



# Town of Whitby

## By-law # 7733-21

### Conveyance of Parkland and Cash-in-Lieu of Parkland By-law

Being a By-law to require the conveyance of land or the payment of cash-in-lieu thereof for park or other public recreational purposes as a condition of the development or redevelopment of land.

Whereas Sections 42, 51.1 and 53 of the Planning Act authorize local municipalities to pass by-laws requiring that land or cash-in-lieu thereof be conveyed to the local municipality for park or other public recreational purposes as a condition of development or redevelopment of land, the subdivision of land, or the granting of provisional consent over land; and

Whereas Council has adopted policies within its Official Plan pertaining to the conveyance of land or cash-in-lieu thereof to the Town for park or other public recreational purposes as a condition of development or redevelopment under the Planning Act; and

Whereas Council deems it necessary and expedient to enact a by-law to provide for the provision of lands or cash-in-lieu thereof for park or other public recreational purposes and the use of alternative requirements as set out in the Planning Act and the Town's Official Plan; and

Whereas Sections 23.1 to 23.3 of the Municipal Act authorize the delegation of powers or duties of the municipality subject to restrictions;

Now therefore, the Council of The Corporation of the Town of Whitby hereby enacts as follows:

#### 1. Definitions

- 1.1. "building permit" means a building permit issued pursuant to the Building Code Act, 1992, S.O. 1992, c. 23, as amended or successor thereto;
- 1.2. "cash-in-lieu" means a payment of money for park or other public recreational purposes which is collected in lieu of a conveyance of land which would otherwise be required to be conveyed pursuant to the parkland provisions of the Planning Act as incorporated into this by-law;
- 1.3. "commercial" has the same meaning as it is defined or used in the applicable Town Zoning By-law;
- 1.4. "Council" means the Council of The Corporation of the Town of Whitby;
- 1.5. "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 that has the effect of substantially increasing the size or usability thereof, or the laying out and establishment of a commercial parking lot or of sites for the location of three or more trailers as defined in subsection 164(4) of the Municipal Act, or of sites for the location of three or more mobile

- homes as defined in subsection 46(1) of the Planning Act or of sites for the construction, erection or location of three or more land lease community homes as defined in subsection 46(1) of the Planning Act;
- 1.6. “dwelling unit” means any property that is used or designed for use as a domestic establishment in which one or more persons may sleep and prepare and serve meals;
  - 1.7. “high density residential” means a residential building that is five (5) or more storeys high and contains ten (10) or more dwelling units;
  - 1.8. “Historic Downtown Whitby Priority Area” is the area shown on the map as set out in Schedule “B” of this by-law;
  - 1.9. “industrial” has the same meaning as it is defined or used in the applicable Town Zoning By-law;
  - 1.10. “mixed use” means any land or building or portion thereof that is used or intended to be used for both residential and non-residential uses;
  - 1.11. “Municipal Act” means the Municipal Act, 2001, S.O. 2001, c. 25, as amended or successor thereto;
  - 1.12. “Planning Act” means the Planning Act, R.S.O. 1990, c. P.13, as amended or successor thereto;
  - 1.13. “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 a non-residential use to a residential use, or the expansion, extension or alteration of a building or structure, except interior alterations to an existing building or structure which do not change or intensify the use of the land;
  - 1.14. “residential” has the same meaning as it is defined or used in the applicable Town Zoning By-law; and
  - 1.15. “Town” means The Corporation of the Town of Whitby or the geographical boundaries of the Town of Whitby, as the context requires.

## **2. Interpretation**

- 2.1. References in this by-law to items in the plural include the singular, and references to the singular include the plural, as applicable.
- 2.2. The words “include”, “includes”, or “including” are not to be read or interpreted as limiting the words, phrases or descriptions that precede them.

- 2.3. The words or references in this by-law that are not defined herein shall be interpreted in accordance with their plain, ordinary, and common dictionary meaning.
- 2.4. If a court of competent jurisdiction declares any section, or any part of any section, of this by-law to be invalid, or to be of no force or effect, it is the intention of the Town that every other provision of this by-law be applied and enforced in accordance with its terms to the extent possible according to law.
- 2.5. The provisions of this by-law apply to all land located within the Town.
- 2.6. References to employees of the Town by title of their position include an individual acting in that capacity in the absence of the employee, and an individual acting in a position that is a functional successor to the position in the event of reorganization.

### **3. Parkland Dedication Requirements**

- 3.1. As a condition of development or redevelopment of land, the Town shall require the conveyance of land to the Town or a cash-in-lieu equivalent to the value of the land required to be conveyed under this by-law for park or other public recreational purposes.
- 3.2. Conveyance, including the location and configuration shall be in the form of land, cash-in-lieu, or a combination of cash-in-lieu and land, at the discretion of the Town.

### **4. Calculation of Conveyance of Land or Cash-in-Lieu**

- 4.1. As a condition of development or redevelopment of land, the Town shall require the conveyance of land or cash-in-lieu equivalent to the Town for parks and other public recreational purposes as set out in Schedule "A" of this by-law.
- 4.2. To determine a cash-in-lieu value of land as required by this by-law, land value shall be determined as of the day before the first building permit is issued in respect of the development or redevelopment.
- 4.3. The value of the land for which payment is being made in lieu of a conveyance shall be established by way of an appraisal of the fair market value of the land by a qualified professional appraiser of real estate with experience appraising all types of real property, and who is designated as an Accredited Appraiser by the Appraisal Institute of Canada. The appraisal shall be obtained by the owner of the land being developed or redeveloped, and shall be at the sole cost and expense of such owner.
- 4.4. All appraisals obtained pursuant to this by-law shall state the criteria used to determine the value within the appraisal and shall be satisfactory to the Town.

- 4.5. An appraisal shall remain current for a maximum period of one (1) year from the date of the appraisal.
- 4.6. Where land is required to be conveyed to the Town, and/or cash-in-lieu is required to be paid to the Town in accordance with this by-law:
- (a) Title for the land to be conveyed or the payment of cash-in-lieu thereof for any development or redevelopment under Section 42 of the Planning Act shall be received by the Town prior to the issuance of any building permit for the proposed development or redevelopment.
  - (b) Title for the land to be conveyed or the payment of cash-in-lieu thereof shall be received by the Town in accordance with the conditions of approval of a plan of subdivision or condominium pursuant to Section 51 of the Planning Act or the conditions of provisional consent pursuant to Section 53 of the Planning Act.
- 4.7. For development or redevelopment which occurs pursuant to either of Sections 41 or 51 of the Planning Act and for which approvals are issued in phases, the Town shall calculate and require:
- (a) the entire conveyance of land or the payment of cash-in-lieu in accordance with the provisions of this by-law prior to the approval of the initial phase; or
  - (b) the conveyance of land or the payment of cash-in-lieu in accordance with the provisions of this by-law on a phase-by-phase basis;
- at the discretion of the Town.

## **5. Exemptions**

- 5.1. This by-law shall not apply to the following development or redevelopment:
- (a) Land, building, or structures owned by and used for the purposes of any municipality, local board, the Province of Ontario, or the Government of Canada, or any agency or ministry thereof.
  - (b) Land, building, or structures owned by and used for the purposes of any “district school board” or “school authority” as defined in the Education Act, R.S.O. 1990, c. E.2, as amended or successor thereto.
  - (c) An accessory dwelling unit permitted by the Town’s Official Plan and/or the applicable Town Zoning By-law.
  - (d) Land, building, or structures owned by and used for the purposes of any hospital or hospice, or accessory uses thereof on the same land.
  - (e) The replacement of any building that is a direct result of destruction due to accidental fire or other accidental cause beyond the control of the owner

provided that no intensification or change in use is proposed, including but not limited to an increase in total dwelling unit count or gross floor area.

- (f) A dwelling unit that does not contain a kitchen and where common eating facilities are provided within the building or structure; however this does not include an establishment that provides accommodations and other related services for travelers or tourists.

## **6. General**

6.1. This by-law shall be administered by and under the authority of the Commissioner of Community Services, or his/her designate, in consultation with the Planning and Development Department. Without limiting the generality of the foregoing, the Commissioner of Community Services is hereby authorized:

- (a) to determine whether to require the conveyance of land or accept the payment of cash-in-lieu, or any combination thereof;
- (b) to establish the location and configuration of land required to be conveyed; and
- (c) to establish or confirm the value of land for the purpose of calculating any required cash-in-lieu;

provided that such decisions are not contrary to a resolution of Council passed at any time prior to the issuance of a building permit dealing at its discretion with one or more of these matters in compliance with the Municipal Act and the Planning Act.

6.2. Notwithstanding anything in this by-law, where before or after the passing of this by-law Council has approved an agreement with respect to the conveyance of parkland or the payment of cash-in-lieu, the terms of that agreement shall remain binding between the parties, and any conveyance of parkland or payment of cash-in-lieu shall be required under this by-law in accordance with the amounts specified in the agreement rather than the rates provided for in this by-law.

## **7. Schedule(s)**

7.1. Schedule "A" – Conveyance of Land and Cash-in-Lieu Rates

7.2. Schedule "B" – Map of the Historic Downtown Whitby Priority Area

## **8. Short Title**

8.1. This by-law may be referred to as the "Parkland Dedication By-law".

## **9. Effective Date**

- 9.1. This by-law shall come into full force and effect on the day of final passage.
- 9.2. The provisions of this by-law shall apply to all deemed complete development and redevelopment applications pursuant to the Planning Act where the conveyance of parkland or the payment of cash-in-lieu has not yet been fulfilled as of the effective date of this by-law.

By-law read and passed this 29th day of March, 2021.

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Don Mitchell, Mayor

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Christopher Harris, Town Clerk

**Schedule “A” to By-law # 7733-21**

**Conveyance of Land and Cash-in-Lieu Rates**

	<b>Outside the Historic Downtown Whitby Priority Area</b>	<b>Inside the Historic Downtown Whitby Priority Area</b>
<b>Commercial or Industrial Uses</b>	<ul style="list-style-type: none"> <li>• 2% of the land area proposed for development or redevelopment; or the cash-in-lieu equivalent.</li> </ul>	<ul style="list-style-type: none"> <li>• 2% of the land area proposed for development or redevelopment; or the cash-in-lieu equivalent.</li> </ul>
<b>Residential Uses</b>	<ul style="list-style-type: none"> <li>• 5% of the land area proposed for development or redevelopment, or 1 hectare per 312 dwelling units, <u>whichever is greater</u>.</li> </ul> <p align="center">OR</p> <ul style="list-style-type: none"> <li>• Cash-in-lieu equivalent of 5% of the land area proposed for development or redevelopment, or 1 hectare per 500 dwelling units, <u>whichever is greater</u>.</li> </ul>	<ul style="list-style-type: none"> <li>• 5% of the land area proposed for development or redevelopment; or the cash-in-lieu equivalent.</li> </ul>
<b>High Density Residential Uses</b>	<ul style="list-style-type: none"> <li>• 35% of the land area proposed for development or redevelopment, or 1 hectare per 500 dwelling units, <u>whichever is less</u>; or the cash-in-lieu equivalent.</li> </ul>	<ul style="list-style-type: none"> <li>• 5% of the land area proposed for development or redevelopment; or the cash-in-lieu equivalent.</li> </ul>
<b>All Other Uses</b>	<ul style="list-style-type: none"> <li>• 5% of the land area proposed for development or redevelopment; or the cash-in-lieu equivalent.</li> </ul>	<ul style="list-style-type: none"> <li>• 5% of the land area proposed for development or redevelopment; or the cash-in-lieu equivalent.</li> </ul>

	<b>Outside the Historic Downtown Whitby Priority Area</b>	<b>Inside the Historic Downtown Whitby Priority Area</b>
<b>Mixed Uses</b>	<ul style="list-style-type: none"> <li>• The cumulative amount for the various uses proposed at their respective rates specified in this by-law; or the cash-in-lieu equivalent.</li> <li>• In no case shall such contribution be less than 2% of the land area or the cash-in-lieu equivalent, assessed on the basis of the percentage of the total floor space used for non-residential purposes.</li> </ul>	<ul style="list-style-type: none"> <li>• The cumulative amount for the various uses proposed at their respective rates specified in this by-law; or the cash-in-lieu equivalent.</li> <li>• In no case shall such contribution be less than 2% of the land area or the cash-in-lieu equivalent, assessed on the basis of the percentage of the total floor space used for non-residential purposes.</li> </ul>



# Schedule "B" to By-law #7733-21

## Map of the Historic Downtown Whitby Priority Area

