Authority: Item 7, Planning Committee
Report 18-008 (PED18105)
CM: May 23, 2018
Ward: City Wide

Bill No. 126

CITY OF HAMILTON

BY-LAW NO. 18-126

Being a By-law to Require the Conveyance of Land for Park or Other Public Recreational Purposes as a Condition of Development or Redevelopment or the Subdivision of Land

WHEREAS sections 42 and 51.1 of the *Planning Act* provide that the Council of a local municipality may by by-law require that land be conveyed to the municipality for park or other public recreational purposes as a condition of development or redevelopment or the subdivision of lands;

AND WHEREAS subsections 42(3) and 51.1(2) of the *Planning Act* provide for an alternate land conveyance rate of one hectare for each three hundred dwelling units proposed for development provided the municipality has an official plan that contains specific policies dealing with the provision of lands for park or other public recreational purposes at such rate;

AND WHEREAS subsection 42(6.0.1) and 51.1(3.1) of the *Planning Act* permit the City to require a payment in lieu of land to be conveyed, calculated by using a rate of one hectare for each 500 dwelling units proposed, or such lesser rate as may be determined by the City;

AND WHEREAS the Council of the City of Hamilton wishes to use these provisions to acquire land and cash to be used for park or other public recreational purposes;

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

DEFINITIONS

1. In this By-law:

   "Agricultural Use" as defined in By-law 05-200.

   "Block Townhouse Dwelling" as defined in By-law 05-200.

"Consent" means the process referred to in section 53 of the *Planning Act*.

"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 establishing of a commercial parking lot.

"Dwelling Unit" as defined in By-law 05-200.

"Existing Use" means the legally established use as per the City's Building Division records.

"Gross Land Area" means the total area of all lands contained in the subdivision plan or development or redevelopment application including lands subject to easements.

"Industrial Use" means the use of land, buildings or structures for, or in connection with:

i. manufacturing, processing, producing, storing or distributing of something;

ii. research or development in connection with manufacturing, producing or processing something;

iii. retail sales by a manufacturer, producer or processor of something they manufactured, produced or processed, if the retail sales are at the site which the manufacturing, production or processing takes place;

iv. offices for administrative purposes, if they are;

a. carried out with respect to manufacturing, producing, processing, storage or distributing of something, and,

b. in or attached to the building or structure used for that manufacturing, producing or processing, storage or distribution.

"Maisonette Dwelling" as defined in By-law 05-200.

"Multiple Dwelling" as defined in By-law 05-200.

"Natural Heritage Features" includes valley land, being lands located below the "top of bank" as defined by the appropriate Conservation Authority, but does not include any buffer land above the top of bank; Provincially significant

lands including Areas of Natural or Scientific Interest (ANSI); Wetlands; Environmentally Significant Areas (ESA); and Woodlands.

"Net Land Area" means the "Gross Land Area" minus any storm water management facilities to be conveyed to the City, major utility corridors and easements and any "Natural Heritage Features". Notwithstanding the above, where water services, wastewater services, public roads, private roads and/or parking lots are located within the major utility corridor/easement or the "Natural Heritage Features", the respective portion of the lands where the improvements are located are included as part of the Net Land Area.

"Planning Act" means the *Planning Act*, R.S.O. 1990, c. P.13.

"Redevelopment" means the removal of a building or structure from land and the further development of the land, the substantial renovation of a building or structure, and a change in the use, character or the density of the use in connection therewith.

"Residential" for the purposes of this By-law, residential refers to dwelling units.

"Street Townhouse Dwelling" as defined in By-law 05-200.

"Subdivision" means the process referred to in section 51 of the *Planning Act*.

"Townhouse Dwelling" for the purposes of this By-law, townhouse dwellings includes block townhouse, maisonette and street townhouse dwelling units but does not include stacked townhouse dwellings.

SHORT TITLE

2. This By-law may be cited as the Parkland Dedication By-law.

APPLICATION

3. This By-law shall apply to all lands within the City of Hamilton.

DEVELOPMENT, REDEVELOPMENT, SUBDIVISION OR CONSENT

4. As a condition of development or redevelopment pursuant to section 42, or as a condition of subdivision plan approval pursuant to section 51.1, or the giving of a provisional Consent pursuant to section 53 of the *Planning Act*, the owner is

required to convey to the City land for park or other public recreational purposes as follows:

(1) **Development, Subdivision or Consent**

(a) In the case of lands to be developed for an individual single detached dwelling in a rural area, the parkland dedication shall be based on the amount of 2.5% of a 0.405 hectare (1 acre) building lot (this section is not applicable to development within designated Rural Settlement Areas).

(b) In the case of lands proposed to be developed or redeveloped for residential purposes:

(i) at a density less than 20 units per hectare, dedication of land in the amount of 5% of the Net Land Area to be developed or redeveloped;

(ii) at a density of 20 units per hectare to 75 units per hectare, dedication of land at a rate of 1.0 hectare of the Net Land Area for each 300 dwelling units proposed;

(iii) at a density of 75 units per hectare to 120 units per hectare, dedication of land at a rate of 0.6 hectare of the Net Land Area for each 300 dwelling units proposed;

(iv) at a density greater than 120 units per hectare, dedication of land at a rate of 0.5 hectare of the Net Land Area for each 300 dwelling units proposed;

(v) notwithstanding subclauses 4(1)(a)(ii), (iii) and (iv), a maximum parkland dedication of 5% of the Net Land Area will apply to developments of single and semi-detached lots, duplexes, street townhouses fronting on a public street where such developments are not part of a registered plan of subdivision, and a maximum of six dwelling units above a commercial use in a building that existed as of March 8, 2017.

(c) In the case of lands proposed for development or redevelopment for commercial purposes, including a golf course or driving range, land in the amount of 2% of the Net Land Area to be developed or redeveloped.

(d) In the case of lands proposed for development or redevelopment for a use other than commercial and residential, land in the amount of 5% of the Net Land Area to be developed or redeveloped.

(e) In the case of lands proposed for development of more than one use, dwelling type and/or at varying residential densities, a prorating of the dedication rates defined in clauses 4(1)(b), (c) and (d), applicable to the respective use and/or density.

Expansion of Existing Buildings/Uses

(f) In the case of lands proposed for residential expansion, the parkland dedication calculation shall be based on the additional dwelling units proposed, which shall be the land area to be dedicated calculated under clause 4(1)(b) for the entire development, multiplied by the pro rata proportion of the number of proposed additional dwelling units to the total number of units after development.

(g) In the case of lands proposed for commercial expansion, including a building addition or construction of additional free standing buildings, where no land has been previously dedicated, the parkland dedication calculation shall be based on 2% of the Net Land Area multiplied by the pro rata proportion of the floor area of the new building addition to the total floor area after development.

(2) Redevelopment

Conversion or Change of Density of an Existing Use and Demolition/New Construction

(a) Further to the expansions described above, redevelopment may involve a conversion of existing space to another use, a change of density of an Existing Use/space, or the demolition of existing space and construction of new replacement floor space. The same principles apply as noted above with regard to prorating new or converted space or dwelling units to the total floor space or number of dwelling units after construction.

Offsetting

(b) Where land was not previously dedicated or cash-in-lieu paid and floor space and/or dwelling units have been eliminated through conversion or demolition, the parkland dedication for the newly created space and/or units is offset against the parkland dedication that is deemed to apply to the existing floor space and/or dwelling units, respectively, that is/are being eliminated for the same use.

(c) Where land was previously been dedicated or cash-in-lieu was paid for existing development, then the parkland dedication attributable to the existing space being eliminated through conversion or demolition is offset against the parkland dedication required for the new floor space or dwelling units, regardless of use.

(d) The offset for demolished buildings only applies if a building permit is issued for the new development or redevelopment within five years from the date the demolition permit was issued.

CASH-IN-LIEU OF PARKLAND DEDICATION

5. (1) In lieu of requiring the conveyance referred to in section 4 above, the City may require the payment of money to the value of the lands required to be conveyed.

(a) Cash-in-lieu of parkland dedication shall be calculated based on a maximum dedication rate of one hectare for every 500 dwelling units.

(2) "Development", "Redevelopment", "Subdivision" and "Consent" terms apply to the entire Net Land Area of the phase being registered for development proposed within an approved plan of subdivision; and to the entire Net Land Area of a Site Plan application for development proposed as part of an approved Site Plan, notwithstanding that building permits for development within the subdivision phase or site plan area may be issued in stages.

(3) Notwithstanding subclauses 4(1)(b)(i), (ii), (iii) and (iv), and 5(1)(a), cash-in-lieu of parkland dedication for Townhouse Dwellings shall be capped at the following dollar amounts per unit, subject to annual indexing as described in subsection 5(7):

Area (As outlined in Schedule C)	**Cap per Townhouse Dwelling Unit**
Ancaster, Flamborough, Dundas, Westdale	$10,000
Lower Hamilton (excluding Downtown CIP Area – See section 6)	$9,000
Upper Hamilton, Stoney Creek, Glanbrook	$8,000

(4) Notwithstanding subclauses 4(1)(b)(i), (ii), (iii), (iv),. and 5(1)(a), cash-in-lieu of parkland dedication for Multiple Dwelling units shall be fixed at the following dollar amounts per unit, subject to annual indexing as described in subsection 5(7):

Area (As outlined in Schedule C)	**Fixed Rate per Multiple Dwelling Unit**
Ancaster, Flamborough, Dundas, Westdale	$8,000
Lower Hamilton (excluding Downtown CIP Area – See section 6)	$7,000
Upper Hamilton, Stoney Creek, Glanbrook	$6,000

(5) Notwithstanding section 4, where one additional dwelling unit is added to a single detached dwelling that existed on March 8, 2017, a cash-in lieu fixed rate of $869 applies, subject to annual indexing as described in subsection 5(7).

(6) Notwithstanding section 4, where additional dwelling units are created within a building that existed on March 8, 2017, and that building is designated or located within a heritage district under the *Ontario Heritage Act*, a cash-in lieu fixed rate of $579 per unit applies, subject to annual indexing as described in subsection 5(7).

(7) The caps and fixed rates referred to in subsections 5(3), (4), (5), and (6) shall be adjusted annually on April 1 starting the year following the year this By-law is passed, in an amount equal to the January year-over-year price increase in Hamilton, as reported by the Teranet and National Bank of Canada House Price Index.

DOWNTOWN CORE

6. Notwithstanding subclauses 4(1)(b)(i), (ii), (iii), and (iv) for new residential development or redevelopment in the form of Multiple Dwellings located within the Hamilton Downtown Community Improvement Project Area, as shown on Schedule A, cash-in-lieu of parkland dedication shall be calculated as follows:

Effective Date	**Dedication Rate / Fixed Rate**
Date of Passing of By-law	5% of the Net Land Area
April 1, 2020	$2,000 per unit
April 1, 2021	$3,500 per unit
April 1, 2022	$5,000 per unit

(1) Notwithstanding subsection 5(7), the fixed rates in section 6 above shall not be indexed annually.

BROWNFIELD SITES

7. Notwithstanding clause 4(1)(b), for new residential development or redevelopment that qualify for financial incentives under ERASE Community Improvement Plan programs, located within Areas 2 and 3 as shown on Schedule B, land shall be dedicated at a rate of 5% of the Net Land Area regardless of density.

LOCATION OF PARK LAND

8. (1) The location and configuration of land required to be conveyed shall be at the sole discretion of the City and all such conveyances shall be free and clear of all encumbrances.

(2) Any conveyance or dedication of Natural Heritage Features, environmental buffer lands, walkways and trails, major utility corridors and easements, floodplain or storm water management facilities are not be considered a conveyance for park or other recreational purpose pursuant to the requirements of sections 4, 6 or 7 above.

VALUATION

9. (1) Where the City requires the payment of money to the value of the land otherwise required to be conveyed, such payments shall be made prior to the issuance of the building permit for the land to be developed or redeveloped.

(2) The value of the land shall be determined as of the day before the day of the issuance of the building permit in respect of the development or redevelopment, or, where more than one building permit is required for the development, as of the day before the day of the issuance of the first building permit, which includes the foundation permit where applicable.

PREVIOUS LAND DEDICATION OR CASH-IN-LIEU

10. Land or cash-in-lieu equivalent required to be conveyed to the City for park or other public recreational purposes pursuant to sections 4, 5, 6, and 7 shall be

determined having regard to the amount of land conveyed or cash-in-lieu of parkland equivalent previously paid to the City pursuant to sections 42, 51.1 or 53 of the *Planning Act* and no additional conveyance or payment in respect of the land subject to the earlier conveyance or payment will be required by the City in respect of subsequent development or redevelopment unless:

(1) There is a change in the proposed development or redevelopment which would increase the density of development; *or,*

(2) Land originally proposed for development or redevelopment for Commercial or Industrial purposes or uses exempted from parkland dedication under section 12, is now proposed for development or redevelopment for other purposes.

EXEMPTIONS FROM PARKLAND OR CASH-IN-LIEU REQUIREMENTS

11. Notwithstanding any other provisions of this By-law, the parkland conveyance or cash-in-lieu requirements do not apply where:

(1) The proposed development or redevelopment is for an Industrial Use or and Agricultural Use .

(2) The development or redevelopment consists of an addition or alteration to a residential building provided the number of dwelling units within the residential building is not increased.

(3) The development or redevelopment consists of an addition or alteration to a commercial building and the building continues to be used for that purpose, as follows:

(a) If the building was constructed on or prior to July 9, 2003, a net increase of floor area up to a maximum of 50% of the gross floor area existing as of July 9, 2003 is exempt, whether constructed at one time or by cumulative expansions;

(b) If the existing building is a mixed-use building (i.e. commercial and residential), an expansion of the commercial portion is exempt if it is no more than 50% of the existing commercial floor area as of July 9, 2003, whether constructed at one time or by cumulative expansions;

(c) Where the expansion of the commercial floor area exceeds 50% of the existing floor area as of July 9, 2003, parkland dedication is based on the entire floor area of the addition pro-rated to the total floor area after construction.

(4) The development or redevelopment is on a school property, in the form of portable classrooms.

(5) The development or redevelopment is on an existing golf course and is for continued golf course use.

(6) The proposed development or redevelopment is for the following Institutional uses:

a place of worship, college or university, public hospital, hospice, a non-profit emergency shelter, public library, cemetery, mausoleum, columbarium or crematorium, or other charitable, non-profit uses as may be deemed by Council.

(7) Development or redevelopment is for eligible affordable housing projects as confirmed by the City of Hamilton Housing Services Division, Healthy and Safe Communities Department. Eligibility will be determined based on final confirmation by the Housing Services Division of funding approval from a Housing Program administered by the City.

(8) In the case that the development or redevelopment contains more than one use such that subsections 12(1), 12(6) and 12(7) do not apply to a portion of the development or redevelopment, parkland dedication required pursuant to sections 4 and 5 shall be calculated based on the pro rata proportion of the non-exempt gross floor area to the total floor area of the building.

EXCEPTION

12. Council may vary any of the requirements for parkland dedication or payment in lieu thereof set out in this By-law provided that such variance is:

(1) less onerous or stringent than the requirement set out herein;

(2) applicable for a temporary, specified period of time;

(3) applicable to a specified type or class of development or redevelopment; and,

(4) applicable to the whole of the City or a specified geographical area thereof.

The period of time specified pursuant to subsection 12(2) above may be extended once for an additional period of time not to exceed the period of time specified for the original variance.

BY-LAWS REPEALED

13. The following By-laws are hereby repealed:

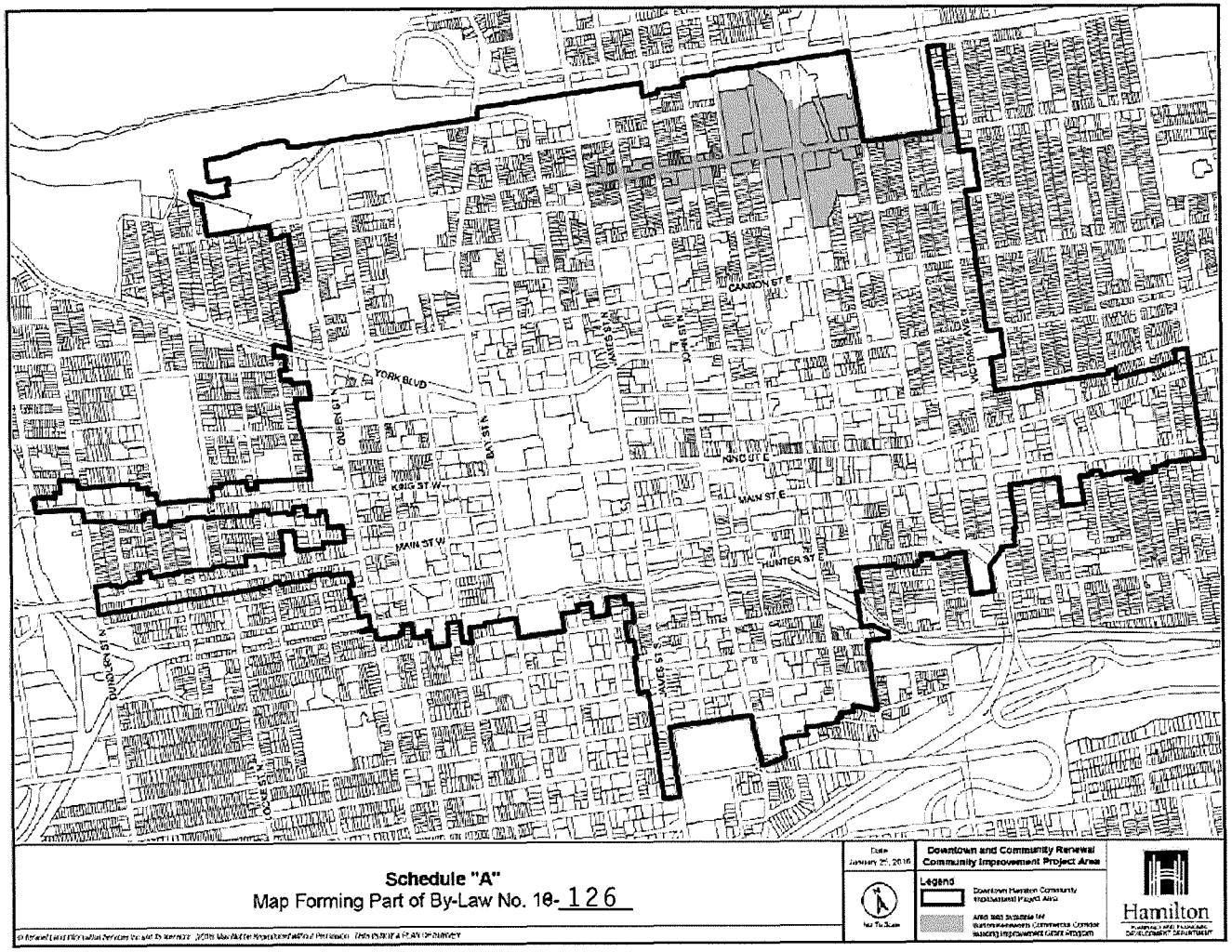
(1) By-law 17-039;
(2) By-law 09-124.

PASSED this 23rd day of May, 2018.

F. Eisenberger
Mayor

J. Pilon
Acting City Clerk

SCHEDULE "A"
Downtown CIP Area



Date:

Not To Scale

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT

© Teranet and Information Services Inc. and its licensors. [2010] May Not be Reproduced without Permission. THIS IS NOT A PLAN OF SURVEY.