Français

Development Charges Act, 1997

ONTARIO REGULATION 82/98

GENERAL

Consolidation Period: From July 22, 2004 to the e-Laws currency date.

Last amendment: O.Reg. 206/04.

This is the English version of a bilingual regulation.

DEFINITIONS

1. (1) For the purposes of the Act and in this Regulation,

"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; ("immeuble industriel existant")

"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 above the average level of finished ground adjoining the building at its exterior walls. ("surface de plancher hors oeuvre brute") O. Reg. 82/98, s. 1 (1).

(2) For the purposes of paragraph 3 of subsection 2 (4) of the Act,

"land for parks",

(a) includes land for woodlots and land that is acquired because it is environmentally sensitive, and

(b) does not include land for an enclosed structure used throughout the year for public recreation and land that is necessary for the structure to be used for that purpose, including parking and access to the structure. O. Reg. 82/98, s. 1 (2).

EXCEPTION RELATING TO THE CREATION OF ADDITIONAL DWELLING UNITS

2. For the purposes of clause 2 (3) (b) of the Act, the following table sets out the name

and description of the classes of residential buildings that are prescribed, the maximum number of additional dwelling units that are prescribed for buildings in those classes and the restrictions for each class.

Name of Class of Residential Building	Description of Class of Residential Buildings	Maximum Number of Additional Dwelling Units	Restrictions
Single detached dwellings	Residential buildings, each of which contains a single dwelling unit, that are not attached to other buildings.	Two	The total gross floor area of the additional dwelling unit or units must be less than or equal to the gross floor area of the dwelling unit already in the building.
Semi-detached dwellings or row dwellings	Residential buildings, each of which contains a single dwelling unit, that have one or two vertical walls, but no other parts, attached to other buildings.	One	The gross floor area of the additional dwelling unit must be less than or equal to the gross floor area of the dwelling unit already in the building.
Other residential buildings	A residential building not in another class of residential building described in this table.	One	The gross floor area of the additional dwelling unit must be less than or equal to the gross floor area of the smallest dwelling unit already in the building.

O. Reg. 82/98, s. 2.

WHEN INTENTION TO MEET INCREASED NEED IS SHOWN

3. For the purposes of paragraph 3 of subsection 5 (1) of the Act, the council of a municipality has indicated that it intends to ensure that an increase in the need for service will be met if the increase in service forms part of an official plan, capital forecast or similar expression of the intention of the council and the plan, forecast or similar expression of the intention of the council has been approved by the council. O. Reg. 82/98, s. 3.

LEVEL OF SERVICE

4. (1) For the purposes of paragraph 4 of subsection 5 (1) of the Act, both the quantity and quality of a service shall be taken into account in determining the level of service and the average level of service. O. Reg. 82/98, s. 4 (1).

(1.1) In determining the quality of a service under subsection (1), the replacement cost of municipal capital works, exclusive of any allowance for depreciation, shall be the amount used. O. Reg. 206/04, s. 1.

(2) A geographic area of the municipality may be excluded in determining the service and average level of service if,

(a) the service is not provided in the excluded geographic area; and

(b) the excluded geographic area is identified in the by-law. O. Reg. 82/98, s. 4 (2).

(3) If the average level of service determined is lower than the standard level of service required under another Act, the standard level of service required under the other Act may be deemed for the purposes of paragraph 4 of subsection 5 (1) of the Act to be the average level of service. O. Reg. 82/98, s. 4 (3).

(4) Subject to subsection (2), if a development charge by-law applies to a part of the municipality, the level of service and average level of service cannot exceed that which would be determined if the by-law applied to the whole municipality. O. Reg. 82/98, s. 4 (4).

UNCOMMITTED EXCESS CAPACITY

5. For the purposes of paragraph 5 of subsection 5 (1) of the Act, excess capacity is

uncommitted excess capacity unless, either before or at the time the excess capacity was created, the council of the municipality expressed a clear intention that the excess capacity would be paid for by development charges or other similar charges. O. Reg. 82/98, s. 5.

REDUCTIONS IN RESPECT OF CAPITAL GRANTS, ETC.

6. (1) If a capital grant, subsidy or other contribution has been made in respect of capital costs and, at the time the grant, subsidy or other contribution was made, the person making it expressed a clear intention that all or part of the grant, subsidy or other contribution be used to benefit existing development or new development, the capital costs determined under paragraph 7 of subsection 5 (1) of the Act shall be reduced by the amount of the grant, subsidy or other contribution, but only to the extent that the grant, subsidy or other contribution was intended to benefit new development. O. Reg. 82/98, s. 6 (1).

(2) If subsection (1) does not apply, the capital costs determined under paragraph 7 of subsection 5 (1) of the Act shall be reduced by the amount of any grant, subsidy or other contribution made in respect of the capital costs in the same proportion as the increase in the need for service was reduced under paragraph 6 of subsection 5 (1) of the Act. O. Reg. 82/98, s. 6 (2).

PRESCRIBED INDEX

7. The Statistics Canada Quarterly, *Construction Price Statistics*, catalogue number 62-007 is prescribed as the index for the purposes of paragraph 10 of subsection 5 (1) of the Act. O. Reg. 82/98, s. 7.

BACKGROUND STUDY

8. A development charge background study under section 10 of the Act shall set out the following for each service to which the development charge relates:

1. The total of the estimated capital costs relating to the service.
2. The allocation of the costs referred to in paragraph 1 between costs that would benefit new development and costs that would benefit existing development.
3. The total of the estimated capital costs relating to the service that will be incurred during the term of the proposed development charge by-law.
4. The allocation of the costs referred to in paragraph 3 between costs that would benefit new development and costs that would benefit existing development.
5. The estimated and actual value of credits that are being carried forward relating to the service. O. Reg. 82/98, s. 8.

NOTICE OF PUBLIC MEETING

9. (1) The notice of the public meeting the council is required to give under clause 12 (1) (b) of the Act shall be given in one of the following ways:

1. To every owner of land in the area to which the proposed by-law would apply, by personal service, fax or mail.
2. By publication in a newspaper that is, in the clerk’s opinion, of sufficiently general circulation in the area to which the proposed by-law would apply to give the public

reasonable notice of the meeting. O. Reg. 82/98, s. 9 (1).

(2) For the purposes of paragraph 1 of subsection (1), the owners are the owners shown on the last revised assessment roll, subject to any written notice of a change of ownership of land the clerk of the municipality may have received. A notice given by mail to an owner shall be mailed to the address shown on the last revised assessment roll or, if applicable, to the address shown on the notice of a change of ownership of land received by the clerk. O. Reg. 82/98, s. 9 (2).

NOTICES OF DEVELOPMENT CHARGE BY-LAWS

10. (1) This section applies to the notices relating to the passage of a development charge by-law that the clerk of a municipality is required to give under section 13 of the Act. O. Reg. 82/98, s. 10 (1).

(2) Notice shall be given in one of the following ways:

1. By personal service, fax or mail to every owner of land in the area to which the by-law applies.
2. By publication in a newspaper that is, in the clerk's opinion, of sufficiently general circulation in the area to which the by-law applies to give the public reasonable notice of the passing of the by-law. O. Reg. 82/98, s. 10 (2).

(3) Subsection 9 (2) applies, with necessary modifications, for the purposes of paragraph 1 of subsection (2). O. Reg. 82/98, s. 10 (3).

(4) In addition to the notice under subsection (2), notice shall be given, by personal service, fax or mail, to the following:

1. To every person and organization that has given the clerk of the municipality a written request for notice of the passing of the by-law and has provided a return address.
2. In the case of a by-law passed by the council of an area municipality, to the clerk of the upper tier municipality that the area municipality is in.
3. In the case of a by-law passed by the council of an upper tier municipality, to the clerks of the area municipalities within the upper tier municipality.
4. To the secretary of every school board having jurisdiction within the area to which the by-law applies. O. Reg. 82/98, s. 10 (4).

(5) Each notice shall set out the following:

1. A statement that the council of the municipality has passed a development charge by-law.
2. A statement setting out when the by-law was passed and what its number is.
3. A statement that any person or organization may appeal the by-law to the Ontario Municipal Board under section 14 of the Act by filing with the clerk of the municipality a notice of appeal setting out the objection to the by-law and the reasons supporting the objection.
4. A statement setting out what the last day for appealing the by-law is.
5. An explanation of the development charges imposed by the by-law.

6. A description of the lands to which the by-law applies.

7. A key map showing the lands to which the by-law applies or an explanation of why a key map is not provided.

8. An explanation of where and when persons may examine a copy of the by-law. O. Reg. 82/98, s. 10 (5).

MINIMUM INTEREST RATE

11. (1) The minimum interest rate that a municipality shall pay under subsections 18 (3) and 25 (2) of the Act and section 36 of the Act, in relation to a development charge by-law, is what the Bank of Canada rate is on the day the by-law comes into force. O. Reg. 82/98, s. 11 (1).

(2) Despite subsection (1), if the by-law so provides, the minimum interest rate is what the Bank of Canada rate is on the day the by-law comes into force updated on the first business day of every January, April, July and October. O. Reg. 82/98, s. 11 (2).

TREASURER'S STATEMENT

12. (1) The information described in subsection (2) is prescribed as information to be included in the statement of the treasurer of a municipality under section 43 of the Act. The information is in addition to the opening and closing balance for the previous year and the transactions relating to the year, as required by subsection 43 (2) of the Act. O. Reg. 82/98, s. 12 (1).

(2) The information referred to in subsection (1) is the following, for each reserve fund:

1. A description of the service for which the fund was established. If the fund was established for a service category, the services in the category.

2. For the credits in relation to the service or service category for which the fund was established,

   i. the amount outstanding at the beginning of the previous year, given in the year, used in the year and outstanding at the end of the year,

   ii. the amount outstanding at the beginning of the previous year and outstanding at the end of the year, broken down by individual credit holder.

3. The amount of any money borrowed from the fund by the municipality during the previous year and the purpose for which it was borrowed.

4. The amount of interest accrued during the previous year on money borrowed from the fund by the municipality.

5. The amount and source of any money used by the municipality to repay, in the previous year, money borrowed from the fund or interest on such money.

6. A schedule that identifies credits recognized under section 17 and, for each credit recognized, sets out the value of the credit, the service against which the credit is applied and the source of funds used to finance the credit. O. Reg. 82/98, s. 12 (2).

(3) The following is also prescribed as information to be included in the statement of the treasurer of a municipality under section 43 of the Act:

1. For each project that is financed, in whole or in part, by development charges,

i. the amount of money from each reserve fund established under section 33 of the Act that is spent on the project, and

ii. the amount and source of any other money that is spent on the project. O. Reg. 82/98, s. 12 (3).

13. (1) The treasurer of a municipality shall, on or before such date as the council of the municipality may direct in each year that reserve funds described in subsection 63 (3) of the Act exist, give the council a financial statement relating to those reserve funds. O. Reg. 82/98, s. 13 (1).

(2) A statement must include, for the preceding year, statements of the opening and closing balances of the reserve funds and of the transactions relating to the funds and the information required by subsections 12 (2) and (3), with necessary modifications. O. Reg. 82/98, s. 13 (2).

PAMPHLET EXPLAINING BY-LAW

14. (1) A municipality shall prepare a pamphlet for each development charge by-law in force setting out,

(a) a description of the general purpose for which the development charges under the by-law are being imposed;

(b) the rules for determining if a development charge is payable in a particular case and for determining the amount of the charge;

(c) a list of the services to which the development charges relate; and

(d) a description of the general purpose of the statement of the treasurer of the municipality and the place where it may be reviewed by the public. O. Reg. 82/98, s. 14 (1).

(2) The municipality shall prepare the pamphlet,

(a) if the by-law is not appealed to the Ontario Municipal Board, within 60 days after the by-law comes into force;

(b) if the by-law is appealed to the Ontario Municipal Board, within 60 days after the Board's decision or, if the Board orders the municipality to amend the by-law, within 60 days after the municipality does so. O. Reg. 82/98, s. 14 (2).

(3) If a development charge by-law is amended, the municipality shall revise the pamphlet for the by-law as necessary. O. Reg. 82/98, s. 14 (3).

(4) If the municipality is required to revise the pamphlet, it shall do so,

(a) if the amendment is not appealed to the Ontario Municipal Board, within 60 days after the amendment comes into force;

(b) if the amendment is appealed to the Ontario Municipal Board, within 60 days after the Board's decision or, if the Board orders the municipality to amend the amendment, within 60 days after the municipality does so. O. Reg. 82/98, s. 14 (4).

(5) The municipality shall give a copy of the most recent pamphlet, without charge, to any

person who requests one. O. Reg. 82/98, s. 14 (5).

(6) The municipality may charge a fee for additional copies of a pamphlet given to a person but the fee must be no more than is needed to pay for the cost of the additional copies. O. Reg. 82/98, s. 14 (6).

(7) A person may reproduce and distribute the pamphlet in any form. O. Reg. 82/98, s. 14 (7).

NOTICE RELATING TO CREDITS UNDER SECTION 13 OF THE OLD ACT

15. (1) A notice required under paragraph 1 of subsection 64 (1) of the Act shall be given by the clerk of the municipality,

(a) by personal service, fax or mail to every person who holds a credit from the municipality under section 13 of the *Development Charges Act* as it read immediately before March 1, 1998; and

(b) by publication in a newspaper that is, in the clerk's opinion, of sufficiently general circulation in the area to which the by-law applied to give the public reasonable notice of the right to apply for a refund of ineligible credits. O. Reg. 82/98, s. 15 (1).

(2) A notice required under paragraph 1 of subsection 64 (1) of the Act shall contain the following:

1. A statement setting out the date the by-law expired or was repealed and what its number was.

2. A statement setting out the last day for applying under section 64 of the Act for a refund of ineligible credits.

3. A statement describing the credits for which refunds are available under section 64 of the Act, including a summary of the definition of "ineligible credit" in subsection 64 (2) of the Act and a list of the services referred to in paragraphs 1 to 7 of subsection 2 (4) of the Act.

4. A statement that there is no right of appeal to the Ontario Municipal Board in respect of a claim under section 64 of the Act for a refund of ineligible credits. O. Reg. 82/98, s. 15 (2).

TRANSITION RULES FOR CREDITS UNDER SECTION 14 OF THE OLD ACT

16. In sections 17 to 20,

"new Act" means the *Development Charges Act, 1997*; ("nouvelle loi")

"old Act" means the *Development Charges Act* as it read immediately before March 1, 1998. ("ancienne loi") O. Reg. 82/98, s. 16.

17. The following rules apply with respect to credits given or required to be given under section 14 of the old Act:

1. The owner or former owner of land is entitled to the recognition of a credit towards a development charge imposed under a development charge by-law passed under the new Act by the council of the municipality that gave the credit.

2. If there is a conflict between a development charge by-law passed under the new Act

and an agreement referred to in paragraph 3, the provisions of the agreement prevail over the by-law to the extent of the conflict.

3. Paragraph 2 applies with respect to an agreement made between a municipality and the owner or former owner of land if, before the coming into force of a development charge by-law under the old Act,

   i. the owner or former owner of the land paid all or a portion of a charge related to development under the agreement with respect to the land and the land is within the area to which a development charge by-law passed under the new Act may apply, or

   ii. the owner or former owner of the land provided services in lieu of the payment referred to in subparagraph i.

4. If a credit has been recognized under this section with respect to a service referred to in paragraphs 1 to 7 of subsection 2 (4) of the new Act, the value of the credit cannot be recovered from future development charges.

5. An application for the recognition of a credit under paragraph 1 must be made,

   i. on or after March 1, 1998 and on or before March 1, 1999, or

   ii. on or after September 27, 1999 and on or before October 31, 1999.

6. An application for the recognition of a credit shall set out the amount of the credit that is sought and the services to which the applicant claims the credit should be applied.

7. The municipality shall give each applicant written notice of whether the municipality agrees or refuses to recognize the credit in accordance with the application. The notice must be given,

   i. on or before September 1, 1999 for an application made during the period described in subparagraph 5 i, and

   ii. on or before December 31, 1999 for an application made during the period described in subparagraph 5 ii.

8. If the municipality agrees to recognize a credit in accordance with an application, or does not give the applicant a notice within the time required under paragraph 7, the applicant is entitled to have the credit recognized for the services set out in the application in the amount set out in the application.

9. A municipality may agree to recognize some credits in accordance with an application and refuse to recognize other credits and, if the municipality does so, paragraph 8 applies but only with respect to the credits that the municipality agrees to recognize.

10. If the municipality refuses to recognize a credit in accordance with an application, the applicant may appeal the municipality’s decision to the Ontario Municipal Board by filing with the clerk of the municipality, within 30 days after the applicant receives the notice of the municipality’s refusal, a notice of appeal.

11. If a notice of appeal under paragraph 10 is filed with the clerk of the municipality, the clerk shall,

   i. compile a record that includes a copy of the application and the notice of the

municipality's refusal,

ii. forward a copy of the notice of appeal and the record to the secretary of the Ontario Municipal Board within 30 days after the notice is received, and

iii. provide any other information and material that the Board may require in respect of the appeal.

12. The Ontario Municipal Board shall hold a hearing to deal with the notice of appeal.

13. The parties to the appeal are the appellant and the municipality.

14. The Ontario Municipal Board shall give notice of the hearing to the parties.

15. After the hearing, the Ontario Municipal Board shall determine whether the appellant is entitled to the recognition of a credit and, if so, shall determine the amount of the credit to be recognized and the services to which it relates.

16. Despite paragraph 12, the Ontario Municipal Board may, where it is of the opinion that the complaint set out in the notice of appeal is insufficient, dismiss the appeal without holding a full hearing after notifying the appellant and giving the appellant an opportunity to make representations as to the merits of the appeal.

17. An applicant and the municipality may, at any time before the commencement of the hearing before the Ontario Municipal Board, agree that the applicant is entitled to the recognition of a credit and may agree to the amount of the credit to be recognized and the service to which it relates.

18. If the applicant and the municipality enter into an agreement under paragraph 17, the applicant shall withdraw the appeal to the Ontario Municipal Board and the appeal shall be deemed to be terminated. O. Reg. 82/98, s. 17; O. Reg. 439/99, s. 1.

TRANSITION RULES FOR DEBTS UNDER THE OLD ACT

18. (1) This section applies with respect to a debt, other than credits, incurred with respect to a service referred to in paragraphs 1 to 7 of subsection 2 (4) of the new Act under a development charge by-law under the old Act that expires or is repealed during the transition period or expires, under section 63 of the new Act, at the end of the transition period. O. Reg. 82/98, s. 18 (1).

(2) For the purposes of developing a development charge by-law, the debt, reduced by the amount of any reserve funds held in respect of the same service, may be included as a capital cost if the following requirements are met:

1. The debt relates to a service contained in a development charge by-law on or before November 25, 1996.

2. The project for which the debt was incurred was tendered for construction on or before November 25, 1996.

3. The debt was either debentured or the subject of documented internal fund borrowing on or before November 25, 1996. O. Reg. 82/98, s. 18 (2).

TRANSITION RULES FOR DEVELOPMENT CHARGE BY-LAWS

19. (1) A development charge by-law passed under section 3 of the old Act before March

1, 1998 may be approved by the Minister after March 1, 1998 and before the end of the transition period. O. Reg. 82/98, s. 19 (1).

(2) Section 62 of the new Act applies to a by-law described in subsection (1). O. Reg. 82/98, s. 19 (2).

TRANSITION RULES FOR OLD FRONT-ENDING AGREEMENTS

20. (1) The old Act continues to apply to a front-ending agreement under Part II of the old Act if the agreement was entered into before March 1, 1998, even if the agreement is not yet in force on that day. O. Reg. 82/98, s. 20 (1).

(2) If an agreement mentioned in subsection (1) comes into force, it continues in force until it expires or otherwise ceases to be in force. O. Reg. 82/98, s. 20 (2).

(3) The following rules apply with respect to deductions under subsection 28 (9) of the old Act as it applies under subsection (1):

1. If a development charge by-law under the old Act applies, the deduction under subsection 28 (9) of the old Act shall be made from the amount otherwise payable under that by-law.

2. An amount not deducted under paragraph 1 shall be deducted from any applicable development charge under the new Act. Such an amount shall be deducted only from a development charge that is for the same development for which the payment being deducted was made.

3. A deduction is not a credit and the provisions of the new Act in relation to credits do not apply. O. Reg. 82/98, s. 20 (3).

21. Omitted (provides for coming into force of provisions of the English version of this Regulation). O. Reg. 82/98, s. 21.

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