Creation of a range of housing opportunities and choices," meaning development, redevelopment, addition or conversion that adds multiple-unit housing types to the housing stock.

“Reduced setbacks from roadways,” meaning development, redevelopment or conversion that places the building façade at the front lot line or closer to the street than the mid-point between the street line and the existing building. Where there is an existing building line along the block-face that is set back from the street line, “reduced front setbacks from roadways” means placing the building façade closer to the street line than the mid-point between the street line and the established building line.

Rules With Respect to Exemptions for Intensification of Existing Housing

16. Pursuant to the Act, no development charge is payable if the development is only the enlargement of an existing dwelling unit.
17. Pursuant to the Act and Regulation, no development charge is payable if the development is only the creation of:
 - (a) one or two additional dwelling units in a dwelling unit in a single detached dwelling, where the total gross floor area of the additional dwelling unit or units is less than or equal to the gross floor area of the existing dwelling unit;
 - (b) one additional dwelling unit in a dwelling unit in a semi-detached dwelling or row dwelling, where the gross floor area of the additional dwelling unit is less than or equal to the gross floor area of the existing dwelling unit; or
 - (c) one additional dwelling unit in a dwelling unit in a duplex dwelling, multiplex dwelling or apartment dwelling, where the gross floor area of the additional dwelling unit is less than or equal to the gross floor area of the smallest existing dwelling unit in the residential building.

Rules With Respect to Exemptions for Industrial Expansion

18. (1) Pursuant to the Act, but subject to the other provisions of this By-law, if a development includes the enlargement of the gross floor area of an existing industrial building, the amount of the development charge that is payable in respect of the enlargement is determined in accordance with this section.
 - (2) If the gross floor area is enlarged by 50 percent or less, the amount of the development charge in respect of the enlargement is zero.
 - (3) If the gross floor area is enlarged by more than 50 percent, the amount of the development charge in respect of the enlargement is the amount of the development charge that would otherwise be payable multiplied by the fraction determined as follows:
 1. Determine the amount by which the enlargement exceeds 50 percent of the gross floor area before the enlargement.
 2. Divide the amount determined under paragraph 1 by the amount of the enlargement.

Rules With Respect to Redevelopment – Demolitions

19. (1) If application is made for a building permit in respect of a parcel of land upon which a premise existed within five years prior to the date of such application, but which premise has been demolished or destroyed before the date of such application, then the amount of development charges payable upon issuance of the said building permit shall be

reduced by the net amount, calculated pursuant to this By-law at the current development charge rates, that would be payable as development charges in respect of the demolished or destroyed premise, provided that such reduction shall not exceed the development charges otherwise payable. For purposes of this subsection, "net" means the excess of the development charges for premises constructed, over the development charges for premises demolished or destroyed.

- (2) If, at the time of payment of development charges in respect of a parcel of land, the owner of the said land provides written notification of his/her intention to demolish (within five years) a premise existing on that parcel at the time of such payment, then upon the subsequent assurance by the Treasurer of the relevant local municipality (or his or her designate) to the Region's Treasurer, within five years after such payment, that such premise on such parcel has indeed been so demolished (and the particulars of such demolished premise), the Region shall refund to such owner a reduction in the development charges paid, which reduction is the amount, calculated pursuant to this By-law or a predecessor by-law of the Region, at the development charge rates in effect at the time of such payment, that would have been payable as development charges in respect of the premise demolished, provided that such reduction shall not exceed the development charges actually paid.

Rules With Respect to Redevelopment – Conversions

20. If a development includes the conversion of a premise from one use (the "first use") to another use, then the amount of development charges payable shall be reduced by the amount, calculated pursuant to this By-law at the current development charge rates, that would be payable as development charges in respect of the first use, provided that such reduction shall not exceed the development charges otherwise payable.

INDEXING

21. The amounts of development charges imposed pursuant to this By-law, as set out in Schedule "B" shall be adjusted annually without amendment to this By-law, in accordance with the Statistics Canada Quarterly Construction Price Statistics (catalogue number 62-007), as follows:
 - (a) the initial adjustment shall be one year from the effective date of this By-law; and
 - (b) thereafter, adjustment shall be made each year on the anniversary of the effective date of this By-law.
22. For greater certainty, on September 1st of each year, the annual indexation adjustment shall be applied to the development charge as set out in Schedule "B", plus the accumulated annual indexation adjustments from previous years, if any.
23. Notwithstanding sections 21 and 22 of this By-law, Council of the Region may, for any particular year, waive the indexing for that particular year.
24. Notwithstanding sections 21 and 22 of this By-law, no indexing adjustment shall be applied to development charges for industrial uses.

GENERAL

25. The following schedules to this By-law form an integral part of this By-law:

Schedule "A" – Map of the Regional Municipality of Niagara
Schedule "B" – Development Charges
Schedule "C1" – Legal Description of the Healthcare Complex Lands on Fourth Avenue,
St. Catharines
Schedule "C2" – Legal Description of the Hospital Lands on Main Street East, Grimsby
Schedule "D" – Designated Central Urban Areas for Regional Development Charges
Exemption/Waiver

26. This By-law shall come into force and effect on September 1, 2009.
27. Pursuant to the Act, and unless it is repealed earlier, this By-law shall expire five years after the date it comes into force.
28. Each of the provisions of this By-law is severable and if any provision hereof should, for any reason, be declared invalid by the Ontario Municipal Board or a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
29. By-laws 90-2004, 84-2006, 19-2007 and 47-2007 are hereby repealed effective September 1, 2009.

THE REGIONAL MUNICIPALITY OF NIAGARA

(Regional Chair)

(Regional Clerk)

Passed: [date]