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VIA EMAIL AND REGISTERED MAIL (mles@peterborough.ca; miwalsh@peterborough.ca)

City of Peterborough
Attn: David Potts, City Solicitor
via executive assistant, Michelle Walsh
500 George St. N.
Peterborough, ON K9H 3R9

Municipal Law Enforcement & Security Division
Legislative Services
500 George Street North,
Peterborough ON K9H 3R9

RE: DEVELOPMENT CHARGES
280 Jameson Drive, Peterborough, ON K9J 6X6

We represent 1439121 Ontario Ltd. ("**143**"). We write with respect to the City of Peterborough's Invoice #88984 dated September 16, 2025 (the "**Improper Invoice**") regarding development charges levied with respect to the lands located at 280 Jameson Drive, Peterborough, Ontario (the "**Project**"). The development charges levied under the Improper Invoice, which are substantial and amount to $895,369.20, are improper and unjustified. If not withdrawn (which they ought to be), the amounts charged under the Improper Invoice will cause irreparable financial harm to 143's continued operations.

Be advised that this letter and the submissions below also serve as 143's formal complaint to the Municipal Law Enforcement & Security Division, Legislative Services of the City of Peterborough (the "**City**") with respect to the development charges levied pursuant to the Improper Invoice. A copy of the Complaint Form is enclosed.

Background

143 is the owner of the Project. On January 30, 2024, the City issued the first building permit with respect to the Project bearing permit number 2023-102322-000-00-B3N. This permit states that "permission is granted to 1439121 Ontario Ltd. to construct finished warehousing at 280 Jameson Drive". The permit and the respective architectural drawings submitted by 143 contemplated the construction of two buildings among other items. A copy of this permit is attached for your reference as well as 143's architectural drawings for the Project.

At the beginning of the Project's construction, 143 constructed the first of two buildings, one of two parking lots, a mutual driveway/entrance for *both* buildings, a storm water management system for the *overall site*, completed the installation of City services for the second structure, completed water runoff management from the site of the second structure, and completed overall site preparation. The first building has been completed and has been occupied by Intelcom Courrier Canada Inc. dba Dragonfly Shipping since June 5, 2025.

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On August 20, 2025, 143 applied to the City for a foundation permit for the Project's second building. As part of the permit process, the City stipulated that 143 must commence pouring the foundation for the second structure by no later than October 31, 2025. On September 16, 2025, 143 was provided with the Improper Invoice which levied development charges in the amount of $895,369.20. 143 was previously advised that the Project was exempt from development charges under By-law 19-095. The Improper Invoice runs afoul of this exemption. Furthermore, the first permit in respect of the Project was issued in January 2024 – well in advance of the by-laws the City now purportedly relied upon as the basis for levying the charges. In addition, the work already completed by 143 (which was completed in June 2025) clearly contemplates and includes scopes of work for the second building. There is no question that *all* the work pertaining to the Project was contemplated by the first permit. 143 has incurred approximately $500,000 in costs related to preparation of the Project site for the second building.

Development charges verging on $1 million are now being imposed by the City, nearly two years after the first permit for the Project was issued, will effectively kill the Project. It is our position that the City is improperly imposing these charges to collect additional unwarranted City revenue funds from 143.

143 hereby disputes and is making a formal complaint in relation to the Improper Invoice. The basis for 143's position and complaint are set out below.

The Project Site is Subject to an Exemption and, Alternatively, Restrictions

Relevant Statutes

The *Development Charges Act* 1997, S.O. 1997, c. 27 (the "***Act***") provides the following with respect to the timing of payment of development charges at section 26:

> **When development charge is payable**
>
> **26** (1) A development charge is payable for a development upon a building permit being issued for the development unless the development charge by-law provides otherwise under subsection (2).

The *Act* also provides that developments may be exempt from the imposition of Municipal development charges in certain circumstances. Section 5(1) provides the for the following:

> **5 (1)** The following is the method that must be used, in developing a development charge by-law, to determine the development charges that may be imposed:
> …

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> 9. Rules must be developed to determine if a development charge is payable in any particular case and to determine the amount of the charge, subject to the limitations set out in subsection (6).
>
> 10. The rules may ***provide for full or partial exemptions for types of development and for the phasing in of development charges.*** The rules may also provide for the indexing of development charges based on the prescribed index. 1997, c. 27 [emphasis added].

The City has taken the position that the development charges under the Improper Invoice are justified as By-law 19-095 (which provided the exemption) was replaced by by-law 24-081 effective October 26, 2024. By-law 19-095 provided the following exemption:

> **17(b)** Development charges in respect of industrial uses of lands buildings or structures shall not be payable during the term of this By-law for only those lands identified in Schedule D.

Schedule D of the By-law listed the Project site as being exempted from development charges. It is 143's position that this exemption applies continues to apply to the Project. The first building permit issued for the Project clearly contemplated the entirety of the development and, as such, the construction of the second building is subject to the exemption. At no time did the City advise 143 of the possibility that the exemption could be revoked. Had 143 been aware of the possibility that the Project was at risk of significant future development charges at the whim of the City and after a substantial amount of construction had been completed, they would not have proceeded with the Project in this region.

Even if the exemption does not apply (which we strictly deny), the *Act* provides the following restrictions with respect to development charges:

> **Restriction on rules**
>
> **5(6)** The rules developed under paragraph 9 of subsection (1) to determine if a development charge is payable in any particular case and to determine the amount of the charge are subject to the following restrictions:
>
> 1. The rules must be such that the total of the development charges that would be imposed upon the anticipated development is less than or equal to the capital costs determined under paragraphs 2 to 8 of subsection (1) for all the services to which the development charge by-law relates.
>
> 2. If the rules expressly identify a type of development they must not provide for the type of development to pay development charges that exceed the capital

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costs, determined under paragraphs 2 to 8 of subsection (1), that arise from the increase in the need for services attributable to the type of development. However, it is not necessary that the amount of the development charge for a particular development be limited to the increase in capital costs, if any, that are attributable to that particular development.

3. ***If the development charge by-law will exempt a type of development, phase in a development charge, or otherwise provide for a type of development to have a lower development charge than is allowed, the rules for determining development charges may not provide for any resulting shortfall to be made up through higher development charges for other development*** [emphasis added].

Section 5(6)(3) referenced above clearly provides that any shortfall due to a development being subject to an exemption from development charges cannot be "made up through higher development charges for other development". Accordingly, the City cannot impose this substantial development charge in order to make up for any short fall it has experienced due to previous exemptions it has provided. Given the substantial sum being invoiced by the City, as well as the City's inconsistent and arbitrary removal of the exemption in the amended development charges By-laws, 143 takes the position that the City is imposing this development charge in an effort to make up for a shortfall.

The Development Charges Are Applied as of the First Permit

If the exemption provided under By-law 19-095 does not continue to apply to the Project (which is denied), then 143 nevertheless takes the position that the subsequent by-laws clearly state that a development charge may only be calculated and payable *on the date of the issuance of the first building permit*. By-law 24-081 states the following at section 17:

Phasing, Timing of Calculation and Payment
17. (a) Except as provided in subsection (b) hereof, the development charges set out in this By-law are payable, in full, subject to the exemptions and credits provided herein, from the effective date of this By-law.

(b) Development charges in respect of industrial uses of lands, buildings or structures shall not be payable during the term of this By-law for only those lands identified in Schedule D.

(c) Subject to section 22 (with respect to redevelopment) and subsection (d), *the development charges shall be calculated as of, and shall be payable,* ***on the date the first building permit is issued*** *in relation to a building or structure on land to which the development charge applies* [emphasis added]**.**

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By-law 24-081 was repealed and replaced by By-law 25-100 on September 3, 2025. Bylaw 25-100 states the following at section 17:

> **Phasing Timing of Calculation of Payment**
> 17. (a) Except as provided in subsection (b) hereof, the development charges set out in this By-law are payable, in full, subject to the exemptions and credits provided herein, from the effective date of this By-law.
>
> (b) Development charges in respect of industrial uses of lands, buildings or structures shall not be payable during the term of this By-law for only those lands identified in Schedule D.
>
> (c) Subject to section 22 (with respect to redevelopment) and subsection (d), *the development charges shall be calculated as of, and shall be payable,* ***on the date the first building permit is issued*** *in relation to a building or structure on land to which the development charge applies* [emphasis added]**.**

Notably, both of the above by-laws provide that "the development charges ***shall*** be calculated as of, and ***shall*** be payable, ***on the date the first building permit is issued*** in relation to a building or structure on land to which the development charge applies". The by-law states that development charges *shall* be calculated and payable on the date of the issuance of the first permit. Use of the word *shall* denotes a mandatory date on which the calculation must be conducted. As a result, the development charges in effect as of January 30, 2024, ought to apply, if any. The provisions do not contain language that would allow the new charges to be applied retroactively. Simply put, the City cannot impose a development charge nearly two years after the issuance of the first permit related to the Project. Even if the exemption did not apply to the Project (which we deny), the development charges as they were *at the time the first permit was issued* would apply pursuant to section 26 of the Act, and those charges would be significantly less than those contemplated under the current development charges by-laws.

Finally, and in the event of any ambiguity in the by-law, the Ontario Land Tribunal has held that – where there is ambiguous language in a development charge by-law – such ambiguity must be resolved in favour of the developer. Accordingly, if there is any ambiguity in by-law 24-081 (which is denied) it should be resolved in favour of 143.[1] The Ontario Superior Court has further upheld a decision of the Ontario Municipal Board whereby it was held that "the City has a responsibility to clearly communicate the development charge process to the Developer". Therefore, if there was a possibility of further development charges being levied against the Project, the City had an obligation to make this clear to 143 at the time the first permit was issued with respect to the Project.[2]

[1] *140 Old Mill Road LP v Waterloo (Region),* 2024 CanLII 120314 (ON LT) at para 98.
[2] *City of Toronto v. Sherway Gate Development Corp*., 2013 ONSC 6298 (CanLII) at para 8.

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The City's Application of By-Law 24-081 is Replete with Additional Issues

The Bylaw has not been Uniformly Applied

Further to the issues outlined above, 143 states that By-law 24-081 has not been applied uniformly across all properties. For example, a property located in Major Bennett Industrial Park which was exempt from development charges under by-law 19-095 (as the Project previously was) continues to be exempt from such charges. There is no reasonable basis for the lack of uniformity in the application of exemptions (or withdrawal of the same) and, as such, 143 states that the City's application of this by-law is arbitrary and unfair. There is no clear justification as to why some properties continue to be exempt from these substantial charges, but Project site is not. No basis or reasons have been given for the City's unilateral and unannounced attempt to revoke a prior exemption.

The Development Charges Exceed the Capital Costs

Section 2(1) of the *Act* 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***" [emphasis added]. Therefore, the City's authority to impose development charges is to account for increased capital costs. It is 143's understanding that the increase in capital costs which would result from the Project are limited to connecting Municipal services from the perimeter of the Project Site to the Municipality. It is unclear how such a narrow capital cost could result in a nearly $1 million development charges. In that vein, the charges seem disproportionate, unjustified, and prohibited by operation of the *Act*.

The *Act* is clear that a development charge is not intended to be a source of revenue generation for a Municipality. It exists to directly respond to the costs that a Municipality will incur in relation to the services it will need to provide for new developments. Therefore, the City's imposition of the charges under the Improper Invoice run contrary to the purpose of the *Act* and development charges more broadly. If Municipalities were to have unlimited discretion in assessing the development charges, Municipalities could attempt to upcharge developers to collect amounts in excess of capital costs in order to generate additional revenue for the City. This would deter development and stunt growth, not encourage it.

Retroactive & Improper Charges Damage Business, Growth and Development

As stated above, the City's imposition of these unforeseen and improper development charges at this stage of the Project will render it financially unviable. The remaining facility being constructed is a commercial manufacturing facility designed to increase the capacity and output of goods. Unlike a residential development project, these costs cannot be passed on to a consumer.

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This Project is a hard sunk cost which was designed to increase the future capacity and growth of 143. That said, the City will lose out on the jobs and the economic growth that would have been created by this Project if the Project is unable to proceed (not to mention the loss of business for construction trades in the region).

Further, if the City refuses to withdraw these development charges and ultimately repossesses the lot upon which the second building is to be built, the municipality will have a smaller (nearly half the size of the original site), more restricted and less desirable lot to market. The construction which has already been completed included a significant amount of work related to the second structure. Therefore, any future construction on this site will have to properly interact with the first building as well as the existing construction. Developers will likely view these requirements as being costly, inefficient and restrictive.

Finally, as the news and information of the retroactive and improper application of development charges circulates in the construction and development industry – it will undoubtedly have a chilling effect and drive business out of the region to surrounding regions with cheaper development costs. In *140 Old Mill Road v. Waterloo (Region)* the Ontario Land Tribunal (the "**Tribunal**") held that "good public policy demands that there be some element of finality to the imposition of development charges and that property owners should not be forever exposed to the possibility of additional development charges because a municipality did not take appropriate care to ensure that its calculation of development charges was accurate". The Tribunal also found that "the language in the development charges by-law does not state the Region may assess an additional development charge or make a correction after a development charge amount is certified, paid, and a building permit issued".[3]

In the present case, the relevant by-laws with respect to the Project do not include a provision whereby the City can re-assess development charges after the first building permit for a development project has been issued. If the City opts to take this approach, developers will essentially have to write a blank cheque to the City for development charges when commencing any development project. Such financial uncertainty and instability will result in developers boycotting the City, thereby harming the local economy and construction industry.

The above in mind, 143 states that it is in the City's interest to facilitate the completion of construction at the Project.

Conclusion

The City's actions have caused the Project to be suspended until the City advises of its final position in respect of the Improper Invoice.

[3] Supra note 1 at para 68.

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Time is of the essence as the City has required 143 to commence construction of the foundation for the second structure by October 31, 2025. We hereby request that the City extend the aforementioned deadline until such time as this dispute / complaint is resolved. In any event, we trust that the City will not take steps to repurchase any lands without first giving notice.

We strongly encourage the City to consider the inevitable negative effects of these development charges on the Project, as well as on the state of development within the region more broadly.

We require the City's position by **Thursday, October 31, 2025, at 5:00 p.m**. Should we not receive the City's position by this date, we have instructions to commence legal proceedings, including but not limited to filing a formal complaint under the *Development Charges Act*.

We look forward to your prompt response.

Sincerely,

Rousseau Mazzuca LLP

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Encl: Complaint Form - Municipal Law Enforcement & Security Division; Building Permit No. 2023-102322-000-00-B3N; Drawings issued by Engage Engineering on August 3, 2023; Invoice dated September 9, 2023