

FACILITY
Chapter 273
PARK DEDICATION

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WHEREAS section 42, 51.1 and 53 of the Planning Act, R.S.O. 1990, c. P.13 as amended (the “Act”) provides that as a condition of development, redevelopment or approval of a plan of a plan of subdivision, the Council of a municipality may require land in an amount not exceeding, in the case of land proposed for development or redevelopment for commercial or industrial purposes, two percent and for all other cases five percent of the land be conveyed to the City for park or other public recreational purposes; (42 (1), 51.1 (1))

AND WHEREAS the Act permits an alternative requirement with respect to land for residential purposes, of dedication at a rate of one hectare for each 300 dwelling units proposed subject to specific policies with respect thereto being set forth in the city’s Official Plan; (42 (3), 51.1 (2), 53 (13))

AND WHEREAS the Act permits the Council of a municipality to require the payment of money to the value of land in lieu of the conveyance of land; (42 (6), 51.1 (3))

AND WHEREAS the Act permits a maximum rate of one hectare for each 500 dwelling units under the money in lieu of land calculation. (42 (6.0.1), 51.1 (3.1))

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Article 1

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273.1.1 - Definitions

Adaptive Re-use – alteration or change of use of an existing building or structure to some other use or alteration or change of an existing building or structure to create new residential units.

City – means the geographic area under the jurisdiction of the Corporation of the City of Kitchener, or the Corporation of the City of Kitchener, as the case may be.

Consent – means the development approval for which the process is set out in section 53 of the Planning Act, and includes severances.

Convey – to transfer an interest in land.

Council – means the Council of the City.

Development – the construction, erection or placing of one or more buildings or structures on lands, or an addition or alteration to a building or structure that has the effect of substantially increasing the size or usability thereof.

Director of Parks and Cemeteries – means an officer or employee of the City who:

- i. Holds the position of the Director of Parks and Cemeteries or comparable position;
- ii. Holds a successor position at the City with responsibility for subject matters similar to those of the Director of Parks and Cemeteries; or,
- iii. Acts in place of either of the foregoing.

Dwelling Unit – 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.

Effective Date – the date set out in Article 2

Flood Plain Conservation Lands – land reserved for the use of maintaining regional flood capacity as outlined by the Grand River Conservation Authority.

Gross Floor Area - the aggregate horizontal area measured from the exterior faces of the exterior walls of all storeys of a building (excluding any portion of a storey devoted exclusively to parking) within all buildings on a lot.

Legalization of existing dwelling units – the City process in which a new building permit is obtained for existing residential units that are not legally recognized under Building Division records.

Mixed use – a building with at least one dwelling unit and a non-residential use.

Multi-Unit – a building containing two or more non-residential uses within two or more separated spaces for lease or occupancy. A multi-unit building shall be managed and operated as one unit with shared on-site parking. A multi-unit building shall not include a mixed use building.

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Natural Heritage Conservation – the use of land, water, and/or structures for the protection, management, and conservation of the natural heritage system. Natural heritage conservation may include the preservation, maintenance, sustainable utilization, restoration, and/or enhancement of the natural environment, and may include forest, fish, and wildlife management.

Owner – the Registered Owner(s) of the property upon which the development of redevelopment is being undertaken.

Park land – includes land for parks and other public recreational purposes.

Planning Act – means the Ontario *Planning Act*, R.S.O. 1990, c. P.13, as amended.

Redevelopment – the removal of buildings or structures from a site and the construction or erection of other buildings or structures thereon, including adaptive re-use.

Site Plan – means the development approval as described in section 41 of the Planning Act.

Stormwater dedicated areas – land dedicated, designed and engineered for the purpose of stormwater management.

Subdivision – means the process for subdividing land that is set out in section 51 of the Planning Act.

273.1.2 – Interpretations

This By-Law is to be read in conjunction with the City of Kitchener Park Dedication Policy. In the event of conflicting guidance, the By-Law shall take precedence in any development interpretation.

The City of Kitchener Park Dedication Policy is subject to change and the most recent version should be consulted.

273.1.3 – Development or Redevelopment

Except as provided in this by-law, no person shall develop or redevelop land within the City unless the owner of the land has conveyed or agreed to convey land to the City in the amount or amounts as calculated set out in this By-law.

As a condition of development or redevelopment of land within the City of Kitchener, the owner shall convey to the City land for park or other public recreation purposes. In addition to the conditions within this by-law, exemptions and reductions shall also be enacted through the Park Dedication Policy and as follows:

- a) Where the development or redevelopment land use is Residential, then:
 - i) Land will be taken at Consent, in the amount of 5% of the total land being developed or redeveloped;
 - ii) Land will be taken at Subdivision in the amount of 5% of the total land being developed or redeveloped, or one (1) hectare for each three hundred (300) dwelling units proposed, whichever is greater; or
 - iii) Land will be taken at Site Plan in the amount of 5% of the land being developed or redeveloped, or one (1) hectare for each three hundred (300) dwelling units proposed, whichever is greater.

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- b) Where the development or redevelopment land use is Institutional, then land will be taken at a rate of 5% of the total land being developed or redeveloped.
- c) For land being developed which is not proposed for land use as Residential or Institutional, then where it is being developed or redeveloped, land will be taken at a rate of 2% of the total land being developed or redeveloped.
- d) Where the Director of Parks and Cemeteries determines cash-in-lieu of park land is applied to the above alternative residential rates, one (1) hectare for each five hundred (500) dwelling units proposed is the maximum rate.

273.1.4 – Calculating Park Land

273.1.4.1 – Factors for Calculations

The following sets out the criteria of calculating park land or cash-in-lieu of park land dedication as condition of development:

- a) Where the development land use is Residential, park land dedication as a condition of Site Plan will be based on net proposed dwelling units, with further interpretation as follows:
 - i) Existing dwelling units that are to be retained will not be included in the park dedication calculation.
 - ii) Existing dwelling units that are to be demolished, or have been demolished within five (5) years of the development or redevelopment, from the date of demolition permit issuance to the date of Approval in Principle, will be deducted from the net proposed dwelling units.
 - iii) Legalization of existing dwelling units are considered proposed dwelling units.
 - iv) Additional dwelling units (ADU's) are considered proposed dwelling units.
- b) Where the development land use is Residential, park land dedication as a condition of Subdivision is determined as follows:
 - i) All land within Plans of Subdivision is eligible for use in calculation of park dedication requirements, less hazard lands, natural heritage features, ecological buffers or any naturalized features that are non-developable or will otherwise be conveyed to the City through other processes.
 - ii) Dedicated stormwater areas are considered eligible land area for use in calculating park dedication within Plans of Subdivision.
 - iii) Multi-unit blocks are calculated as follows:
 - i. In accordance with the number of dwelling units specified within multi-unit blocks on the proposed draft plan of subdivision; and
 - ii. In cases where a specified number of high-density units are not provided on multi-unit blocks within a draft plan of subdivision, the parkland

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requirement for each block shall be calculated up to the maximum number of units allowed within the density range of each block.

- c) Where the development land use is Residential, park land dedication as a condition of Consent is determined as follows:
 - i) Park land or cash-in-lieu of land will only be required on newly created development properties.
- d) Where the development land use is Residential in addition to a non-residential use, park land dedication is determined as follows:
 - i) Park land or cash-in-lieu of park land dedication will be applied to each type of use, calculated separately as independent applications and combined to form the total park dedication requirements.
- e) Where the development land use is Commercial, Industrial and Institutional, park land dedication is determined as follows:
 - i) In the event of development or redevelopment of commercial or industrial lands, dedication will be based on the percentage of new net gross floor area (proposed GFA less demolished GFA) to the total gross floor area (proposed GFA plus retained GFA), applied to the maximum required dedication (2%)
- f) Where there is discrepancy in the development land use, the land zoning shall be used to determine park dedication requirements.

273.1.4.2 – Exemptions or Reductions

In addition to the exemptions and reductions within this by-law, exemptions and reductions shall also be enacted through the Park Dedication Policy.

No conveyance or additional conveyance of park land dedication or cash-in-lieu of park land dedication will be required for the following:

- a) If land has been conveyed or is required to be conveyed to a municipality for park or other public purposes or a payment in lieu has been received by the municipality or is owing to it under this section or a condition imposed under section 51.1 or 53, no additional conveyance or payment in respect of the land subject to the earlier conveyance or payment may be required by a municipality in respect of subsequent development or redevelopment unless:
 - i) there is a change in the proposed development or redevelopment which would increase the density of development; or
 - ii) land originally proposed for development or redevelopment for commercial or industrial purposes is now proposed for development or redevelopment for other purposes.
- b) In all exemptions listed in subsection (a), previous conveyances in either park land dedication or cash-in-lieu of park land dedication deducted from current park dedication

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calculation. Cash-in-lieu of land deductions will be based on the land that was required and converted to cash value at the time of dedication.

- c) Replacement of an existing commercial or industrial building equal to or less than the existing gross floor area.
- d) The proposed use is a temporary sales centre as defined in the Zoning By-Law 2019-051.

273.1.5 – Conveyance of Park Land or Cash-in-Lieu of Park Land

273.1.5.1 – Conveyance and Acceptance of Land

In addition to the conditions of conveyance and acceptance of park land dedication within this by-law, conditions of conveyance and acceptance shall also be enacted through the Park Dedication Policy.

- a) Lands conveyed to the City of Kitchener pursuant to this By-law shall be conveyed:
 - i) Free and clear from all encumbrances; and,
 - ii) In a condition deemed satisfactory by the Director of Parks and Cemeteries and in accordance with the requirements of the City's Official Plan, Park Dedication Policy, Development Manual and other City policies related to the acquisition of real property.
- b) The Director of Parks and Cemeteries retains the right to not accept the conveyance of land that is considered unsuitable, including:
 - i) Environmental lands, including but not limited to:
 - i. Natural Heritage Conservation lands;
 - ii. Cultural Heritage landscapes and corridors;
 - iii. Stormwater dedicated areas;
 - iv. Flood Plain Conservation Lands;
 - v. Woodlots;
 - vi. Streams, creeks or wetlands; and/or,
 - vii. Steep or unstable slopes.
 - ii) Contaminated or suspected of being contaminated;
 - iii) Any land having unsuitable or unstable soil conditions for intended recreation facilities;
 - iv) Hydro rights-of-ways or easements;
 - v) Privately built, owned and operated recreational areas; and/or,
 - vi) Any portion of land that would serve a purpose that is contradictory for the intended use as public park land.
- c) Notwithstanding 273.1.5.1.a, the City may at its sole discretion, under special circumstances and as directed by the Director of Parks and Cemeteries or designate:

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- i) Accept environmental lands as a means for protection of the natural amenity or for potential use as a passive recreational and educational feature;
 - ii) Accept lands that have been disturbed, filled, stripped, or containing debris by any other means, provided the Owner undertake restoration of the land to the satisfaction of the City and at the Owners cost;
 - iii) Reduce the park land or cash-in-lieu of park land dedication requirement for privately built, owned and/or operated spaces that are publicly accessible without restriction to the public, in accordance with the requirements set out in the City's Park Dedication Policy as amended;
 - iv) Accept suspected contaminated lands provided due diligence in environmental analyses is completed, submitted to and accepted by the City at the sole discretion of the Director of Parks and Cemeteries, including but not limited to:
 - i. Phase I Environmental Site Assessment (ESA) per CSA-Z768 (current revision);
 - ii. Phase II ESA as per CSA Z769 (current revision); and/or
 - iii. Minister's acknowledgement of a Record of Site Condition.
 - v) Accept land that is outside of the development limits within the boundaries of development, as set out in the Park Dedication Policy.
- d) Any legal and administrative costs associated with the conveyance of land shall be the responsibility of the Owner.
- e) Any requirement to convey land to the City for park or other recreational purposes is fulfilled when the City accepts the conveyance.

273.1.5.2 – Cash-in-Lieu of Land Payments

In addition to the conditions of cash-in-lieu of park land dedication within this by-law, conditions of cash-in-lieu of park land dedication shall also be enacted through the Park Dedication Policy.

Where the Director of Parks and Cemeteries determines cash-in-lieu of park land dedication is required, the following criteria apply:

- a) Land value for purposes of cash-in-lieu of land conveyance shall be based on valuation rates determined by an accredited appraiser (AACI) for the specified classes of land. This schedule is referred to under Appendix "A".
- b) In the event there is a discrepancy, challenge of the accredited values or a development that is not of a type set out Appendix 'A', the Owner may obtain an appraisal of the land prepared by an accredited appraiser with the Appraisal Institute of Canada (AACI) and in accordance with the City's terms of reference, with costs paid for by the Owner. The City may:
 - i) Accept the appraisal; or,
 - ii) Require a peer review, paid for by the City to confirm appraisal valuation.
- c) The market value shall be fixed in accordance with the appraisal obtained by the City.

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- d) All cash-in-lieu of land dedication requirements must be received and paid into a special account administered by the City of Kitchener.
- e) Deferral of cash-in-lieu of park land dedication may be pursued at the discretion of the Director of Parks and Cemeteries, as set out in the Park Dedication Policy.

273.1.5.3 – Timing

Park land conveyance, or the payment of cash-in-lieu of land for any development or redevelopment shall be received by the City prior to the following, at the City's discretion:

- a) Issuance of the first building permit for the proposed development or redevelopment, in accordance with Section 42 of the Planning Act;
- b) Approval of Plan of Subdivision or Condominium, in accordance with Section 51 of the Planning Act; or,
- c) Consent being granted, in accordance with Section 53 of the Planning Act.

273.1.6 – Transition

Notwithstanding anything else contained in this by-law, a development or redevelopment shall not be subject to the parkland dedication requirements set out in this by-law and shall be instead subject to the parkland dedication requirements set out in By-Law 2008-93 as it existed on the day before the effective date, where the following has occurred in relation to the development or redevelopment:

- a) On the day before the effective date, pursuant to the Planning Act, a complete application has been submitted for one or more of the following:
 - i) Official Plan Amendment;
 - ii) Zoning By-law Amendment;
 - iii) Site Plan;
 - iv) Vacant Land Condominium;
 - v) Subdivision; or
 - vi) Consent; and,
- b) The same development or redevelopment has received one of the following within 12 months of the effective date of the by-law:
 - i) Final Site Plan Approval;
 - ii) Draft Plan approval for Subdivision;
 - iii) Draft plan approval Vacant Land Condominium; or,
 - iv) Provisional Consent.
- c) Notwithstanding anything contained this section, if an application set out in subsection (a) is appealed to the Ontario Land Tribunal, then the 12 month period set out in subsection (b) shall be suspended for the duration of said appeal until all of such appeal(s) have been withdrawn or finally disposed of, whereupon the 12 month period shall resume.

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- d) At the discretion of the Director of Parks and Cemeteries or the Director of Planning, if an application set out in subsection (a) includes a condition which requires approval from the Regional Municipality of Waterloo or the Province of Ontario, and/or any appointed representatives of either, the 12 month period set out in subsection (b) shall not apply to such condition(s), only where all other conditions have been satisfied and subsection (b) would otherwise be satisfied.

Article 2

EFFECTIVE DATE AND REPEAL

273.2.1 – Administration and Appeal

This By-Law shall come into force and effect on the day that it is passed. The administration of this By-Law and the determination of the application of this By-Law is hereby delegated by Council to the Director of Director of Parks and Cemeteries.

273.2.2 – By-law - previous

By-law 2008-93 and the contents of Chapter 273 will be repealed on the effective date.

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Appendix 'A'

Land Valuations

Category	Applicable Built Form	\$ per Acre	\$ per Hectare
Retail/Neighbourhood Commercial	N/A	\$1,550,000	\$3,830,000
Industrial	N/A	\$750,000	\$1,853,000
Employment / Office	N/A	\$950,000	\$2,348,000
Residential – Lots	Individual lots, including: <ul style="list-style-type: none"> • Single detached • Semi detached • Townhomes 	\$11,000 <i>(per linear foot)</i>	\$36,080 <i>(per linear meter)</i>
Residential - Low Density	Subdivision, including: <ul style="list-style-type: none"> • Single detached • Semi detached • Townhomes 	\$950,000	\$2,348,000
Residential – Medium (<2 FSI)	Cluster townhouse Stacked townhouse Quad units	\$1,550,000	\$3,830,000
Residential - Medium, Mixed Use (<2 FSI)	N/A	\$2,400,000	\$5,931,000
Residential - High, 5-10 FSI	N/A	\$8,000,000	\$19,768,000
Residential - High, 10+ FSI	N/A	\$17,500,000	\$43,243,000