STANDARDS FOR
FIRST NATION DEVELOPMENT COST CHARGES LAWS

[Consolidated to 2014-06-25]

PART I
PREAMBLE

WHEREAS:

A. Section 35 of the *First Nations Fiscal Management Act* gives the First Nations Tax Commission the authority to establish standards respecting the form and content of First Nation local revenue laws enacted under subsection 5(1) of the Act;

B. Standards are established by the Commission to further the policy objectives of the Commission and the Act, including to ensure the integrity of the First Nations property taxation system and to assist First Nations to achieve economic growth through the generation of stable local revenues; and

C. Section 31 of the Act requires the Commission to review every local revenue law and subsection 5(2) of the Act provides that such a law has no force and effect until it is reviewed and approved by the Commission.

PART II
PURPOSE

These Standards set out the requirements that must be met for First Nation development cost charges laws enacted under subparagraph 5(1)(a)(v) of the Act. These Standards are used by the Commission in its review and approval of First Nations' development cost charges laws, pursuant to section 31 of the Act. The requirements established in these Standards are in addition to those requirements set out in the Act.

The Commission recognizes that each First Nation's property taxation system operates within the broader context of its fiscal relationships with other governments. These Standards are intended to support a more comprehensive First Nation fiscal framework within Canada.

PART III
AUTHORITY AND PUBLICATION

These Standards are established under subsection 35(1) of the Act and are published in the *First Nations Gazette* as required by subsection 34(1) of the Act.

PART IV
APPLICATION

These Standards apply to every development cost charges law submitted to the Commission for approval under the Act.

PART V
DEFINITIONS

In these Standards:

"Act" means the *First Nations Fiscal Management Act*, S.C. 2005, c. 9 and the regulations enacted under that Act;

"administrator" means a person appointed by Council to administer a Law;

"assist factor" means that percentage of the capital costs of each development cost charge class that will be paid by the First Nation, as determined by the First Nation;

“building” means any structure used or intended for supporting or sheltering any use or occupancy and includes a manufactured home;

“building permit” means a permit or other authorization from a First Nation for the construction, alteration or extension of a building or structure on the First Nation’s reserve;

“capital costs” includes planning, engineering and legal costs directly related to the work for which a capital cost may be incurred, and interest costs incurred by the First Nation that are directly related to the work and meet the requirements of subsection 3.6;

“commercial development” means a development used or intended to be used for the carrying on of any business, including the provision or sale of goods, accommodation, entertainment, meals or services, but excludes an industrial or residential development;

“Commission” means the First Nations Tax Commission established under the Act;

“developer” means a person undertaking a development on the reserve;

“development” means the subdivision of a parcel or the construction, alteration or extension of a building or structure on the reserve;

“development cost charge” means a development cost charge levied under a Law;

“development cost charge class” means a class of works, or park and recreation land acquisition and improvement, for which development cost charges may be collected under a Law;

"dwelling unit" means one (1) or more habitable rooms having collectively its or their own entrance from the exterior, used or intended to be used for the residential accommodation of not more than one (1) person or family, having provision for living, sleeping and sanitary facilities and containing or providing for not more than one (1) cooking facility;

“expenditure law” means an expenditure law enacted under paragraph 5(1)(b) of the Act;

“First Nation” means a band named in the schedule to the Act;

“gross floor area” means the combined area of all floors within a building, including any basement or cellar, measured to the inside surface of the exterior walls of the building;

“gross site area” means the total area of land that is proposed for development in a building permit or development approval application, including access, parking, loading and landscape areas;

“industrial development” means a development used or intended to be used for manufacturing, production, assembly, testing, warehousing, distribution or storage of products or materials;

“institutional development” means a building or structure used or intended to be used only on a non-profit basis for cultural, recreational, social, religious, governmental, public hospital or educational purposes, and also includes any building or structure that is serviced with sewer, water or drainage and which is not a residential, commercial or industrial development;

“interest in land” or “property” means land or improvements, or both, in a reserve and, without limitation, may include any interest in land or improvements, any occupation, possession or use of land or improvements, and any right to occupy, possess or use land or improvements;

“Law” means a development cost charges law enacted under subparagraph 5(1)(a)(v) of the Act;

“long-term capital plan” means a plan approved by Council that sets out the First Nation’s requirements for infrastructure development and the capital costs of that infrastructure for the purposes for which development cost charges are to be collected;

"manufactured home" means a structure, whether or not ordinarily equipped with wheels, that is designed, constructed or manufactured

(a) to be moved from one place to another by being towed or carried; and

(b) to provide

(i) a dwelling house or premises,

(ii) a business office or premises,

(iii) accommodation for any other purpose,

(iv) shelter for machinery or other equipment, or

(v) storage, workshop, repair, construction or manufacturing facilities;

"manufactured home park development" means a residential development where spaces and utilities are provided for two (2) or more manufactured homes;

"parcel" means a parcel, block or other defined area of property on the reserve;

"parcel area" means the total area of land of a parcel;

"park improvements" means fencing, landscaping, drainage and irrigation, trails, restrooms, changing rooms, and playground and playing field equipment;

"Province" refers to the province in which the reserve is situated;

"reserve" means any land set apart for the use and benefit of a First Nation within the meaning of the *Indian Act*;

"residential (multi-family) development" means a development for residential purposes that does not include single-family residential, two-family residential or three-family residential;

"resolution" means a motion passed and approved by a majority of Council present at a duly convened meeting;

"secondary suite" means an additional dwelling unit that is contained within a single-family residential building;

"single-family residential" means a detached building consisting of only one (1) dwelling unit, not including a secondary suite where permitted by the First Nation;

"structure" means a construction of any kind, whether fixed to, supported by or sunk into land or water;

"three-family residential" means a detached building consisting of three (3) dwelling units; and

"two-family residential" means a detached building consisting of two (2) dwelling units.

Except as otherwise provided in these Standards, words and expressions used in these Standards have the same meaning as in the Act.

[am. FNTC Resolution 2011-06-14; 2014-06-25.]

PART VI

STANDARDS

1. Administration

1.1 The Law must provide for the appointment of an administrator by resolution to

(a) administer and enforce the Law;

(b) establish and maintain a separate development cost charge reserve fund for each development cost charge class;

(c) maintain records for all development cost charges imposed and collected; and

(d) undertake such further duties as set out in the Law or as specified by Council.

1.2 The Law must require the administrator to report annually to Council on the administration of the Law, which report must include, for each development cost charge class,

(a) the amount of development cost charges received;

(b) the expenditures from the development cost charge reserve fund;

(c) the balance in the development cost charge reserve fund account at the start and at the end of each calendar year;

(d) any exemptions, credits, rebates or refunds of development cost charges;

(e) the amount of all outstanding installment payments of development cost charges; and

(f) a summary of the works completed and the works to be undertaken within each development cost charge class.

1.3 The Law must require the administrator to make available to the public, upon request, the considerations, information and calculations used to determine the development cost charges imposed under the Law, other than information respecting the contemplated acquisition costs and locations of specific properties.

2. Application of Law

2.1 The Law must apply to the entire reserve.

2.2 Notwithstanding subsection 2.1, the Law may apply to a portion of the reserve where application to the entire reserve would create a significant disparity between those who pay the development cost charges and those who benefit from the infrastructure funded by the development cost charges.

3. Amount of Development Cost Charges

3.1 The Law must provide for development cost charges to be levied only to pay the capital costs of one or more of the following development cost charge classes:

(a) providing, constructing, altering, or expanding sewage, water, drainage and transportation facilities, and

(b) providing and improving park and recreation land,

to service, directly or indirectly, the development for which the development cost charge is being imposed.

3.2 The capital costs used to determine the development cost charges levied in the Law must be supported by

(a) a long-term capital plan; or

(b) a local government regional growth strategy, official community plan, or other regional development plan, where the First Nation

(i) participates in regional planning, and

(ii) has a service agreement with one or more adjacent local governments respecting services for which the First Nation levies development cost charges.

3.3 Where a First Nation

(a) has a service agreement with an adjacent local government respecting services for which the First Nation levies development cost charges, and

(b) the service agreement requires the First Nation to pay to the local government all or a portion of

development costs charges it collects in respect of those services,

the Law may establish development cost charges for those services equivalent to the development cost charges established by the local government for those services, and subsections 3.4 and 3.5 do not apply.

3.4 The Law must establish similar development cost charges for all developments that impose similar capital cost burdens on the First Nation, but may vary with respect to one or more of the following:

(a) different zones or different defined or specified areas;

(b) different uses;

(c) different capital costs as they relate to different classes of development; and

(d) different sizes or different numbers of lots or units in a development.

3.5 The Law must establish development cost charges that reflect that the Council considered, in the long-term capital plan, the following issues when determining those charges:

(a) the future land use patterns and development;

(b) the phasing of works and services; and

(c) the provision of park and recreation land.

3.6 The Law may establish development cost charges that include interest costs as part of the capital costs for a development cost charge class only where the First Nation must construct the development cost charge-funded infrastructure in advance of sufficient development cost charges being collected, and only where

(a) the fixed-capacity infrastructure, such as sewer and water, must be constructed before development can occur; or

(b) the infrastructure must be provided in an area with no services, to enable development to occur.

3.7 Where interest costs are included in the capital costs of a development cost charge under subsection 3.6, the interest rate used must not exceed the fixed rate for a ten (10) year loan set by the First Nations Finance Authority at the time Council makes the Law.

[am. FNTC Resolution 2011-06-14; 2014-06-25.]

4. Calculation of Development Cost Charges

The Law must include the following provisions:

(a) the development cost charges payable per unit of development for each development cost charge class and for each type of development;

(b) how development cost charges are assessed for each development cost charge class;

(c) for development types not specifically identified in the Law, a provision that the amount of development cost charges payable must be equal to the development cost charges that would have been payable for the most comparable type of development, as determined by the administrator;

(d) for developments that contain two (2) or more uses, a provision that the development cost charges must be calculated separately for each use within the development and the total amount payable must be the sum of the development cost charges levied for all uses in the development; and

(e) where a building permit relates only to the expansion or alteration of an existing development, a provision that the development cost charges must be levied only on that portion of the development that expands or alters the existing development.

[am. FNTC Resolution 2014-06-25.]

5. Units of Development

5.1 The Law must specify the basis on which development costs charges are calculated for each development type, in accordance with subsection 5.2.

5.2 The Law must specify a unit of development for each development type that is either

(a) one of the following units of development:

(i) for a single-family residential, a two-family residential or a three-family residential development, on one of a per dwelling unit, a per square metre of parcel area, or a per parcel basis,

(ii) for a residential (multi-family) development, on one of a per dwelling unit, per square metre of gross floor area, or per square metre of parcel area basis,

(iii) for a commercial development, an institutional development or an industrial development, on one of a per square metre of gross floor area, per square metre of gross site area, or per square metre of parcel area basis,

and

(iv) for a manufactured home park development, on either a per pad or per square metre of parcel area basis; or

(b) a unit of development that is used by a local government in the Province for the levy of development cost charges for that development type.

[am. FNTC Resolution 2014-06-25.]

6. Assist Factor

Where a First Nation has an assist factor as part of its development cost charge calculation, the assist factor must be set out in the Law.

7. Levy and Payment of Development Cost Charges

7.1 The Law must set out when development cost charges will be levied, which must be only at one or more of the following times:

(a) on building permit issuance;

(b) on subdivision approval; or

(c) on development approval.

7.2 The Law must require the payment in full of development cost charges at the time, and as a condition, of the issuance of the permit or the granting of the approval referenced in subsection 7.1, as applicable.

7.3 The Law must provide that where a development occurs in phases, development cost charges levied at the time of subdivision approval or development approval must be levied only in respect of each phase at the time it receives approval.

7.4 Notwithstanding subsection 7.2, the Law may allow for the payment of development cost charges in installments where requested by a developer and approved by Council in its sole discretion.

7.5 Where the Law allows for the payment of development cost charges in installments, the Law must set out

(a) how a developer may request to pay by installments;

(b) any qualifying criteria for paying by installments;

(c) the maximum number of installment payments allowed;

(d) how each installment amount is calculated;

(e) the required timing of each installment payment;

(f) the consequences of failing to pay an installment by the installment due date;

(g) any penalties or interest that will be levied on unpaid installment payments and when such charges will be imposed; and

(h) any requirement for the developer to provide security for the unpaid development cost charges and the acceptable forms of security.

[am. FNTC Resolution 2014-06-25.]

8. Application of Development Cost Charges

8.1 The Law must provide that a development cost charge is not payable under the Law

(a) where the development does not impose any new capital cost burden on the First Nation; or

(b) where a development cost charge has previously been paid for the same development, unless, as a result of a further development, new capital cost burdens will be imposed on the First Nation.

8.2 Where a First Nation wishes to provide for exemptions from development cost charges under a Law, those exemptions must be set out within the Law.

8.3 Where exemptions from development cost charges are included in a Law, the exemptions must be

(a) within a class of exemption required or permitted under development cost charge legislation in the Province; or

(b) exemptions for developments undertaken by members of the First Nation.

8.4 Where the Law provides for an exemption from development costs charges under paragraph 8.3(b), the Law must require the First Nation to

(a) pay into the appropriate development cost charge reserve funds an amount equivalent to the development cost charges that would have been payable in respect of the development had the exemption not applied; and

(b) make the payment under paragraph (a) using moneys that are not local revenues.

[am. FNTC Resolution 2014-06-25.]

9. Development Cost Charge Credits and Rebates

9.1 The Law must provide that if a developer has, with the written agreement of the First Nation, provided or paid the cost of providing a specific service outside the boundaries of the parcel being subdivided or built upon, and that service is included in the calculations used to determine the amount of a development cost charge, the First Nation must give a credit to the developer by deducting the developer's costs of providing that service from the development cost charges payable for the applicable development cost charge class.

9.2 The Law must provide that where a service is included in the calculations used to determine the amount of a development cost charge and a developer has, with the written agreement of a First Nation,

(a) provided that service outside the boundaries of the parcel being subdivided or built upon, and

(b) provided the service to a standard that exceeds the local standard required,

the First Nation must offer a development cost charge rebate for the incremental portion of costs beyond the local standard required for that development cost charge class.

[am. FNTC Resolution 2014-06-25.]

10. Development Cost Charge Refunds

The Law must provide for a refund to a developer of development cost charges paid in respect of a development where the subdivision or development is not proceeding or the building permit is cancelled, as the case may be, provided

(a) the developer makes an application for a refund within six (6) months of the developer's abandonment of the subdivision or development, or building permit cancellation, as the case may be; and

(b) a new or replacement subdivision or development application, or building permit application, has not been received or approved in respect of the development.

[am. FNTC Resolution 2014-06-25.]

11. Use of Development Cost Charges

11.1 The Law must require

(a) a separate development cost charge reserve fund to be established by expenditure law for each development cost charge class; and

(b) all development cost charges collected by the First Nation for a development cost charge class to be deposited in the development cost charge reserve fund established for that class.

11.2 The Law must require all expenditures of development cost charge funds to be authorized by an expenditure law.

11.3 The Law must provide that moneys in a development cost charge reserve account, plus interest earned on those moneys, can be used only for one or more of the following:

(a) to pay the capital costs of providing, constructing, altering, improving, replacing or expanding sewer, water, drainage and transportation facilities that relate directly or indirectly to the development in respect of which the development cost charge was collected;

(b) to pay the capital costs of

(i) acquiring park and recreation land or reclaiming land as park and recreation land, and

(ii) providing park improvements on park and recreation land,

subject to the restriction that the capital costs must relate directly or indirectly to the development in respect of which the development cost charge was collected;

(c) to pay the principal of and interest on a debt incurred by a First Nation as a result of an expenditure under paragraphs (a) or (b); and

(d) to pay a person subject to a development cost charge for some or all of the capital costs the person incurred in completing a project described in paragraph (a) or (b) if

(i) the project was completed under a written agreement between the person and the First Nation, and

(ii) the project is included in the calculations used to determine the amount of that development cost charge.

11.4 For clarity, payments under paragraphs 11.3(a) and (b) may be made to a local government where the First Nation has a service agreement with the local government that requires the First Nation to

(a) pay to the local government all or a portion of the development cost charges it collects in respect of a development, or

(b) otherwise make payments to the local government,

to contribute to the capital costs of facilities used to provide services to the development in respect of which the development cost charge was collected, or to acquire or reclaim park and recreation land or provide park improvements on that land.

[am. FNTC Resolution 2011-06-14; 2014-06-25.]

12. Transfer of Development Cost Charges

12.1 The Law may permit moneys in a development cost charge reserve fund to be transferred from that reserve fund to another development cost charge reserve fund, where the amount to the credit of a reserve fund is greater than required for the purpose for which the reserve fund was established.

12.2 The Law must require all transfers of development cost charge moneys to be authorized by an expenditure law under paragraph 5(1)(b) of the Act.

13. Borrowing of Development Cost Charges

13.1 The Law may permit the First Nation to borrow from a development cost charge reserve fund for the purposes of another capital purpose reserve fund only on the following conditions:

(a) the reserve funds are not currently required for its purpose;

(b) the First Nation has another reserve fund established for a capital purpose;

(c) the First Nation must repay to the first reserve fund, no later than the time when the money is needed for the purposes of that reserve fund,

(i) the amount used, and

(ii) an amount equivalent to the interest that would have been earned on the amount had it remained in the first reserve fund; and

(d) interest paid under paragraph (c) must be at a rate that is at or above the prime lending rate set from time to time by the principal banker to the First Nation.

13.2 In addition to borrowing permitted under subsection 13.1, the Law must permit the First Nation to borrow from a development cost charge reserve fund where the First Nations Financial Management Board has assumed third-party management of the First Nation's local revenue account and, acting in the place of the Council, has determined that moneys must be borrowed from a development cost charge reserve fund to meet the financial obligations of the First Nation.

13.3 The Law must require all borrowing of development cost charge moneys to be authorized by an expenditure law under paragraph 5(1)(b) of the Act.

[am. FNTC Resolution 2011-06-14.]

14. Investing of Development Cost Charges

Where the Law provides for the investing of moneys in a development cost charge reserve fund that are not immediately required, it must allow for investment only in one or more of the following:

(a) securities of Canada or of a province;

(b) securities guaranteed for principal and interest by Canada or by a province;

(c) securities of a municipal finance authority or the First Nations Finance Authority;

(d) investments guaranteed by a bank, trust company or credit union; or

(e) deposits in a bank or trust company in Canada or non-equity or membership shares in a credit union.

15. Complaints

The Law must provide for a complaints process that allows a developer to object to the development cost charges payable in respect of a development on at least the following grounds:

(a) there is an error or omission respecting the calculation of the development cost charges; and

(b) an exemption from development cost charges has been improperly applied.

PART VII

COMING INTO FORCE

These Standards are established and in effect as of June 10, 2009.

PART VIII

ENQUIRIES

All enquiries respecting these Standards should be directed to:

First Nations Tax Commission
321 – 345 Chief Alex Thomas Way
Kamloops, BC V2H 1H1
Telephone: (250) 828-9857