

The Corporation of the City of Guelph

By-law Number (2022) - 20717

A By-law to require the conveyance of land for park or other public recreational purposes as a condition of the development or redevelopment of land within the City of Guelph, or the payment of money in lieu of such conveyance, pursuant to the Planning Act, RSO 1990, c P.13, as amended, and to repeal By-laws (2019)-20366 (Parkland Dedication By-law).

WHEREAS Section 42(1) of the *Planning Act*, RSO 1990, c P.13 (the "Planning Act"), as amended authorizes the Council of the Municipality to require, by By-law, the conveyance of land for park or other public recreational purposes as a condition of the development or redevelopment of land within the Municipality or any part thereof, or to require the payment of money in lieu of such a conveyance;

AND WHEREAS The Corporation of the City of Guelph (the "City") has an Official Plan in effect that contains specific policies dealing with the provision of lands for park or other public recreational purposes and the use of the alternative requirement authorized under section 42(3) of the Planning Act, RSO 1990, c P.13;

AND WHEREAS further to amendments to the Planning Act, the City has directed and approved an updated Park Plan which examines the need for parks in the City, which confirms the continuing need for parkland dedication or cash-in-lieu of parkland dedication as a land and/or revenue source to support the levels of park services prescribed in the Official Plan;

Now, therefore, The Council of the Corporation of the City of Guelph enacts as follows:

Short Title:

1. This By-law may be referred to as the Parkland Dedication By-law.

Severability:

2. If a court of competent jurisdiction declares any provision or part of a provision of this By-law to be invalid, illegal, unenforceable or of no force and effect, it is the intention of Council in enacting this By-law that the remainder of this By-law will continue in force and be applied and enforced in accordance with its terms to the fullest extent possible according to law.

Definitions:

3. The following definitions apply in this By-law:
 - (a) "**Additional Residential Dwelling Unit**" means a dwelling unit that is self-contained, subordinate to and located with the same building or on the same lot of a primary dwelling unit;
 - (b) "**Board of Education**" has the same meaning as "board" as that term is defined in the *Education Act*, RSO 1990, c E.2, as amended, or any successor thereto;

- (c) **"City"** means the City of Guelph, or the Corporation of the City of Guelph, as the context dictates;
- (d) **"Conversion to a Different Use"** means changing the use of a building and/or Land from one use to another pursuant to an approved rezoning application
- (e) **"College"** means a college established under the *Ontario Colleges of Applied Arts and Technology Act, 2002*, as amended, or any successor thereto;
- (f) **"Council"** means the Council of the City;
- (g) **"Develop"** means:
- i. the construction, erection or placing of one or more buildings on Land
 - ii. the making of an addition or alteration to a building that has the effect of substantially increasing the size or usability thereof by increasing the Gross Floor Area of the building by fifty-percent (50%) or more
 - iii. the addition of one or more new Dwelling Unit(s)
 - iv. Conversion to a Different Use.
 - v. "Development", "Redevelop" and "Redevelopment" have their corresponding meanings;
- (h) **"Downtown"** means that part of the City shown in Schedule "C"
- (i) **"Dwelling Unit"** means a suite operated as a housekeeping unit, used or intended to be used by one or more persons and usually containing cooking, eating, living, sleeping and sanitary facilities
- (j) **"Gross Floor Area"** has the meaning given to it in the Zoning By-law;
- (k) **"Land" (or "Lot")** means, for the purposes of this By-law, the lesser of the area defined as:
- i. The whole of a parcel of property associated with the Development or Redevelopment and any abutting properties in which a person holds the fee or equity of redemption in, power or right to grant, assign or exercise a power of appointment in respect of, or;
 - ii. The whole of a lot or a block on a registered plan of subdivision or a unit within a vacant land condominium that is associated with the Development or Redevelopment;
 - iii. For industrial or commercial development and redevelopment, the portion of property that is impacted by the proposed development.

But not including any hazard lands, natural heritage features, or ecological buffers identified in the City's Official Plan, an approved Secondary Plan, or through an environmental impact study accepted by the City.

- (l) **"Market Value"** means the value of the Land determined in accordance as nearly as may be with section 14 of the *Expropriations Act*, RSO 1990 c E.26, as amended or any successor thereto, as of the day before the day of the issuance of the first building permit for the Development;

- (m) **"Parkland"** includes land for parks and other public recreational purposes as described in the Official Plan;
- (n) **"Place of Worship"** means that part of a building or structure which is exempt from taxation under the Assessment Act, R.S.O. 1990, c. A.31, as amended, or any successor thereto;
- (o) **"Record of Site Condition"** means a record of site condition under Part XV.1 of the *Environmental Protection Act*, RSO 1990 c E.19, as amended, or any successor thereto;
- (p) **"University"** means a university to which the *University Expropriation Powers Act*, RSO 1990, c U.3, as amended, or any successor thereto, applies;
- (q) **"Zoning By-law"** means By-law (1995) – 14864, as amended or any successor thereto;

General Requirement:

- 4. The entirety of the City is hereby established as an area for which the conveyance of a portion of Land to be Developed or Redeveloped, or the payment of money in lieu of such conveyance, shall be required as a condition of Development or Redevelopment.
- 5. No person shall Develop or Redevelop Land within the City unless they have first conveyed a portion of the Land to the City for Parkland, or paid money in lieu of such conveyance, in accordance with this By-law.

Delegation of Authority – Conveyance of a Portion of Land or Money in Lieu:

- 6. The authority to determine whether a conveyance of a portion of the Land associated with Development or Redevelopment for Parkland or the payment of money in lieu of such conveyance shall be required is hereby delegated to the Deputy CAO of Public Services, any successor thereto, or an officer or employee of the City designated by the Deputy CAO of Public Services, or their successor.
- 7. The determination of whether a conveyance of a portion of the Land for Parkland or the payment of money in lieu of such conveyance shall be required shall be made in accordance with the relevant policies of the City's Official Plan, and generally in accordance with any other policies and guidelines established by the City from time to time for that purpose.
- 8. Any policies and guidelines established by the City to assist in determining whether a conveyance of a portion of the Land for Parkland or the payment of money in lieu of such conveyance shall be required shall be made available to the public.
- 9. Council retains the authority to determine whether a conveyance of a portion of the Land for Parkland or the payment of money in lieu of such conveyance shall be required, at its discretion.

Where Conveyance of a Portion of the Land Required:

- 10. Where it has been determined that a portion of the Land will be required to be conveyed to the City as Parkland, the following shall apply:

(a) Where Land in the City is to be Developed or Redeveloped for commercial or industrial purposes, a portion of the Land not exceeding 2% of the total area of the Land shall be conveyed to the City for Parkland.

(b) Where Land is located within the Downtown and is to be Developed or Redeveloped for residential purposes, the greater of:

- i. a portion of the Land not exceeding 1 hectare (1ha) per five-hundred (500) Dwelling Units proposed as part of the Development or Redevelopment, but in no case to exceed twenty-percent (20%) of the total area of the Land, or
- ii. five-percent (5%) of the total area of the Land

shall be conveyed to the City for Parkland.

(c) Where Land is located outside of the Downtown and is to be Developed or Redeveloped for residential purposes with a total proposed density of less than one-hundred (100) Dwelling Units per one hectare (1 ha), the greater of:

- i. a portion of the Land not exceeding one hectare (1ha) per five-hundred (500) Dwelling Units proposed as part of the Development or Redevelopment, or
- ii. five-percent (5%) of the total area of the Land

shall be conveyed to the City for Parkland.

(d) Where land is located outside of Downtown and is to be Developed or Redeveloped for residential purposes with a total proposed density equal to or greater than one-hundred (100) Dwelling Units per one hectare (1ha), the greater of:

- i. a portion of the Land not exceeding 1 hectare (1ha) per three-hundred (300) Dwelling Units, but in no case to exceed thirty-percent (30%) of the total area of the Land, or;
- ii. five-percent (5%) of the total area of the Land;

shall be conveyed to the City for Parkland.

(e) Where Land in the City is to be Developed or Redeveloped for any use other than commercial, industrial, or residential, a portion of the Land not exceeding five percent (5%) of the total area of the Land shall be conveyed to the City for Parkland.

11. Where a Development or Redevelopment will include a mix of uses, and two or more of the requirements under section 10 a) - e) may apply to the Development or Redevelopment, the area of the Land required to be conveyed to the City for Parkland shall be determined in accordance with whichever single requirement under section 10 a) - e) applies to the Development or Redevelopment which will result in the greatest total area of the Land being required to be conveyed to the City for Parkland.

Acceptance of Land for Park or Other Public Recreational Purposes:

12. Any portion of the Land required to be conveyed to the City for Parkland shall be:

- (a) Free of encumbrances except as may be satisfactory to the City Solicitor; and,
 - (b) In a condition satisfactory to the City and in accordance with the requirements of the City's Official Plan and other policies respecting the acquisition of real property.
13. The City may require that a Record of Site Condition be filed in respect of the property prior to accepting the conveyance of a portion of the Land for Parkland required under this By-law. Any area of the Land that is contaminated or potentially contaminated shall only be accepted by the City in accordance with the City's *Guidelines for Development of Contaminated or Potentially Contaminated Sites*, as amended from time to time.
14. The following shall not be accepted by the City in satisfaction of a requirement to convey a portion of the Land for Parkland under this By-law:
- (a) Areas of Land that are identified as part of the City's Natural Heritage System in the City's Official Plan, an approved Secondary Plan, or through an environmental impact study accepted by the City;
 - (b) Areas of Land that are susceptible to flooding, have poor drainage, erosion issues, extreme slopes or other environmental or physical conditions that would interfere with their potential use as a public park;
 - (c) Areas of Land that are required to accommodate stormwater management facilities;
 - (d) Areas of Land that are deemed to be contaminated in any way, subject to acceptance by the City pursuant to section 13, above;
 - (e) Areas of Land that are used or proposed to be used for utility corridors or other infrastructure incompatible with their use as a public park; and,
 - (f) Lands that are encumbered by easements or other instruments that would unduly restrict or prohibit public use.
 - (g) Lands for trails or active transportation purposes;
15. Any costs associated with a conveyance of a portion of Land for Parkland purposes required under this By-law shall, including but not limited to costs related to the preparation and registration of documents, surveys or reference plans, and any applicable taxes shall be borne by the person seeking to Develop or Redevelop the Land at no cost to the City.
16. Any requirement to convey a portion of Land to the City for park and other recreational purposes is fulfilled only when the City accepts the conveyance of the portion of the Land required.

Payment of Money in Lieu of Conveyance:

17. Where it has been determined that the payment of money will be required in lieu of a conveyance of a portion of the Land for Parkland, the following shall apply:
- (a) Where Land in the City will be Developed or Redeveloped for commercial or industrial purposes, the payment required in lieu of the conveyance of a portion of the Land for Parkland shall be two percent (2%) of the Market Value of the Land;

(b) Where Land is located within the Downtown and is to be Developed or Redeveloped for residential purposes, the payment required in lieu of the conveyance of a portion of the Land for Parkland shall be the greater of:

- i. the equivalent Market Value of 1 hectare (1ha) per five-hundred (500) Dwelling Units proposed to be added by the Development or Redevelopment, but in no case to exceed twenty-percent (20%) of the total Market Value of the Land, or;
- ii. Five-percent (5%) of the total Market Value of the Land.

(c) Where Land in the City located outside Downtown will be Developed or Redeveloped for residential purposes with a total proposed density less than one-hundred (100) Dwelling Units per one hectare (1ha), the payment required in lieu of the conveyance of a portion of the Land for Parkland shall be the greater of:

- i. the equivalent Market Value of 1 hectare (1ha) per five-hundred (500) Dwelling Units proposed to be added by the Development or Redevelopment, or
- ii. five percent (5%) of the total Market Value of the Land

(d) Where Land in the City located outside Downtown will be Developed or Redeveloped for residential purposes with a total proposed density greater than or equal to one-hundred (100) Dwelling Units per one hectare (1ha), the payment required in lieu of the conveyance of a portion of the Land for Parkland shall be the greater of:

- i. the equivalent Market Value of 1 hectare (1ha) per five-hundred (500) Dwelling Units proposed to be added by the Development or Redevelopment, but in no case to exceed thirty-percent (30%) of the total Market Value of the Land, or;
- ii. Five-percent (5%) of the total Market Value of the Land.

(e) Where Land in the City is to be Developed or Redeveloped for any use other than commercial, industrial, or residential, the payment required in lieu of the conveyance of a portion of the Land for Parkland shall be five percent (5%) of the Market Value of the Land.

18. Where a Development or Redevelopment will include a mix of uses, and two or more of the requirements under section 17 a) - e) may apply to the Development or Redevelopment, the payment required in lieu of a conveyance of a portion of the Land to the City for Parkland shall be determined in accordance with whichever single requirement under section 17 a) - e) applies to the Development or Redevelopment which will result in the greatest total payment to the City being required.

Determination of Market Value:

19. Where the payment of money is required in lieu of a conveyance of a portion of the Land for Parkland, and the Land is one of the types set out in Schedule "A" to this By-law, the person who seeks to Develop or Redevelop the Land may elect to have the Market Value of the Land to be used in calculating any payment required under this By-law in accordance with the applicable standard rate set out therein or may elect to submit an appraisal in accordance with the specifications set out in section 20, below.
20. Where the Land is not of a type set out in Schedule "A" to this By-law, or otherwise where the person who seeks to Develop or Redevelop the Land elects to submit an appraisal of Market Value, the following shall apply:

- (a) The person who seeks to Develop or Redevelop the Land shall obtain and furnish the City with an appraisal of the Market Value of the Land from a certified professional appraiser of real estate who is designated as an Accredited Appraiser by the Appraisal Institute of Canada, at no expense to the City.
- (b) Where the City is satisfied with the Market Value determined by the appraisal submitted in accordance with subsection (a), above, that value shall be used in the determination of the payment required.
- (c) Where the City is not satisfied with the Market Value determined by the appraisal submitted in accordance with subsection (a), above, the City may obtain its own appraisal, at the City's sole expense, of the Market Value of the Land from a certified professional appraiser of real estate who is designated as an Accredited Appraiser by the Appraisal Institute of Canada, which appraisal shall be shared with the person who seeks to Develop or Redevelop the Land.
- (d) Where the Market Value of the Land as determined by appraisals of the City and of the person who seeks to Develop or Redevelop the Land are within 5% of each other, or where the parties otherwise agree, the City's appraisal shall be used. Where there is greater than 5% difference, the person who seeks to Develop or Redevelop the Land may elect to select an appraiser from a list of appraisers pre-qualified by the City to carry out an appraisal which appraisal shall be treated as definitive of Market Value. The initial cost of such third party appraisal shall be paid by the person who seeks to Develop or Redevelop the Land, but those appraisal fees shall be deducted from the payment ultimately required.

- 21. Appraisals submitted to or obtained by the City for the purposes of this By-law shall be considered valid for a maximum period of one (1) year from the date the appraisal was completed, or such lesser time as may be specified in the appraisal.
- 22. City Staff shall review Schedule "A" to this By-law no less than one (1) time every two (2) years, commencing from the date this By-law is passed, and any updates required to the standard rates set out therein shall be determined by certified professional appraiser of real estate who is designated as an Accredited Appraiser by the Appraisal Institute of Canada.

No building without payment:

- 23. If a payment is required pursuant to section 17 or 18 above, no person shall construct a building on the Land proposed for Development or Redevelopment unless the payment has been made or arrangements for the payment satisfactory to the City have been made.

Payment Under Protest:

- 24. Any person who is required to pay money in lieu of a conveyance of a portion of Land to be Developed or Redeveloped may make that payment under protest in accordance with section 42(12) of the *Planning Act*. Subsections 42 (10), (11), (12) and (13) of the *Planning Act* shall govern any dispute that arises out of application of this section.

Form of Payment:

- 25. Any payment of money required under this By-law shall be made in the form of cash, certified cheque, bank draft or another form acceptable to the City.
- 26. Payment of any amount required under this By-law does not include any applicable taxes, which may be added to the payment required.

Special Account:

- 27. All money received by the City in lieu of the conveyance of a portion of Land for Parkland, or received on the sale of any property that has been conveyed to the City pursuant to this By-law, shall be paid into a special account established in accordance with section 42(15) of the *Planning Act*, and used only as permitted under that Act or any successor thereto, or any other general or special Act.
- 28. The City Treasurer shall give Council the financial statement of the any special account established pursuant to this By-law in accordance with the requirements of subsections 42(17) and (18) of the *Planning Act*.

Other Powers Not Affected:

- 29. Nothing in this By-law is intended to or has the effect of restricting or derogating from the authority of Council to require a conveyance for Parkland or the payment of money in lieu of such conveyance as a condition of the approval of a plan of subdivision in accordance with section 51.1 of the *Planning Act*, or the authority of Council, the committee of adjustment or any successor body thereto established under section 44 of the *Planning Act*, to require a conveyance for Parkland or the payment of money in lieu of such conveyance as a condition of the approval of a consent given under section 53(12) of the *Planning Act*.

Reduction for Previous Conveyance or Payment in Lieu:

- 30. If a portion of the Land has been previously conveyed or is required to be conveyed for Parkland, or a payment of money in lieu of such conveyance has been made or is required to be made under this By-law, a previous By-law passed under section 42 of the *Planning Act*, or as a condition of an approval under section 51.1 or 53(12) of the *Planning Act*, no additional conveyance or payment shall be required under this By-law as a condition of Development or Redevelopment of the Land unless:
 - (a) There is a change in the proposed Development or Redevelopment which would increase the density of the Development or Redevelopment; or
 - (b) Land originally proposed for Development or Redevelopment for commercial or industrial purposes is now proposed for Development or Redevelopment for other purposes.
- 31. Where section 30 applies, and a change referred to in (a) or (b) of that section has occurred, any conveyance that has previously been made or is required to be made for Parkland, or any payment of money that has previously been made or is required to be made in lieu of such conveyance, as the case may be, shall be deducted from the portion of the Land required to be conveyed for Parkland or the payment of money in lieu of such conveyance required under this By-law.

Exemptions from General Requirement:

- 32. This By-law does not apply to the following classes of Development or Redevelopment:
 - (a) Development or Redevelopment of Land owned by and used for the purposes of the City;
 - (b) Development or Redevelopment of Land owned by and used by a Board of Education;

- (c) Development or Redevelopment of Land owned by a College or University for non-commercial institutional and/or educational purposes;
- (d) Development or Redevelopment of Land owned and used by the Guelph General Hospital or St. Joseph's Hospital for non-commercial institutional, public health related, or medical uses;
- (e) Development or Redevelopment that consists solely of the replacement of any building destroyed or demolished, provided however a building permit for the replacement of such building must be submitted within 4 years of demolition, and further provided that there may be no increase to the total number of Dwelling Units or expansion of the size of the Gross Floor Area of the original building by more than fifty-percent;
- (f) Development or Redevelopment consisting solely of an Additional Residential Dwelling Unit permitted by the City's Official Plan or Zoning By-law;
- (g) Development or Redevelopment that consists solely of a temporary building or structure;
- (h) Industrial or Commercial Development or Redevelopment that has as its principal purpose compliance with the recommendations of public health in respect of physical distancing, screening and/or testing for COVID-19, and/or for the production of urgently required safety equipment and supplies for the primary purpose of supplying the local, provincial, national, and/or international response to the COVID-19 pandemic;
- (i) Development or Redevelopment of a Place of Worship or of a cemetery or burial ground exempt from taxation under the Assessment Act, R.S.O. 1990, c. A.31, or any successor thereof;
- (j) Such other land uses, projects or specific Development or Redevelopment as may be exempted by resolution of Council

Review:

- 33. Council intends that each new Council shall formally review this By-law no less than once during its term.

Repeal:

- 34. By-law (2019)- 20366 is repealed immediately upon the coming into force of this Parkland Dedication By-Law.

Coming Into Force:

This By-law shall come into effect at 12:01 A.M. on July 19, 2022.

Passed this Eighteenth day of July, 2022.

Schedules:

Schedule "A" – Standard Market Land Value

Schedule "B" – City of Guelph Land Valuation Areas

Schedule "C" – Downtown Boundary

Cam Guthrie, Mayor

Stephen O'Brien, City Clerk