

CITY OF NIAGARA FALLS

By-law No. 2022-132

A by-law to repeal and replace By-law 2020-37 which provides for the conveyance of land for park or other recreational purposes as a condition of development, redevelopment and subdivision of land for residential purposes.

WHEREAS sections 42, 51.1 and 53 of the Planning Act, R.S.O., 1990, c.P13, as amended, authorize the Council of a municipality to pass a by-law applicable to the whole of the municipality, or to any defined area or areas thereof, to require that land, in an amount not exceeding 5 percent of the land proposed to be subdivided, be conveyed to the City for park or other recreational purposes;

AND WHEREAS the City's Official Plan contains policies which provide for the dedication of parkland or cash-in-lieu as a condition of the development, redevelopment and subdivision of land for residential purposes;

AND WHEREAS it is desirable to set a lesser rate of dedication of parkland or cash-in-lieu required for any Community Improvement Area in the City;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF NIAGARA FALLS ENACTS AS FOLLOWS:

1. DEFINITIONS

- a) "Appraisal" – means a fair market valuation of land prepared by an accredited Appraiser
- b) "Appraiser" – means a member in good standing of the Appraisal Institute of Canada holding an Accredited Appraiser Canadian Institute or Canadian Residential Appraiser designation as appropriate.
- c) "Cash-in-lieu" means monies accepted by the City to the value of any land required to be conveyed under this by-law in lieu of such conveyance.
- d) "City" means The Corporation of the City of Niagara Falls;
- e) "Council" means the Council of The Corporation of the City of Niagara Falls.
- f) "Development" means the construction, erection, or placing of one or more buildings or structures on land.
- g) "Redevelopment" means the removal of buildings or structures from the land and further development of the land within 5 years of those buildings or structures being removed, or the alteration of an existing building or structure that has the effect of substantially increasing the size and usability thereof.

2. This By-law applies to those lands in the whole of the City designated for Residential purposes pursuant to the City of Niagara Falls Official Plan, as amended.
3. As a condition of development or redevelopment the City shall require the conveyance of land of land for park or other recreational purposes, in an amount equal to 5 percent of the land proposed for development or redevelopment, at no charge;
 - a) the location and configuration of land required to be conveyed shall be at the discretion of the City and all such conveyances shall be free of all encumbrances and accompanied by a Solicitor's Certificate; and
 - b) title for the land to be conveyed shall be received by the City prior to the issuance of any Building Permit.
4. As a condition of site plan control, consent, plan of subdivision of land or plan of condominium for residential purposes the City shall require the conveyance of land for park or other recreational purposes, in an amount equal to 5 percent of the land proposed for development or redevelopment, at no charge:
 - a) the location and configuration of land required to be conveyed shall be at the discretion of the City and all such conveyances shall be free of all encumbrances and accompanied by a Solicitor's Certificate; and
 - b) title for the land to be conveyed shall be received by the City in accordance with the conditions of approval of a plan of subdivision or condominium or conditions of consent pursuant to sections 51 and 53 of the Planning Act, respectively.
5. Environmental Protection Areas and Environmental Conservation Areas, as defined in the Official Plan, shall be gratuitously conveyed to the City through the development review process and shall not be accepted by the City as land for parkland dedication, nor included in the calculation thereof.
6. The City may, where appropriate and in compliance with the parkland dedication policies of the City, consider Environmental Conservation Lands as defined in the Official Plan for parkland dedication where the lands are of particular value either because of their physical, social or environmental character, or because their location provides a link with other portions of the open space system as identified in the City's Parks Plan or Woodland Management Plan. The decision to accept Environmental Conservation Lands as parkland dedication is solely at the discretion of the General Manager of Planning, Building and Development, or their designate.
7. Where undevelopable or Natural Heritage Lands are to be conveyed to the City, the parkland dedication shall be calculated based upon the net area of developable lands.

8. In lieu of requiring the conveyance of land referred to in sections 3 and 4, the City may require cash-in-lieu of land in the amount of the appraised value or such combination of land and cash as the Council may direct;
 - a) all appraisal of land value shall be carried out under the direction or to the satisfaction of the General Manager of Planning, Building and Development (hereinafter referred to as the "General Manager"), or their designate, and shall be determined in accordance with the Planning Act and generally accepted appraisal principles;
 - b) the General Manager, or their designate, may, in their discretion, determine that an Appraisal is not acceptable, and may require the applicant to obtain a revised or further Appraisal, at the Applicant's sole expense. The General Manager, or their designate, shall make the final determination as to the appraisal to be utilized. In the event the applicant is in disagreement with the General Manager's, or their designate's, determination, the Applicant may make the payment under protest, in which case, Section 42 of the *Planning Act* shall apply; and
 - c) all fees associated with all required Appraisals shall be the sole responsibility of the Applicant including, but not limited to: surveyor fees, application & review fees paid to the conservation authority, region or local municipality, legal fees to prepare and register deeds, Appraiser fees, and demolition costs to remove buildings or structures when required as a condition of approval.
9. The conveyance of parkland as set out in sections 3 and 4 of this By-law or the acceptance of cash-in-lieu as set out in section 5 of this By-law shall not apply to any land that has been subdivided under sections 51 and 53 of the Planning Act, R.S.O. 1990, c. P13 or predecessor, where land in the plan was previously conveyed to the City for park or public recreation purposes.
10. Parkland dedication or payment of cash-in-lieu of parkland dedication shall not be required in the following situations:
 - a. additions or alterations to existing individual residential units;
 - b. the redevelopment of residential properties for replacement of residential uses that were demolished or destroyed by fire, accidental causes or other natural causes, provided that the density of the new development, in the discretion of the General Manager, or their designate, is generally the same as the density which previously existed.
11. Notwithstanding sections 3 and 4 of this By-law, no parkland dedication is required for any development, redevelopment or subdivision of lands for residential purposes within any Community Improvement Plan area of the City as provided for in By-law 2022-130.

12. By-law No. 2020-37 is hereby repealed.

**Read a First, Second and Third time, passed, signed and sealed in open Council
this 13th day of December, 2022.**

WILLIAM G. MATSON, CITY CLERK

JAMES M. DIODATI, MAYOR