



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Economic Development Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	August 9, 2022
SUBJECT/REPORT NO:	Re-enactment of the Parkland Dedication By-law (PED22158) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Phil Caldwell (905) 546-2424 Ext. 2359
SUBMITTED BY:	Norm Schleehahn Director, Economic Development Division Planning and Economic Development Department
SIGNATURE:	
SUBMITTED BY:	Ray Kessler Chief Corporate Real Estate Officer, Economic Development Division Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

- (a) That existing Parkland Dedication By-law No. 18-126 and amending By-law No. 21-078, be repealed;
- (b) That the Parkland Dedication By-law attached as Appendix "A" to Report PED22158, prepared in a form satisfactory to the City Solicitor, be enacted;
- (c) That the General Manager, Planning and Economic Development, or designate, be directed to prepare and implement updated Parkland Dedication and Cash-in-Lieu of Parkland Procedures consistent with the enacted Parkland Dedication By-law.

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

EXECUTIVE SUMMARY

In 2020, the Province introduced changes to various pieces of legislation through the *More Homes, More Choice Act* (“Bill 108”) and *COVID-19 Economic Recovery Act* (“Bill 197”). Included among these changes were amended parkland dedication provisions of the *Planning Act*. The most notable of these changes, which have necessitated the need for recommendations (a) and (b) of this Report are:

- That any existing municipality’s Parkland Dedication By-law (PDB) that employs an alternative rate for residential parkland dedication/cash-in-lieu, is deemed to expire, unless updated/re-enacted, by the date legislation respecting Community Benefit Charge (CBC) By-laws comes into effect on September 18, 2022; and,
- That an updated/re-enacted PDB passed by a municipal Council be subject to public notice requirements and a 40-day appeal period once passed.

The City’s existing PDB was last comprehensively reviewed and updated in 2018 and continues to comply with Provincial regulations respecting parkland dedication and cash-in-lieu rates permitted under the *Planning Act* as well as applicable City Official Plan policies. As such, no significant updates to the PDB were required to meet the legislated deadline for PDBs, with staff recommending the re-enactment of the existing by-law largely in its existing form and with only minor updates not related to the changes in Provincial legislation (Appendix “A” to Report PED22158). Updates to the PDB include various non-substantive grammatical/technical fixes as well as:

- The addition of annual indexing to the cash-in-lieu of parkland rate for residential units within the Downtown Hamilton Community Improvement Project Area (CIPA) based on year-over-year changes in Hamilton house prices. This update adds consistency to the by-law by applying annual indexing of cash-in-lieu rates to the Downtown CIPA rate that been in place in all other areas of the City since 2018; and,
- A housekeeping amendment to clarify and implement within the PDB a previous Council direction that discounted Downtown CIPA cash-in-lieu rates apply only to those portions of a development that do not exceed the maximum building heights within Downtown Zones as adopted by City Council April 25, 2018.

A separate exercise to review the existing Parks and Recreation Master Plans is currently underway and will not be completed in a timeframe that will enable the subject by-law to be reviewed prior to the legislated deadline for the City to update/re-enact its PDB. At such time as the reviews of the Parks and Recreation Master Plans are complete, staff will assess the need for any future substantive amendments to the PDB and bring forward a recommendation report for Council consideration, as required.

Alternatives for Consideration – Page 8

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: Funds provided as cash-in-lieu of parkland are directed to the City's Parkland Dedication Fund and used to finance the acquisition of parkland in accordance with applicable legislation and City policies.

The financial impact of adding annual indexing to the cash-in-lieu of parkland rate for residential development in the Downtown Hamilton CIPA will vary year-over-year based on annual changes in Hamilton's house prices in addition to pre-existing and on-going fluctuations arising from year-over-year changes in development activity.

There are no other financial implications arising from the recommendations of this Report.

Staffing: There are no staffing implications arising from the recommendations of this Report

Legal: Notwithstanding the introduction of appeal rights to municipal PDBs, a PDB passed by Council is deemed to be in effect from the day that Council passed the by-law regardless of whether that by-law is the subject of an appeal to the Ontario Land Tribunal (OLT). Any decision on an appeal by the OLT, even if occurring after the date existing municipal PDB's are deemed to expire on September 18, 2022, will be retroactive to the date of Council's passing of the new PDB. As such, staff note there will not be a period where the City is left without a PDB in the event an appeal is filed in respect of the PDB recommended via this Report.

HISTORICAL BACKGROUND

In May 2018, Council enacted the existing Parkland Dedication By-law (No. 18-126) which was the culmination of a multi-phase comprehensive review and update. Key updates made to the by-law at this time included:

- Making permanent reduced rates for accessory dwelling units, up to six dwelling units above commercial use, street townhouses outside a plan of subdivision, and additional dwelling units within a building designated under the *Ontario Heritage Act*;
- The updating of rates based on geographic location within the City and built form to account for variations in land values across the City;

SUBJECT: Re-enactment of the Parkland Dedication By-law (PED22158) (City Wide) - Page 4 of 8

- The introduction of annual indexing of alternative cash-in-lieu of parkland rates in areas outside the Downtown Hamilton CIPA based on year-over-year changes in house prices as identified by the Teranet and National Bank of Canada House Price Index; and,
- A phased increase to the cash-in-lieu of parkland rate for residential developments located in the Downtown Hamilton CIPA culminating in a current rate of \$5,000 per unit as of April 1, 2022.

At this time, Council also approved an updated Parkland Dedication and Cash-in-Lieu of Parkland Procedure Manual used by staff in the implementation of the PDB.

In April 2021, the PDB was subsequently amended by By-law No. 21-078 as part of a suite of recommendations approved by Council via Report PED20093(a) respecting proposed secondary dwelling unit regulations. Amendments to the PDB included the introduction of a definition for ‘Secondary Dwelling Unit’ (SDU) and an amended cash-in-lieu of parkland policy to reflect the expanded range of residential built forms in which SDU’s may be provided within (single detached, semi-detached or block or street townhouse dwellings/lots).

In 2020, the Province introduced changes to various pieces of legislation, including the *Planning Act* and *Development Charges Act*, through Bills 108 and 197 and the related Ontario Regulation 509/20. Included among these changes were amended parkland dedication provisions contained under Sections 42 and 51 of the *Planning Act*. These changes, which have necessitated the need for the recommendations of this Report, are discussed in more detail in the “Analysis and Rationale for Recommendation(s)” section of this Report.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Sections 42 and 51.1 of the *Planning Act* provide the legislative authority for municipalities to require the dedication of land for parks or public recreational purposes as a condition of development/redevelopment or the subdivision of land, respectively. Specifically, dedication of land may be required by the City in an amount not exceeding:

- 2% of the land area for commercial or industrial developments; or,
- 5% of the land area for all other uses, including residential.

With respect to residential developments, subsections 42(3) and (6.0.1) of the *Planning Act* authorizes municipalities to utilize an alternative dedication rate to the standard 5% of land area for the dedication of land or cash-in-lieu thereof where a municipality has

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

adopted Official Plan policies respecting the use of alternative rates. The alternative rates permitted under the *Planning Act* are:

- Dedication of land at a rate of one (1) hectare for every 300 units proposed;
- Cash-in-lieu of land at a value equal to one (1) hectare of land for every 500 units proposed; or,
- Such lesser rate as may be specified by the City by by-law.

Notable limits to the above alternative rates are further stated in subsection 42(3.3) of the *Planning Act* which states that the maximum land dedication or value of land provided as cash-in-lieu shall be limited to:

- 10% of the land area or value when development/redevelopment is proposed on land that is five (5) hectares or less in area; or,
- 15% of the land area or value when development/redevelopment is proposed on land that is greater than five (5) hectares.

The City's Urban Hamilton Official Plan (UHOP) and Rural Hamilton Official Plan (RHOP) currently contain the necessary policies required to permit the use of these alternative rates. The City's existing PDB establishes the specific alternative rates based on the built form and location within the City and are in accordance with the above stated requirements of the *Planning Act*.

Additional legislated requirements respecting PDBs introduced through Bill 108 and Bill 197 are discussed in the "Analysis and Rationale for Recommendation(s)" section of this Report.

RELEVANT CONSULTATION

Staff attended the June 13, 2022 Development Industry Liaison Group to discuss the required re-enactment of the PDB and staff's proposed minor amendment respecting indexing of the Downtown CIPA cash-in-lieu rate. No concerns were raised by attendees.

Staff from the Corporate Services Department's Financial Planning, Administration and Policy Division and Legal and Risk Management Services Division were consulted, and the advice received incorporated in this Report.

ANALYSIS AND RATIONALE FOR RECOMMENDATION(S)

Parkland Dedication By-law Re-enactment and Updates:

Although comprehensively reviewed and updated in 2018, the City's existing PDB (18-126), as amended, is subject to the legislative changes introduced by the Province in 2020. These changes include:

- Deeming any existing municipality's PDB that employs an alternative rate for residential parkland dedication or cash-in-lieu thereof, as expiring on the date that legislation respecting CBC By-laws comes into effect on September 18, 2022;
- Requiring municipalities with PDB's subject to the legislated expiration date to update or re-enact their PDBs prior to September 18, 2022;
- Requiring any changes to a municipalities PDB that require new or amended Official Plan policies to first be informed by the undertaking of a parks/recreation plan that assess the municipalities park/recreation land needs; and,
- Requiring that an updated/re-enacted PDB passed by a municipality's Council be subject to public notice within 20 days and be subject to a 40-day appeal period, with both periods starting the day after the day the by-law is passed by Council.

The City's existing PDB continues to comply with all applicable Provincial legislation and existing City Official Plan policies. As such, to meet legislated requirements regarding the expiration of existing municipal PDBs, staff are recommending a re-enactment of the existing PDB largely in its existing form, with only minor updates not related to legislative changes.

Updates incorporated into the recommended PDB contained in Appendix "A" to Report PED22158 include grammatical/technical fixes as well as the following:

- The addition of annual indexing to the cash-in-lieu of parkland rate for new residential units and redevelopment in the form of Multiple Dwelling Units within the Downtown Hamilton CIPA the effect of which will be that the cash-in-lieu per residential unit rate will change annually equal to the January year-over-year house price change in Hamilton, as reported by the Teranet and National Bank of Canada House Price Index.

This update addresses an existing inconsistency in the PDB whereby all other cash-in-lieu rates outside the Downtown Hamilton CIPA have been subject to this same indexing since 2018. The indexing of rates was originally introduced to create equity and certainty for the development community and reduce administrative burden.

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

- A housekeeping amendment to clarify and implement within the PDB a previous Council direction that discounted Downtown CIPA cash-in-lieu rates for residential units apply only to those portions of a development that do not exceed the maximum building heights within Downtown zones as adopted by City Council April 25, 2018.

This amendment reflects a similar approach undertaken in the City's Development Charge By-law and is intended to further articulate and reinforce the vision for Downtown as originally approved by City Council through the Downtown Secondary Plan (OPA 102) and implementing Downtown Zones contained within Zoning By-law 05-200.

Should Council enact the recommended PDB, staff will fulfil the newly legislated public notice requirements with a Notice of Passing advertisement in the Hamilton Spectator not later than 20 days from the day after the day the by-law is passed by Council.

Parkland Dedication By-law Municipal Comparisons:

As part of the re-enactment of the PDB, a review was undertaken of current residential parkland dedication and cash-in-lieu requirements and rates in other municipalities. This review is summarized in Appendix "B" to Report PED22158.

Staff's observations were that there continues to be a broad range of approaches and values utilized by municipalities with respect to cash-in-lieu requirements for residential developments. Staff observed that cash-in-lieu rates per medium-density residential unit ranges between \$4,403 (City of Brampton) and \$50,800 (Towns of Oakville, Milton, Whitby and City of Ottawa) compared with Hamilton's average rate of \$14,702 for townhouse units and \$11,435 for Multiple Dwelling Units. For high-density developments in the form of tall buildings, again a broad range of cash-in-lieu rates exist ranging between \$4,045 per unit (Cities of Toronto and Ottawa) and \$50,800 (Towns of Oakville and Milton) compared to Hamilton's average rate of \$11,435 for Multiple Dwellings Units and discounted \$5,000 per unit rate within the Downtown Hamilton CIPA.

Overall, there was no specific observation by staff that would suggest a change to any of the City's existing parkland dedication or cash-in-lieu rates are needed at this time. As such, there are no changes proposed to the existing land dedication or cash-in-lieu rates as part of the recommended re-enactment of the PDB. Staff note that, as a result of the updated Provincial legislation, any changes to existing parkland dedication or cash-in-lieu rates requiring an amendment to existing Official Plan policies must now first be informed by a new/updated parks plan.

Review of the Parks and Recreation Master Plans:

A separate exercise to review the existing Parks and Recreation Master Plan is currently underway but will not be completed in a timeframe to meet the legislated deadline for the City to update/re-enact its PDB.

At such time as the Parks and Recreation Master Plan update is completed, staff will assess the need for any future substantive amendments to the PDB in consultation with staff from affected City divisions/departments, the public and stakeholders and bring forward a recommendation report respecting any proposed substantive updates to the PDB for Council consideration, as required.

ALTERNATIVES FOR CONSIDERATION

Council may re-enact the existing PDB without staff's recommended minor updates. The effect of this would be to fix the current cash-in-lieu rates into the future, with no adjustment for inflation, for the Downtown CIPA, which is inconsistent with the approach applied in all other areas of the City.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Healthy and Safe Communities

Hamilton is a safe and supportive City where people are active, healthy, and have a high quality of life.

Built Environment and Infrastructure

Hamilton is supported by state-of-the-art infrastructure, transportation options, buildings and public spaces that create a dynamic City.

APPENDICES AND SCHEDULES ATTACHED

Appendix "A" to Report PED22158 – Recommended Parkland Dedication By-law

Appendix "B" to Report PED22158 – Summary of Residential Parkland Dedication Rates in Other Municipalities