


## Town of Marathon Policy

<b>Town Of Marathon</b>  	<b>Policy:</b> Vacancy Rebate Program	<b>Section:</b> Finance
	New <input type="checkbox"/> Effective: <u>Sept 9, 2013</u> Revised <input checked="" type="checkbox"/> <b>Supersedes Policy dated: <u>February 25, 2002</u></b> <small>Formerly Named Rebate of Property Taxes Program</small> Reviewed <input type="checkbox"/> Date: _____	
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**Purpose:**

To ensure the consistent delivery of a comprehensive, clearly defined process that can be readily implemented by all parties.

This policy is intended to comply with Section 364 of the *Municipal Act, 2001* and its associated regulation – Reg 325/01. This legislation requires all municipalities to maintain a tax rebate program for vacant portions of property in any of the commercial or industrial property classes.

**Scope:**

This policy is to be followed by the Town of Marathon and by all owners of commercial and industrial properties, within the limits of the Town of Marathon, when seeking a vacancy rebate of property taxes.

**Policy:**

**Definitions:**

“Eligible property” shall be taken as a reference to the portion of a property in respect of which a rebate may be provided.

“Base property” shall be taken as a reference to the property as a whole, including the eligible portion and non-eligible portion.

“Eligible Charity” means a charity that is a registered charity under the Income Tax Act (Canada) and that has a registration number issued by the Canada Revenue Agency. The Town of Marathon may decide to include organizations that are similar to eligible charities but the organization may be required to provide evidence to the Town in order to determine status.

**General program features:**

A rebate in the amount of thirty per cent (30%) of the eligible base tax amount shall be provided to successful applicants in respect of eligible property in any of the commercial tax classes.

A rebate in the amount of thirty-five per cent (35%) of the eligible base tax amount shall be provided to successful applicants in respect of eligible property in any of the industrial classes.

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These rates are established in the annual tax ratio by-law.

All applications shall be administered and evaluated in accordance with section 364 of The *Act* and Ontario Regulation 325/01, made under that *Act*,

Successful applications must meet all of the terms, conditions and requirements in respect of:

- Vacancy Term,
- Property Class Eligibility,
- Conditions of Vacancy,
- Submission of Applications,
- Submission of any and all Evidentiary Material requested by the municipality, and
- Rebates will only be provided under this program for properties that meet all of the relevant requirements as determined by the municipality.

## Eligible vacancy period:

To be eligible for a rebate under this program, the subject property, or the relevant portion of that property must be vacant, as qualified below:

- for a period of at least ninety (90) consecutive days, or
- a period of at least eighty-nine (89) consecutive days if the period includes all of the month of February.

An eligible period for a taxation year may include a period of time that begins after October 3rd of the previous taxation year.

## Eligible property classes:

For a property to be considered eligible for consideration under this program, the following conditions must be met in addition to the other eligibility and documentary requirements set out within this document:

- The subject property must be in one of the commercial or industrial property classes.
- Properties in any sub-class of commercial or industrial property (eg. Vacant or excess land) are not eligible for a rebate under this program.
- If different 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 the application process and for the determination of eligibility.

## Vacancy requirements

### General Requirements:

- Rebates can only be provided in respect of a building, structure or portion thereof. No rebate is to be made in respect of the land itself whether improved or not.
- An eligible property must be:

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- An entire building or structure on property in an eligible property class that is unused for at least ninety (90) consecutive days as provided for in subsection 1.(1) of O.Reg. 325/01, or
- A portion of a building or structure on property in an eligible property class that is unused for at least ninety (90) consecutive days and the unused portion of the building is clearly delineated or separated by physical barriers from any used portion of the building.
- The following activities or factors, without some other activity, do not constitute the use of a building or structure or a portion of a building:
  - Construction, repairs or renovation,
  - Heating, cooling, lighting or cleaning, or
  - The presence of fixtures.
- Any and all other activities shall be considered as use of the building or structure, and shall disqualify the subject property from receiving a rebate under this program, including but not limited to:
  - Storage of items that do not fall into the category of fixtures, or
  - Occasional, temporary, reduced or under-utilization of the space.

### **Additional Eligibility Criteria: Commercial Property:**

- In addition to the general requirements noted above, a building, structure or portion thereof that is in one of the commercial classes must be:
  - Capable of being leased for immediate occupation, or
  - Capable of being leased but not for immediate occupation due to repairs, renovations or construction that is either needed or underway, or
  - Unfit for occupation.

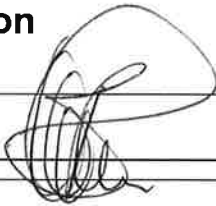
### **Exemption for Charitable Organizations:**

- An owner that has submitted a Notice of Vacancy for a property but has permitted temporary use of the property to an eligible charity may still qualify for a vacancy rebate provided that:
  - The owner does not receive any monetary consideration for the use of the property by the charity;
  - The length of the exemption is limited to 60 days in any taxation year; and
  - The owner must advise the Town of the proposed use of the property in advance of occupancy.

### **Absolute Exclusions:**

- No property shall be considered entitled to any rebate relief under this program where the building, structure or portion of the building is:
  - Used for commercial or industrial activity on a seasonal basis,
  - Leased to a tenant who is in possession of the leasehold interest throughout the period of time, regardless of the currency of the tenants' commitment to that lease or the tenants' occupation of the property, or

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- Included in a subclass for vacant land under subsection 8(1) of the *Assessment Act*, at any time throughout the claimed period of vacancy.

### Submission of notice of vacancy:

- Any owner of vacant property that intends to make an application for a vacancy rebate must notify the municipality of the vacancy at the time the property becomes vacant in order to be eligible for a rebate commencing from that date. Notice of vacant property shall be given by completing a "Notice of Vacancy" form.
- The commencement date of eligibility for a vacancy rebate will start on the date of vacancy stated on a completed "Notice of Vacancy" form. Such date is not to exceed 30 calendar days prior to the date the form was submitted.
- This requirement is not referred to in the *Act* or the Regulation.

### Submission of applications

#### General:

- The taxpayer is solely responsible for submitting an application in pursuit of a rebate under this program. Municipalities are not responsible for identifying potentially eligible property or for initiating the application process with respect to any property.
- All applications must be made by the registered owner of the subject property or by a party designated by the owner to act on their behalf. Independent, third parties, not acting directly on behalf of an owner, may not make an application under this program.

#### Timing:

- An application for a taxation year shall be made after:
  - January 1 of the taxation year in respect of which the application is being made, and
  - After an eligible period of vacancy has elapsed.
- No application will be accepted prior to the elapse of the minimum eligible period of vacancy.
- No application will be accepted in respect of a period of vacancy that ends subsequent to the date that the application is submitted.
- An interim application for a taxation year may be made for an eligible period within the first six months of the taxation year.
- An application made after July 1st of the taxation year, in respect of a period ending after June 30th of that year, should be considered the final application for that year.
- No application can be accepted later than the last day of February of the year following the taxation year with the exception of omitted assessment
  - If a property owner receives a notice of omitted assessment after a tax year, the deadline to submit an application for a rebate is 90 days after the date of issuance of the notice of omitted assessment.

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### Content of Application:

- 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.
- The application shall be accompanied by such additional information and documentation as the Treasurer reasonably deems to be appropriate at the time that the application is submitted.
- 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.

### Processing of Application:

- The Treasurer shall receive and expeditiously process all applications for vacancy on behalf of the municipality.
- The Treasurer may authorize other municipal staff to act on his/her behalf.
- Upon receipt of a complete and eligible application, the Treasurer will forward a copy of the application, or interim application, to the Municipal Property Assessment Corporation (MPAC) for an apportionment of the value of the eligible property space.
- At the sole discretion of the Treasurer, the municipality may conduct investigations and inspections of the property to ascertain the validity of an application.
- 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:
  - Verifying all information accompanying the application,
  - 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,
  - 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.
- Under the *Act*, 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.
- The Treasurer may, by written request sent by mail, delivered personally or by courier, require the property owner or its manager to provide any information or documents relevant to the determination of the applicant's entitlement to the vacancy rebate.
- The time period for responding to such requests will be 15 working days.
- 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

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- Sworn affidavit of the application authorizing that the information included on the application form and questionnaire is true and correct.
- 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.
- Failure to submit additional evidence of vacancy as required by the municipality invalidates the application and the Treasurer shall reject the application.

### Determination of eligibility for rebate:

- As soon as practically possible the Treasurer shall make a final determination regarding the granting of a rebate under this program in respect of each application. However, no determination shall be made until after receipt of:
  - All of the information and documents relevant to the determination of the applicant's entitlement to the vacancy rebate; and
  - The determination by MPAC of the apportionment value of the eligible property.
- The granting of a rebate under this program is at the sole discretion of the Treasurer in consideration of all available information and the Treasurer must refuse applications where (s)he is not fully satisfied as to its validity.
- In the event an application does not qualify for a vacancy rebate the municipality shall advise the owner or its authorized agent, as the case may be, in writing.

### Calculation of rebate:

- Where the Treasurer determines that an applicant is entitled to a vacancy rebate, the rebate shall be calculated as follows:
  - Determine the apportioned assessment as a percentage of the total property in accordance with the information provided by the taxpayer and confirmed or updated by MPAC;
  - Determine the apportioned taxes as the percentage that the value of the eligible property is of the base property multiplied by the total (net/capped) taxes for municipal and school purposes for the base property, for the taxation year,
  - Determine the vacancy period as a percentage of the taxation year; and
  - Multiply the apportioned and pro-rated taxes by the vacancy percentage.
- The amount of rebate in respect of eligible property in the commercial property class shall be thirty per cent (30%) of the taxes applicable to the vacant area unless otherwise by-lawed.
- The amount of rebate in respect of eligible property in the industrial property class shall be thirty-five per cent (35%) of the taxes applicable to the vacant area unless otherwise by-lawed.
- In the event the vacancy period begins after October 3 in the preceding taxation year, then the rebate shall be determined by calculating the appropriate amount for each taxation year and adding them together.

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- The municipality may calculate the rebate based on an estimate of the amount of taxes for municipal and school purposes prior to the final taxes being billed and then subsequently adjust the rebate amount when the amount of taxes is finally determined for the taxation year.

### Provision of rebate:

- Any rebate that a property owner is entitled to under this program may be set as a credit against any unpaid taxes or interest in respect of the property.
- A rebate is payable 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.

### Recalculation of rebates:

- A rebate shall be recalculated in the event that:
  - Taxes of the base property are reduced under s.357 or s.358 of *the Act*; or
  - The assessment of the base property is changed as a result of the following:
    - a reconsideration under s. 39.1 of the *Assessment Act*;
    - an appeal under s. 40 of the *Assessment Act*; or
    - a court application under s. 46 of the *Assessment Act*
  - If, as a result of a recalculation 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.

### Recovery of rebates:

- If, as a result of a recalculation, 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.
- In the event a rebate is erroneously paid, the Treasurer 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.

### Interest to be paid:

- The Municipality shall pay any interest owing in respect of an eligible rebate due to an applicant as determined in accordance with the provisions of s. 364 (20) of *the Act* and sections 7 and 8 of O.Reg. 325/01
- Interest shall be paid at the same rate noted under subsection 257.11 (4) of the *Education Act*, if:
  - A successful interim application is received by July 31st of the taxation year to which it applies, and the rebate is not provided before the later of November 30th of the year to which the rebate relates or, 120 days after the day that the applicant provides any and all supporting information requested by the Municipality, or

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- A successful final application is received by the last day of February of the year following the tax year to which it applies, and the rebate is not provided before the later of:
  - June 30th of the year following the tax year to which it applies, or
  - 120 days after the day that the applicant provides any and all supporting information requested by the Municipality.

### **Cost of rebates to be shared:**

- The costs of the vacancy rebate program shall be shared by the municipality and the school boards in the same proportion as the municipality and the school boards share in the revenue from the taxes on the property.

### **Complaint:**

- An applicant may, within 120 days after the municipality mails its decision with respect to an original application or recalculation under this program, appeal that decision in writing to the Assessment Review Board on the grounds that:
  - An application was erroneously denied,
  - The amount of a rebate provided is too low, or
  - If the municipality fails to mail the decision with respect to an application within 120 days of the receipt of a valid and complete application.