

**THE CORPORATION
OF THE
TOWNSHIP OF ST. CLAIR**

BY-LAW NO. 6 OF 2002

**“A By-Law to Establish a Tax
Rebate Program for the vacant portions of property
In the Commercial Property Class or
The Industrial property Class”**

WHEREAS the Corporation of the Township of St. Clair (the “Municipality”) is required to have a tax rebate program for the vacant portions of property in the Commercial Property Class and the Industrial Property Class, both as defined in s.363(20) of the *Municipal Act*, pursuant to s.442.5 of the *Municipal Act*, R.S.O. 1990, c.M.45, as amended (hereinafter referred to as the “Act”);

AND WHEREAS s.442.5 of the *Act* has been supplemented by *Ontario Regulation Number 325/01* (hereinafter referred to as “*O.Reg. 325/01*”);

AND WHEREAS the Council of the Township of St. Clair deems it appropriate to enact this By-Law for the purpose of establishing a property vacancy tax rebate program;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF ST. CLAIR ENACTS AS FOLLOWS:

1. In this By-Law:

“assessment corporation” means the Municipal Property Assessment Corporation (“MPAC”) or its successor;

“base property” has, for the purposes of this by-law, the meaning prescribed by s.2(1) of *O.Reg. 325/01*;

“eligible property” means property that has been prescribed as such by the Minister of Finance (hereinafter referred to as the “Minister”) in *O.Reg. 325/01* for the purposes of s.442.5 of the *Act*;

“eligible property classes” means property that is in the Commercial property class or the Industrial property class as defined in s.363(20) of the *Act*;

“inspector” means an employee of the Municipality or a person designated by the Council of the Municipality, either of whom will conduct inspections and investigations pursuant to this by-law;

“mixed use property” if portions of a property are classified in different property classes on the assessment roll, each portion shall be deemed to be a separate property for the purposes of this by-law;

“period of time” means the period of time provided for in s.1, 2, 3 and 4 of *O.Reg 325/01* unless otherwise provided for in this by-law;

“time” – a reference to a period of at least ninety (90) consecutive days shall be read as a reference to a period of at least eighty-nine (89) consecutive days if the period includes all of the month of February;

“use” for the purposes of this by-law, the following activities or factors, without some other activity, do not constitute the use of a building or structure of a portion of a building:

- i) Construction, repairs or renovation;
- ii) Heating, cooling, lighting or cleaning; or
- iii) The presence of fixtures.

2. This by-law shall apply commencing with the 2001 taxation year.

3. This by-law shall apply where:
 - a) a building or structure on property in an eligible property class is unused for at least ninety (90) consecutive days as provided for in s.1(1) of *O.Reg. 325/01* and for the purposes of this by-law such a vacancy shall be referred to as a "Complete Vacancy";
 - b) a portion of a building on property in the Commercial property class is unused for at least ninety (90) consecutive days and the unused portion of the building was clearly delineated or separated by physical barriers from any used portion of the building provided that the unused portion of the building was:
 - (1) capable of being leased for immediate occupation;
 - (2) capable of being leased but not for immediate occupation due to repairs, renovations or construction that was either needed or underway; or
 - (3) unfit for occupation;

as provided for in s.1(2) of *O.Reg. 325/01* and for the purposes of this by-law such a vacancy shall be referred to as a "Commercial Partial Vacancy";
 - c) a portion of a building on property in the Industrial property class is unused for at least ninety (90) consecutive days and the unused portion of the building was clearly delineated or separated by physical barriers from any used portion of the building as provided for in s.1(3) of *O.Reg. 325/01* and for the purposes of this by-law such a vacancy shall be referred to as an "Industrial Partial Vacancy";
4. Notwithstanding anything in this by-law, no property shall be considered entitled to any rebate relief under this by-law where the building, structure or portion of the building is:
 - a) Used for commercial or industrial activity on a seasonal basis;
 - b) Leased to a tenant who is in possession of the leasehold interest throughout the period of time; or
 - c) Included in a subclass for vacant land under subsection 8(1) of the *Assessment Act*, R.S.O. 1990, c.A.31, as amended, throughout the period of time.
5. Subject to section 10 hereof, a property owner or its authorized agent may make one application for the taxation year to the Municipality where the eligible property is located for a rebate of property taxes in respect vacant eligible property.
6. The application required by the Municipality shall be in the form attached hereto as Schedule "A".
7. The application shall be accompanied by such additional information and documentation as the Treasurer of the Municipality reasonably deems to be appropriate, and in accordance with the policy statement attached hereto as Schedule "B".
8. The application shall be accompanied by a Statutory Declaration, sworn under oath or affirmed by the owner of the property that all of the contents of the application and the accompanying information are true and correct
9. The application for a taxation year shall be made after January 1 of the taxation year and no application shall be accepted later than the last day of February of the year following the taxation year.
10. An interim application for a taxation year may be made for the first six months of the taxation year.
11. A copy of the application, or interim application, shall be forwarded to the assessment corporation for determination of the value of the eligible property.
12. An inspector may attend and make entry to the buildings and structures on the property at all reasonable times and upon reasonable notice to the owner or its manager for the purposes of:
 - a) Verifying all information accompanying the application;
 - b) Obtaining such other information from every adult person present on the property as is required to assist in determining the applicant's entitlement to the vacancy rebate;
 - c) Requesting or obtaining from the owner or its manager any information or documents relevant to the determination of the applicant's entitlement to the vacancy rebate.

13. The Treasurer of the Municipality may, by written request sent by mail, delivered personally or by courier, require the owner or its manager to provide any information or documents relevant to the determination of the applicant's entitlement to the vacancy rebate.
14. The Treasurer of the Municipality shall establish the reasonable time within which the owner or its manager is required to respond to a request made by the Municipality under section 12 hereof.
15. As soon as practicable after receipt of:
 - a) All of the information and documents relevant to the determination of the applicant's entitlement to the vacancy rebate; and
 - b) The determination by the assessment corporation of the value of the eligible property;

The Treasurer of the Municipality shall determine if the applicant is entitled to a vacancy rebate and, if so entitled, the rebate shall be calculated as follows:

 - i) Multiply the applicable percentage derived from paragraphs 17 or 18 hereof to the taxes applicable determined as follows:
 - (1) Determine the apportioned taxes as the percentage that the value of the eligible property is of the base property multiplied by the taxes for municipal and school purposes for the base property, for the taxation year;
 - (2) Determine the vacancy period as a percentage of the taxation year; and
 - (3) Multiply the apportioned taxes by the vacancy percentage.
16. In the event the vacancy period begins after October 3 in the immediately preceding taxation year then the amount of taxes for municipal and school purposes under s. 15(i)(1) hereof is determined by adding the amounts as directed by s.2(4) of *O.Reg 325/01*.
17. The amount of rebate in respect of eligible property in the Commercial property class shall be thirty percent (30%) of the taxes applicable to the vacant area.
18. The amount of rebate in respect of eligible property in the Industrial property class shall be thirty-five percent (35%) of the taxes applicable to the vacant area.
19. A rebate determined under s. 15 hereof shall be paid by the Municipality to the owner of the eligible property as soon as practicable following determination and a copy of the calculation shall be provided to the owner.
20. In the event a application is determined to be not entitled to a vacancy rebate the Municipality shall advise the owner or its authorized agent, as the case may be, in writing.
21. A rebate shall be recalculated in the event that:
 - a) taxes of the base property are reduced under s.442 or s.443 of the *Act*; or
 - b) the assessment of the base property is changed as a result of the following:
 - i) a reconsideration under s. 39.1 of the *Assessment Act*;
 - ii) an appeal under s. 40 of the *Assessment Act*; or
 - iii) a Court application under s. 46 of the *Assessment Act*.
22. If, as a result of a recalculation under s. 19 hereof the Municipality has paid or credited an owner an amount greater than that determined as a result of the recalculation then the Municipality may recover the excess amount.
23. If, as a result of a recalculation under s. 19 hereof the Municipality has paid or credited an owner an amount less than that determined as a result of the recalculation then the Municipality shall pay or credit the owner the additional rebate amount as soon as practicable following the recalculation.
24. The Municipality may calculate the rebate amount under this by-law based on an estimate of the amount of taxes for municipal and school purposes and then subsequently adjust the rebate amount when the amount of taxes is finally determined for the taxation year.
25. Any rebate that a property owner is entitled to under this By-Law may be set-off as a credit against any unpaid taxes or interest in respect of the property.

26. In the event a rebate is erroneously paid under this By-Law, the Treasurer of the Municipality may, within two years after the application for the vacancy rebate was made, notify the owner of the amount of the overpayment and any such overpayment shall be deemed to be taxes for municipal and school purposes.
27. The costs of the property vacancy rebate program shall be shared proportionately by the municipalities and school boards as the municipalities and school boards share in the revenue from the taxes on the property.
28. Interest on rebates determined under this by-law shall be paid in accordance with the provisions of s. 442.5(21) of the *Act* and s. 6, 7 and 8 of *O.Reg. 325/01*.
29. The offence provisions of s.442.5 (10) and s.442.5 (20) of the *Municipal Act*, as amended shall apply to this by-law *mutatis mutandis*.

FINALLY PASSED this 4th day of February, 2002.

Mayor

Clerk

Application for Rebate of Property Taxes for Vacancies in Commercial and Industrial Buildings

Taxation year for which the application is being made

MUNICIPAL USE ONLY
Application #

INSTRUCTIONS

- The **deadline** for submitting applications is **February 28** of the year following the taxation year to which the application relates.
- Deliver this completed application to your local municipal office.
- Any person who knowingly makes a false or deceptive statement in this application is guilty of an offence and, upon conviction, is liable for a fine.
- To be eligible for a rebate, a building or portion of a building must satisfy the conditions described in Category 1 or Category 2 below.

ELIGIBILITY (Please check to confirm eligibility.)

Category 1 - Buildings that are Entirely Vacant

A whole **commercial** or **industrial** building will be eligible for a rebate if:

- the entire building was unused for at least 90 consecutive days.

Category 2 - Buildings that are Partially Vacant

A suite or unit within a **commercial** building will be eligible for a rebate if, for at least 90 consecutive days, it was:

- unused; and
- clearly delineated or physically separated from the used portions of the building; and
- either capable of being leased for immediate occupation, or
 - undergoing or in need of repairs or renovations that prevented it from being available for lease for immediate occupation, or
 - unfit for occupation.

A portion of an **industrial** building will be eligible for a rebate if, for at least 90 consecutive days, it was:

- unused; and
- clearly delineated or physically separated from the used portions of the building.

Exclusions

A building or portion of a building will not be eligible for a rebate if:

- it is used for commercial or industrial activity on a seasonal basis;
- during the period of vacancy it was subject to a lease, the term of which had commenced; or
- during the period of vacancy it was included in a sub-class for vacant land.

Note: For complete information about eligibility and application requirements, refer to section 442.5 of the *Municipal Act* and Ontario Regulation 325/01.

For general information about the rebate program, you may refer to the Ministry of Finance bulletin entitled "Property Tax Rebates for Vacant Commercial and Industrial Buildings." This bulletin is available on the internet at www.gov.on.ca/FIN.

PROPERTY INFORMATION

Address (Number and Street)			Roll Number (See your notice of property assessment or your property tax bill, or contact your local municipality.)		
City/Town/Municipality, etc.	Province	Postal Code			

Owner's Name			Representative's/Agent's Name (if applicable)		
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Mailing Address (Number and Street)			Mailing Address (Number and Street)		
City/Town/Municipality, etc.	Province	Postal Code	City/Town/Municipality, etc.	Province	Postal Code

Phone Number ()	Fax Number ()	Phone Number ()	Fax Number ()
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Commercial Industrial	Description of Vacant Area (Include unit/suite number, floor number, building number. Attach sketch if necessary.)	Size of Vacant Area in Sq. Ft.	Period of Vacancy (Must be at least 90 consecutive days.)						MPAC USE ONLY Assessment	MUNICIPAL USE ONLY Amount of Tax Rebate
			FROM day	month	year	TO day	month	year		
<input type="checkbox"/> <input type="checkbox"/>		sq. ft.								
<input type="checkbox"/> <input type="checkbox"/>		sq. ft.								
<input type="checkbox"/> <input type="checkbox"/>		sq. ft.								
<input type="checkbox"/> <input type="checkbox"/>		sq. ft.								
<input type="checkbox"/> <input type="checkbox"/>		sq. ft.								

List continued on Page 2

I certify that the information contained in all pages of this form and attachments is true and correct.

Name of Applicant (print)	Signature	Date	Total from Page 2 GRAND TOTAL
MPAC USE ONLY Name of Assessor (print)	Signature	Date	
MUNICIPAL USE ONLY Name of Municipal Representative (print)	Signature	Date	

The information on this form is collected under the authority of section 442.5 of the *Municipal Act* and Ontario Regulation 325/01 and it will be used only for the purposes of determining eligibility for a property tax rebate and the amount of the rebate in respect of vacant commercial and industrial buildings. Questions about the collection of personal information should be directed to your local municipal office.

APPENDIX A – Application for Rebate of Property Taxes

Additional questions to be answered:

1. Please state the reason for the vacancy (eg. Cessation of operations, termination of lease, etc...)

2. Is the vacancy due to the seasonal nature of the occupying business?

3. If this application is for part of a property, how is the vacant area separated from the area still in use?

4. Is the vacant area normally leased to tenants?

5. Is the vacant area currently leased?

6. Has the area been leased again after the period of vacancy?

7. Is the area leased on short term (daily or monthly basis)?

8. Is the vacant area used by the owner for storage or any other purpose?

9. Is the space currently available for lease (if commercial space only)? How is the availability being advertised? Please provide contact name and number (eg. Real estate broker, if applicable).

10. What event marked the start of the vacancy period? (eg. Renovation/retooling, line shutdown)

11. When or by what event do you expect the vacancy to end? (eg. Completion of renovation/retooling (estimated date), sale of property (2-3 months), upturn of business (time indefinite)

“I HEREBY CONFIRM THAT THE INFORMATION PROVIDED IN THE APPLICATION AND THIS APPENDIX IS TO THE BEST OF MY KNOWLEDGE ACCURATE, TRUTHFUL AND COMPLETE”

SWORN (or AFFIRMED) BEFORE ME AT _____

This _____ day of _____, _____

A Commissioner for Taking of affidavits (or as may be)

Signature of Applicant

SCHEDULE "B"

POLICY STATEMENT WITH RESPECT TO SECTION 442.5 PROCESSING APPLICATIONS FOR TAX REDUCTION DUE TO VACANCY

Policy Statement

It is the policy of this Council that applications for tax reduction for *bonifide* vacancies of commercial or industrial properties be processed quickly and efficiently.

Legislative Reference

Section 442.5 of the *Municipal Act* and Ontario Regulation 325/01.

Principles and Processes

1. Any commercial or industrial property owner or their authorized agent may file an application under this policy.
2. The onus rests with the owner to provide full evidence of vacancy and to file an application that is complete. Information to be supplied with the application form shown in Schedule "A" shall be considered to be the minimum requirements and every owner should submit all information available that supports the application.
3. Up to two applications per year may be filed by a taxpayer, one for the first six months of the year and one for the last six months of the year or alternatively, one application may be filed by the taxpayer for the whole of the year.
4. All applications must be filed after the period of vacancy and at no time shall the Treasurer process an application during or before the time of vacancy.
5. Applications filed after the last day of February of the year following the year of full or partial vacancy shall be rejected.
6. An incomplete application filed during the application period shall be deemed not to be filed until all minimum evidence in support of the application is filed.
7. The Treasurer of the municipality is hereby directed to receive and expeditiously process all applications for vacancy on behalf of the municipality.
8. The Treasurer may authorize other municipal staff to act on his/her behalf.
9. The Treasurer in conjunction with the Treasurers of all Lambton County constituent municipalities and the County shall meet at least annually with the Municipal Property Assessment Corporation staff (MPAC) to ensure that a complete codification of process between County municipalities and MPAC is in place.
10. Completed applications shall include all information as noted on the application form and accompanying questionnaire (Schedule "A") and the Treasurer is authorized to direct submission of additional information if, in the opinion of the Treasurer, the application does not conclusively provide evidence of vacancy. Failure to submit additional evidence of vacancy as required by the municipality within 5 business days of the request of same by the municipality invalidates the application and the Treasurer shall reject the application.

11. In the sole discretion of the Treasurer, (s)he may conduct investigations and inspections of the property to ascertain the validity of an application.
12. Types of evidence to be considered may include but are not limited to:
- Utility records
 - Tenant or lease agreements (both outgoing and incoming)
 - Declared income for rental properties
 - Correspondence relating to agreements for usage
 - Mailing, telephone, delivery records
 - Plan or layout of vacant area, other related buildings
 - Zoning information
 - Sworn affidavit of the application authorizing that the information included on the application form and questionnaire is true and correct.
13. The Treasurer shall audit a representative selection of applications, giving consideration to size of property, complexity of application, and other circumstances which cast doubt on the validity of the application. The audit shall consist of examination of supporting documentation, inquiry of the owner, and site inspection, as deemed appropriate by the Treasurer.
14. The Treasurer shall refuse applications where (s)he is not fully satisfied as to its validity.
15. Any person who knowingly makes a false or deceptive statement in an application or other document submitted to the Municipality is guilty of an offence and is liable on conviction to a fine of not more than an amount that is twice the amount of the rebate obtained or sought to be obtained by the false or deceptive statement except that the fine shall not be less than \$500.
16. Every person who is required to provide information related to an application and who defaults in doing so is guilty of an offence and on conviction is liable to a fine of \$100 for each day during which the default continues.