

The Corporation of the City of Burlington

City of Burlington By-law 55-2023

A By-law to revise Residential Parkland Dedication
Policies.
(ES-35-23)

Whereas section 42(3) of the *Planning Act*, R.S.O. 1990, Chapter P.13, as amended (the "Act") provides that as a condition of development, the Council of a municipality may, by by-law applicable to the whole municipality or to any defined area or areas thereof, require that land be conveyed to the municipality for park or other public recreational purposes; and

Whereas section 42(6) of the Act provides that the Council of a municipality may require the payment of money to the value of the land otherwise required to be conveyed in lieu of such conveyance; and

Whereas Section 51.1 of the Act provides that the approval authority may require the conveyance of land for park or other recreational purposes to a local municipality; and

Whereas parkland conveyance policies are set out in the City of Burlington Official Plan; and

Whereas the Corporation of the City of Burlington has prepared a Parks Provisioning Master Plan and made it available to the public; and

Whereas Council for the Corporation of the City of Burlington desires to repeal and replace Bylaw 57-2005, as amended by Bylaw 62 -2022, with an updated By-law to provide for the conveyance of land and payment in lieu thereof for park and other public recreational purposes.

Now therefore the Council of the Corporation of the City of Burlington hereby enacts as follows:

PART 1
APPLICATION

1.0 Definitions

1. In this By-law,

a) "additional residential unit" means:

- i. A second residential unit in a detached house, semi-detached house or rowhouse on a parcel of land on which residential use, other than ancillary residential use, is permitted, if all buildings and structures ancillary to the detached house, semi-detached house or rowhouse cumulatively contain no more than one residential unit;

- ii. A third residential unit in a detached house, semi-detached house or rowhouse on a parcel of land on which residential use, other than ancillary residential use, is permitted, if no building or structure ancillary to the detached house, semi-detached house or rowhouse contains any residential units; or
 - iii. One residential unit in a building or structure ancillary to a detached house, semi-detached house or rowhouse on a parcel of land, as defined in the *Act*, if the detached house, semi-detached house or rowhouse contains no more than two residential units and no other building or structure ancillary to the detached house, semi-detached house or rowhouse contains any residential units.
- b) "affordable residential units" means a residential unit that meets the following criteria: A residential unit intended for use as a rented residential premises shall be considered to be an affordable residential unit if it meets the following criteria:
- i. The rent is no greater than 80 per cent of the average market rent, as determined in accordance with subsection 4.1(5) of the *Development Charges Act, 1997*, as amended.
 - ii. The tenant is dealing at arm's length with the landlord.
- A residential unit not intended for use as a rented residential premises shall be considered to be an affordable residential unit if it meets the following criteria:
- i. The price of the residential unit is no greater than 80 per cent of the average purchase price, as determined in accordance with subsection 4.1(6) of the *Development Charges Act, 1997*, as amended.
 - ii. The residential unit is sold to a person who is dealing at arm's length with the seller.
- c) "agricultural use" means lands, buildings or structures used, or designed or intended for use for the purpose of animal husbandry, agriculture, dairying, fallow, field crops, removal of sod, forestry, fruit farming, horticulture, market gardening, pasturage, poultry keeping and any other activities customarily carried on in the field of agriculture;

- d) "attainable residential units" means a residential unit that meets the following criteria:
1. The residential unit is not an affordable residential unit.
 2. The residential unit is not intended for use as a rented residential premises.
 3. The residential unit was developed as part of a prescribed development or class of developments.
 4. The residential unit is sold to a person who is dealing at arm's length with the seller.
 5. Such other criteria as may be prescribed under the *Development Charges Act, 1997*, as amended.
- e) "City" means The Corporation of the City of Burlington;
- f) "Council" means the Council of the City;
- g) "development" means the construction, erection, or placing of one or more buildings or structures on land or the making of an addition or alteration to a building or structure, and "developed" shall have the corresponding meaning;
- h) "development, low density" on lands designated residential, Low Density, development shall be permitted to up to and including a maximum density of twenty-five (25) units per net hectare;
- i) "development, medium or high density" on lands designated residential, Medium Density or High Density, development shall be more than twenty-five (25) a units per net hectare;
- j) "easement" An easement is an interest in a property that conveys use, but not ownership, over a portion of an owner's property;
- k) "environmental features" means lands of the natural environment, including but not limited to:
1. significant habitat of endangered species, threatened species;
 2. fish habitat;
 3. wetlands;
 4. life science areas of natural and scientific interest;
 5. significant valleylands;
 6. significant woodlands;
 7. significant wildlife habitat;
 8. permanent and intermittent streams;
 9. lakes;
 10. areas prone to flooding; and,
 11. regional recharge areas;

- l) "lot" means a parcel of land;
- m) "mixed-use" means land, buildings or structures used or designed or intended for use for a combination of non-residential uses and residential uses;
- n) "net residential unit" shall be determined by subtracting the number of residential units on the land immediately before the proposed development or redevelopment from the number of residential units that will be on the land after the proposed development or redevelopment;
- o) "record of site condition" means a summary of the environmental condition of a property, based on the completion of environmental site assessments (ESAs) that are conducted by a Qualified Person in accordance with the regulations and guidelines of the Ontario Ministry of the Environment, Conservation, and Parks (MECP);
- p) "redevelopment" means the construction, erection or placing of one or more buildings or structures on land where all or part of a building or structure has previously been demolished on such land, or changing the use of a building or structure from residential to non-residential , or from one form of residential to another form of residential, or from one form of non-residential to another form of non-residential;
- q) "residential unit " for the purposes of this By-law means, two (2) or more rooms designed or intended to be occupied by and for the use of an individual or household as a residence with separate kitchen and sanitary (bathroom) facilities that are intended for the use of the residential unit only.

2. In this By-law where reference is made to a statute or a section of a statute such reference is deemed to be a reference to any successor statute or section.

2.0 Lands Affected

This By-law applies to all lands within the boundaries of the City of Burlington.

3.0 Parkland Dedication Requirements

1. Pursuant to Section 42, Section 51.1 and Section 53 of the Act, as a condition of development, redevelopment, the City shall require the conveyance of parkland, cash-in- lieu of conveyance of parkland, or combination thereof.

2. The parkland conveyance or cash-in-lieu of parkland requirements will be determined during the planning application process and/or building permit review, whichever is applicable, and will be identified as conditions of approval for a planning application and/or as of the day before the building permit for the foundation of the building is issued.

4.0 Conveyance of Land for Parkland

When the Director elects to accept the dedication of land for park or other public recreational uses, in the case of residential or the residential component of mixed-use development, the land shall be conveyed to the City

1. For low density development, the land shall be conveyed to the City at:
 - a) 5% of the total area of the lands to be developed.
2. For medium or high-density development, the land shall be conveyed to the City at the lesser of:
 - b) a maximum 10% of the total area of the lands to be developed for sites under 5 hectares, and 15% for sites greater than 5 hectares; or
 - c) one hectare for each 600 net residential units in the proposed development.
3. The City retains the right not to accept the conveyance of land that is considered unsuitable for use as parkland including, but not limited to:
 - a) hazardous or flood prone lands;
 - b) lands containing environmental features;
 - c) any land having unsuitable, steep or unstable soil conditions unsuitable for intended recreation purposes;
 - d) land encumbered by liens, easements or non-City utilities;
 - e) stormwater management facilities;
 - f) lands that do not have street frontage; or
 - g) any land which is of a size or configuration that limits or restricts the City's ability to use of land for park or public recreational purposes or otherwise does not meet the criteria set out in Appendix B of the Parks Provisioning Master Plan.
4. Lands which are unsuitable for parkland may be gratuitously conveyed to the City as open space blocks and will not be credited towards parkland dedication requirements.
5. Any over dedication of parkland provided willingly by the Applicant shall be given gratuitously and will receive no compensation by the City.

6. Any land that has been or are to be conveyed to the City for stormwater management facilities, overland flow routes, floodplain or conservation purposes, roadways, walkway blocks or any other non-parkland purpose, will not be credited against the required parkland conveyance or cash-in-lieu of parkland conveyance.
7. A Record of Site Condition, specific to lands being conveyed for park purposes, may be a requirement of any conveyance of parkland to the City.
8. Where conveyance of land for park purposes is not feasible or appropriate within the site being developed, the City:
 - a) may consider the conveyance of lands outside of the site being developed if the City is satisfied that the lands is of comparable value, provide a benefit to the residents of the land being developed and support City polices surrounding parks programming;
 - b) will decide if the conveyance of land outside of the site being developed is appropriate prior to the issuance of the building permit for the foundation of the building or as stipulated in conditions of approval, as applicable.
9. Title for the land to be conveyed for the development or redevelopment shall be received by the City the day before the building permit for the foundation of the building is issued or as stipulated in conditions of approval.

5.0 Cash-in-lieu of Parkland

When the Director elects to accept cash in lieu of parkland for park or other public recreational uses, the cash-in-lieu shall be conveyed to the City;

1. For low density development, the calculation shall be:
 - a) 5% value of the parcel to be developed.
2. For medium or high-density development, cash-in-lieu of parkland shall be paid at the lesser of:
 - a) the number of net residential units in the proposed development divided by 1000 x the per hectare land value of the land to be developed.
 - b) a maximum 10% of the total land value for sites under 5 hectares, or 15% for sites greater than 5 hectares.
3. Where cash-in-lieu is required to be paid to the City, it would be determined as follows:
 - a) for development or redevelopment subject to Section 42 of the Act, the value of the land shall be determined as of the day before the building permit for the foundation of the building is issued, and if more than one building permit is required, the value shall be calculated by the City the day before the first

- building permit for the foundation of the building is issued; and
- b) for development or redevelopment occurring through a new plan of subdivision, the value of the land shall be determined as of the day before draft plan of subdivision approval is issued.
4. The value of the land shall be determined by the City.
 5. Where the applicant disputes the City's determination of value, the Applicant may appeal the valuation in accordance with the Act or provide the City, at the Applicant's cost, a fair market value appraisal of the lands prepared by an independent appraiser.

6.0 Exemptions

1. The conveyance of parkland or the payment of cash-in-lieu of parkland is not required for development or redevelopment where it is known, or can be demonstrated it has been previously satisfied in accordance with the Act, unless:
 - a) there is a change in the proposed development or redevelopment that would increase the density,
 - b) the land originally proposed for development or redevelopment for commercial or industrial purposes is now proposed for development or redevelopment for other purposes that include residential.
2. No conveyance of land or payment of cash-in-lieu under this by-law is required in the case of the development or redevelopment of:
 - a) a building that was accidentally damaged or demolished and where the building continues to be used for the same purpose after it is repaired, replaced or rebuilt;
 - b) an additional residential unit
 - c) an addition or alteration to an existing residential building that is a detached house, semi-detached house or rowhouse and that does not result in an increase in residential units;
 - d) non-profit housing as defined in the *Development Charges Act, 1997*, as amended;
 - e) affordable housing as defined in the *Development Charges Act, 1997*, as amended;
 - f) attainable housing as defined in the *Development Charges Act, 1997*, as amended;
 - g) a municipal or other government use;
 - h) a temporary use for which an approval has been granted under Section 39 of the Act;
 - i) any development or redevelopment of a use undertaken in partnership with the City;
 - j) a long-term care home within the meaning of subsection 2 (1) of the Long-Term Care Homes Act, 2010; or

k) a retirement home within the meaning of subsection 2 (1) of the Retirement Homes Act, 2010.

7.0 Effective Date

This By-law comes into force on the day it is enacted by Council.

8.0 Severability

In the event any provision, or part thereof, of this By-law is found, by a court of competent jurisdiction, to be ultra vires, such provision, or part thereof, shall be deemed to be severed, and the remaining portion of such provision and all other provisions of the By-law shall remain in full force and effect.

9.0 Retention of Discretion:

Nothing in this by-law shall be construed so as to fetter the discretion of the Director in determining whether to obtain parkland dedication by way of conveyance of land or cash in-lieu, or a combination thereof.

10.0 Short Title

This By-law may be cited as the Residential Park Dedication By-law.

That By-law 57-2005, as amended by By-law 62-2022, be and is hereby repealed upon the enactment of By-law 55-2023 by Council. This By-Law will come into force and take effect on the date of its passing.

Enacted and passed this 11th day of July, 2023

Deputy Mayor Shawna Stolte _____

City Clerk Kevin Arjoon _____