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**THE CORPORATION OF THE MUNICIPALITY OF  
PELHAM**

**BY-LAW #3049 (2009)**

**A by-law to establish development charges for the Corporation of the Town of  
Pelham**

**WHEREAS** subsection 2(1) of the *Development Charges Act, 1997*, S.O. c. 27 (hereinafter called "the Act") provides that the council of a municipality may pass By-laws for the imposition of development charges against land to pay for increased capital costs required because of the need for services arising from development in the area to which the by-law applies;

**AND WHEREAS** the Council of The Corporation of the Town of Pelham ("Town of Pelham") has given Notice in accordance with Section 12 of the *Development Charges Act, 1997*, of its intention to pass a by-law under Section 2 of the said Act;

**AND WHEREAS** the Council of the Town of Pelham has heard all persons who applied to be heard no matter whether in objection to, or in support of, the development charge proposal at public meetings held on March 23, 2009 and June 22, 2009;

**AND WHEREAS** the Council of the Town of Pelham, had before it a report entitled Town of Pelham Development Charges Background Study dated March 6, 2009 prepared by Watson & Associates Economists Ltd., wherein it is indicated that the development of any land within the Town of Pelham will increase the need for services as defined herein;

**AND WHEREAS** the Council of the Town of Pelham on July 20, 2009 approved the applicable Development Charges Background Study, dated March 6, 2009 (as amended), in which certain recommendations were made relating to the establishment of a development charge policy for the Town of Pelham pursuant to the *Development Charges Act, 1997*;

**AND WHEREAS** the Council of the Town of Pelham on April 6, 2009 determined that an additional public meeting was required;

**NOW THEREFORE THE COUNCIL OF THE TOWN OF PELHAM ENACTS AS FOLLOWS:**

**DEFINITIONS**

1. In this by-law,
  - (1) "Act" means the *Development Charges Act*, S.O. 1997, c. 27;
  - (2) "Administration Service" means any and all studies carried out by the municipality that are with respect to eligible services for which a development charge by-law may be imposed under the *Development Charges Act, 1997*;
  - (3) "Agricultural use" means a bona fide farming operation;

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- (4) "Apartment dwelling" means any building containing more than three Dwelling units;
- (5) "Bedroom" means a habitable room larger than seven square metres, including a den, study, or other similar area, but does not include a living room, dining room or kitchen;
- (6) "Board of education" means a board defined in s.s. 1(1) of the *Education Act*, R.S.O. 1990, c.E.2, as amended;
- (7) "Building Code Act" means the *Building Code Act*, R.S.O. 1992, c.23, as amended;
- (8) "Capital cost" means costs incurred or proposed to be incurred by the municipality or a local board thereof directly or by others on behalf of, and as authorized by, the municipality or local board,
- (a) to acquire land or an interest in land, including a leasehold interest;
  - (b) to improve land;
  - (c) to acquire, lease, construct or improve buildings and structures;
  - (d) to acquire, lease, construct or improve facilities including,
    - (i) rolling stock with an estimated useful life of seven years or more,
    - (ii) furniture and equipment, other than computer equipment, and
    - (iii) materials acquired for circulation, reference or information purposes by a library board as defined in the *Public Libraries Act*, R.S.O. 1990, c.P.44; as amended;
  - (e) to undertake studies in connection with any of the matters referred to in clauses (a) to (d);
  - (f) to complete the development charge background study under Section 10 of the Act;
  - (g) interest on money borrowed to pay for costs in (a) to (d);
- required for provision of services designated in this by-law within or outside the municipality;
- (9) "Commercial use" means a building, structure, lot, use or activity pertaining to the buying or selling of commodities or the supplying of services for remuneration, but does not include activities associated with the manufacturing, warehousing or assembling of goods, or with any construction work;
- (10) "Council" means the Council of The Corporation of the Town of Pelham;

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- (11) "Development" means any activity or proposed activity in respect of land that requires one or more of the actions referred to in Section 7 of this by-law and including the redevelopment of land or the redevelopment, expansion, extension or alteration of a use, building or structure except interior alterations to an existing building or structure which do not change or intensify the use of land;
  - (12) "Development charge" means a charge imposed pursuant to this By-law;
  - (13) "Duplex dwelling" means a building divided horizontally into two Dwelling units ;
  - (14) "Dwelling" means a building containing one or more Dwelling units;
  - (15) "Dwelling unit" means a room or suite of rooms used, or designed or intended for use by, one person or persons living together, in which access to culinary or sanitary facilities has been provided and may include time share, life lease and long term or assisted care type units;
  - (16) "Farm building" means that part of a bona fide farm operation encompassing barns, silos and other ancillary development to an agricultural use, but excluding a residential use;
  - (17) "Farm help house" means a Dwelling containing one Dwelling unit and forming part of a bona fide farm operation providing accommodation to farm help on the farm operation;
  - (18) "Garden Suite" is a temporary single detached Dwelling providing temporary accommodation, and shall have the same meaning as defined in the Town's Zoning By-law No. 1136, as amended;
  - (19) "Grade" means the average level of finished ground adjoining a building or structure at all exterior walls;
  - (20) "Gross floor area" means the total floor area measured between the outside of exterior walls, or between the outside of exterior walls and the centre line of party walls dividing the building from another building, of all floors including below grade but does not include a room or enclosed area within the building or structure that is used exclusively for the accommodation of heating, cooling, ventilation, electrical, mechanical or telecommunications equipment that service that building;
  - (21) "Institution use" means, a use or intended use by an agency, organized body, society, association or religious group for promoting a public or non-profit purpose, and includes (but is not limited to) uses such as universities, colleges, schools, places of worship, hospitals and Institutional shall have a corresponding meaning;
  - (22) "Local board" means a public utility commission, public library board, local board of health, or any other board, commission, committee or body or local authority established or exercising any power or authority under any

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general or special act with respect to any of the affairs or purposes of the municipality or any part or parts thereof;

- (23) "Local services" means those services or facilities which are under the jurisdiction of the municipality and are related to a plan of subdivision or within the area to which the plan relates, required as a condition of approval under s.51 of the *Planning Act*, or as a condition of approval under s.53 of the *Planning Act*;
- (24) "Multiple dwelling" means all Dwellings other than Single detached dwellings, Semi-detached dwellings, and Apartment dwellings;
- (25) "Municipality" means The Corporation of the Town of Pelham;
- (26) "Non-residential uses" means a building or structure used for other than a Residential use and Non-residential shall have a corresponding meaning;
- (27) "Owner" means the owner of land or a person who has made application for an approval for the development of land upon which a development charge is imposed;
- (28) "Planning Act" means the *Planning Act*, R.S.O. 1990, c.P.13, as amended;
- (29) "Regulation" means any regulation made pursuant to the Act;
- (30) "Residential use" means lands, buildings or structures or portions thereof used, or designed or intended for use as a home or residence of one or more individuals, and shall include a Single detached dwelling, a Semi-detached dwelling, a Multiple dwelling, an Apartment dwelling, and the residential portion of a multiple-use building or structure and residential shall have a corresponding meaning;
- (31) "Semi-detached dwelling" means a Dwelling divided vertically into two Dwelling units;
- (32) "Services" means services set out in Schedule "A" to this By-law;
- (33) "Single detached dwelling" means a completely detached Dwelling containing only one Dwelling unit;

## **CALCULATION OF DEVELOPMENT CHARGES**

- 2. (1) Subject to the provisions of this By-law, development charges against land shall be imposed, calculated and collected in accordance with the base rates set out in Schedule "B", which relate to the services set out in Schedule "A".
- (2) The development charge with respect to the uses of any land, building or structure shall be calculated as follows:
  - a) in the case of residential development or redevelopment or the residential portion of a multiple use development or redevelopment, as the sum of the product of the number of dwelling units of each

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type multiplied by the corresponding total amount for such dwelling unit type, as set out in Schedules "B1" to "B3";

- b) in the case of non-residential development or redevelopment, or the non-residential portion of a multiple use development or redevelopment, as the sum of the product of the gross floor area multiplied by the corresponding total amount for such gross floor area as set out in Schedules "B1" to "B3".
- (3) Council hereby determines that the development or redevelopment of land, buildings or structures for residential and non-residential uses will require the provision, enlargement or expansion of the services referenced in Schedule "A".

### **PHASE-IN OF DEVELOPMENT CHARGES**

- 3. The development charges imposed pursuant to this by-law are not being phased-in and are payable in full, subject to the exemptions herein, from the effective date of this by-law.

### **APPLICABLE LANDS**

- 4. (1) The Council of the Town of Pelham hereby imposes the development charges indicated on Schedule "B" to this by-law within the Town of Pelham to those categories of Residential and Non-Residential uses of land, buildings or structures, as further defined herein, in order to defray the growth related net capital cost of providing, enlarging, expanding or improving the services indicated on Schedule "A" to this by-law.
- (2) Subject to Sections 5, 6 and 7, Schedule "B1" to this by-law applies to all lands in the municipality, whether or not the land or use is exempt from taxation under Section 3 of the *Assessment Act*, R.S.O. 1990, c.A.31.
- (3) Subject to Sections 5, 6 and 7, Schedule "B2" to this by-law, Fenwick Water and Sanitary Sewer Development Charges, applies to all lands within the Fenwick Urban Boundary as defined on the map in Schedule "C" to this by-law, whether or not the land or use is exempt from taxation under Section 3 of the *Assessment Act*, R.S.O. 1990, c.A.31.
- (4) Subject to Sections 5, 6 and 7, Schedule "B3" to this by-law, Fonthill Water and Sanitary Sewer Development Charges, applies to all lands within the Fonthill Urban Boundary as defined on the map in Schedule "D" to this by-law, whether or not the land or use is exempt from taxation under Section 3 of the *Assessment Act*, R.S.O. 1990, c.A.31.
- (5) Notwithstanding subsections (3) and (4):
  - (a) The development charge for the water service is applicable to development within the designated service areas provided that municipal water service is available or expected to be made available during the term of the by-law;

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- (b) The development charge for the sanitary sewer service is applicable to development within the designated service areas provided that municipal sanitary sewerage service is available or expected to be made available during the term of the by-law;
- (6) This by-law shall not apply to land that is owned by and used for the purposes of:
- (a) a board of education;
  - (b) any municipality or local board thereof;
  - (c) a hospital as defined under the *Public Hospitals Act*;
  - (d) that portion of a place of worship that is exempt from taxation under the *Assessment Act*;
  - (e) a garden suite,
  - (f) a farm help house
  - (g) a farm building.
  - (h) Institutions that are exempt from municipal taxation under the following legislation;
    - 1. Social Housing Reform Act,
    - 2. Long Term Care Act, or
    - 3. Mental Health Act,save and except those that are operated for profit.
  - (i) This by-law shall not apply to land developed for purposes where the development is clearly exempt from taxation under Provincial or Federal Legislation.
- (7) Notwithstanding subsection (1), a 75% development charge exemption shall be granted for development of the type defined in paragraph (a), and located within the areas defined in paragraph (b), and subject to such development meeting all of the conditions set out in paragraph (c).
- (a)
    - (i) addition of residential units to existing residential, commercial or mixed use buildings; and/or
    - (ii) residential conversion of existing commercial and mixed use buildings that creates additional residential units; and/or
    - (iii) new residential or commercial development on vacant lots/ parking lots; and/or
    - (iv) redevelopment of mixed use buildings that creates additional residential units or commercial space; and/or
    - (v) conversion of non-commercial space to commercial space.
  - (b) The area shown as Downtown Fenwick in Schedule "E" or the area shown as Downtown Fonthill in Schedule "F".
  - (c)
    - 1) Based on the decision of the Treasurer, the property taxes for the property on which the development is located, are in good standing at the time of the application; and
    - 2) Based on the decision of the Director of Planning Services, the existing and proposed land uses for the development, are in conformity with applicable Official Plans, zoning by-law and other planning requirements at both the local and Regional level; and

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- 3) Based on the decision of the Chief Building Official, all improvements relating to the development are to be made pursuant to a building permit and constructed in accordance with the Ontario Building Code and all applicable zoning requirements and planning approvals; and
  - 4) Based on the decision of the Chief Building Official, outstanding work orders and/or orders or requests to comply from the Town have been satisfactorily addressed prior to the Town granting the development charge exemption; and, in addition,
  - 5) The Director of Planning Services may require the applicant to submit for approval, professional design/architectural drawings in conformity with any municipally-issued urban design guidelines, as well as traffic impact studies or studies of microclimatic conditions (e.g. sun, shadow, wind) and such requirements must be met prior to the Town granting the development charge exemption.

#### **RULES WITH RESPECT TO EXEMPTIONS FOR INTENSIFICATION OF EXISTING HOUSING**

5. (1) Notwithstanding Section 4 above, no development charge shall be imposed with respect to developments or portions of developments as follows:
  - (a) the enlargement of an existing residential dwelling unit;
  - (b) the creation of one or two additional residential dwelling units in an existing single detached dwelling where the total gross floor area of the additional unit(s) does not exceed the gross floor area of the existing dwelling unit;
  - (c) the creation of one additional dwelling unit in any other existing residential building provided the gross floor area of the additional unit does not exceed the smallest existing dwelling unit already in the building.
- (2) Notwithstanding subsection 5(1)(b), development charges shall be calculated and collected in accordance with Schedules "B1" to "B3" where the total residential gross floor area of the additional one or two dwelling units is greater than the total gross floor area of the existing single detached dwelling unit.
- (3) Notwithstanding subsection 5(1)(c), development charges shall be calculated and collected in accordance with Schedules "B1" to "B3" where the additional dwelling unit has a residential gross floor area greater than,
  - (a) in the case of semi-detached dwelling or multiple dwelling, the gross floor area of the existing dwelling unit, and
  - (b) in the case of any other residential building, the residential gross floor area of the smallest existing dwelling unit.

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## **RULES WITH RESPECT TO AN “INDUSTRIAL” EXPANSION EXEMPTION**

6. (1) Notwithstanding Section 4, 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 is the following:
- (a) 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; or
  - (b) if the gross floor area is enlarged by more than 50 percent, development charges are payable on the amount by which the enlargement exceeds 50 percent of the gross floor area before the enlargement.
- (2) For the purpose of this section, the terms “gross floor area” and “existing industrial building” shall have the same meaning as those terms have in O.Reg. 82/98 made under the Act.
- (3) In this section, for greater certainty in applying the exemption herein:
- (a) the gross floor area of an existing industrial building is enlarged where there is a bona fide physical and functional increase in the size of the existing industrial building.

## **DEVELOPMENT CHARGES IMPOSED**

7. (1) Subject to subsection (2), development charges shall be calculated and collected in accordance with the provisions of this by-law and be imposed on land to be developed for residential and non-residential uses, where, the development requires,
- (a) the passing of a zoning by-law or an amendment thereto under Section 34 of the *Planning Act*;
  - (b) the 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*, R.S.O. 1990, c.C.26; or
  - (g) the issuing of a permit under the *Building Code Act*, in relation to a building or structure.
- (2) Subsection (1) shall not apply in respect to:



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- (a) local services installed or paid for by the owner within a plan of subdivision or within the area to which the plan relates, as a condition of approval under Section 51 of the *Planning Act*;
  - (b) local services installed or paid for by the owner as a condition of approval under Section 53 of the *Planning Act*.

#### **LOCAL SERVICE INSTALLATION**

8. Nothing in this by-law prevents Council from requiring, as a condition of an agreement under Section 51 or 53 of the *Planning Act*, that the owner, at his or her own expense, shall install or pay for such local services, within the Plan of Subdivision or within the area to which the plan relates, as Council may require.

#### **MULTIPLE CHARGES**

9. (1) Where two or more of the actions described in subsection 7(1) are required before land to which a development charge applies can be developed, only one development charge shall be calculated and collected in accordance with the provisions of this by-law.
- (2) Notwithstanding subsection (1), if two or more of the actions described in subsection 7(1) occur at different times, and if the subsequent action has the effect of increasing the need for municipal services as set out in Schedule AA@, an additional development charge on the additional residential units and additional non-residential gross floor area shall be calculated and collected in accordance with the provisions of this by-law.

#### **SERVICES IN LIEU**

10. (1) Council may authorize an owner, through an agreement under Section 38 of the Act, to substitute such part of the development charge applicable to the owner's development as may be specified in the agreement, by the provision at the sole expense of the owner, of services in lieu. Such agreement shall further specify that where the owner provides services in lieu in accordance with the agreement, Council shall give to the owner a credit against the development charge in accordance with the agreement provisions and the provisions of Section 39 of the Act, equal to the reasonable cost to the owner of providing the services in lieu. In no case shall the agreement provide for a credit that exceeds the total development charge payable by an owner to the municipality in respect of the development to which the agreement relates.
- (2) In any agreement under subsection (1), Council may also give a further credit to the owner equal to the reasonable cost of providing services in addition to, or of a greater size or capacity, than would be required under this by-law.
- (3) The credit provided for in subsection (2) shall not be charged to any development charge reserve fund.

#### **RULES WITH RESPECT TO RE-DEVELOPMENT**

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11. In the case of the re-development involving the demolition and replacement of all or part of a building or structure:
- (1) a credit offsetting the development charges payable shall be allowed, provided that the land was improved by occupied structures (or structures capable of occupancy) within the five years prior to the issuance of the demolition permit, and the building permit has been issued for the development or redevelopment within five years from the date the demolition permit has been issued; and
  - (2) the credit shall be calculated as follows;
    - (a) for residential buildings, the credit shall be equivalent to the number of dwelling units demolished multiplied by the applicable residential development charge in place at the time the development charge is payable under this by-law.
    - (b) for non-residential buildings, the credit shall be equivalent to the gross floor area demolished multiplied by the applicable non-residential development charge in place at the time the development charge is payable under this by-law.
12. Notwithstanding Subsection 11(1), the credit cannot exceed the amount of the development charge that would otherwise be payable, and no credit is available if the existing land use is exempt under this by-law.

#### **TIMING OF CALCULATION AND PAYMENT**

13. (1) Development charges shall be calculated and payable in full in money or by provision of services as may be agreed upon, or by credit granted under the Act, on the date that the first building permit is issued in relation to a building or structure on land to which a development charge applies.
- (2) Where development charges apply to land in relation to which a building permit is required, the building permit shall not be issued until the development charge has been paid in full.

#### **RESERVE FUNDS**

14. (1) Monies received for the payment of development charges shall be used only in accordance with the provisions of Section 35 of the Act.
- (2) Monies received from payment of development charges under this by-law shall be maintained in separate reserve funds. Council directs the Municipal Treasurer to divide the reserve funds created hereunder into separate accounts in accordance with the designated municipal services set out in Schedule "A" to which the development charge payments shall be credited in accordance with the amounts shown, plus interest earned thereon.
- (3) Where any development charge, or part thereof, remains unpaid after the due date, the amount unpaid shall be added to the tax roll and shall be collected in like manner as taxes.

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- (4) Where any unpaid development charges are collected as taxes under subsection (4), the monies so collected shall be credited to the development charge reserve funds referred to in subsection (2).
  - (5) The Municipal Treasurer shall, in each year commencing in 2010 for the 2009 year, furnish to Council a statement in respect of the reserve funds established hereunder for the prior year, containing the information set out in Section 12 of O.Reg. 82/98.

#### **BY-LAW AMENDMENT OR APPEAL**

15. (1) Where this by-law or any development charge prescribed thereunder is amended or repealed either by order of the Ontario Municipal Board or by resolution of Council, the Municipal Treasurer shall calculate forthwith the amount of any overpayment to be refunded as a result of said amendment or repeal.
  - (2) Refunds that are required to be paid under subsection (1) shall be paid with interest to be calculated as follows:
    - (a) Interest shall be calculated from the date on which the overpayment was collected to the date on which the refund is paid;
    - (b) The Bank of Canada interest rate in effect on the date of enactment of this by-law shall be used.

#### **BY-LAW INDEXING**

16. The development charges set out in Schedule "B1" to "B3" to this by-law may be adjusted annually as of April 1<sup>st</sup>, without amendment to the by-law, in accordance with the most recent twelve month change in the Statistics Canada Quarterly, "Construction Price Statistics" (Non-Residential Buildings) Catalogue No. 62-007.

#### **SEVERABILITY**

17. In the event any provision, or part thereof, of this by-law is found by a court of competent jurisdiction to be ultra vires, such provision, or part thereof, shall be deemed to be severed, and the remaining portion of such provision and all other provisions of this by-law shall remain in full force and effect.

#### **HEADINGS FOR REFERENCE ONLY**

18. The headings inserted in this by-law are for convenience of reference only and shall not affect the construction or interpretation of this by-law.

#### **BY-LAW REGISTRATION**

19. A certified copy of this by-law may be registered on title to any land to which this by-law applies.

#### **BY-LAW ADMINISTRATION**