



**STAFF REPORT  
ACTION REQUIRED**

**Clarification and Technical Amendments to the City-Wide Parkland Dedication By-law - Supplementary Report**

<b>Date:</b>	June 8, 2010
<b>To:</b>	City Council
<b>From:</b>	Brenda Patterson, General Manager, Parks, Forestry and Recreation
<b>Wards:</b>	All
<b>Reference Number:</b>	P:\2010\Cluster A\PFR\CC50-060810-AFS#12229

**SUMMARY**

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The purpose of this report is to respond to a request by the Executive Committee, at its meeting of May 17, 2010, for clarification of various aspects of the proposed City-Wide Parkland Dedication By-law, as outlined in the April 23, 2010 staff report (Item EX44.5 – Proposed Municipal Code Amendment – City-Wide Parkland Dedication By-law).

**RECOMMENDATIONS**

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**The General Manager, Parks, Forestry and Recreation recommends:**

1. That the definition of “Residential Use” identified in the April 23, 2010 report, Attachment 1, Section 1B be amended to read:

RESIDENTIAL USE — Land, buildings or structures of any kind whatsoever, or any portion thereof, used, designed or intended to be used as living accommodations. This includes accessory uses naturally and normally incidental in purpose as well as those exclusively devoted to the residential use, for one or more individuals. This also includes a unit designed for combined live/work uses, but does not include a hotel or similar building or structure providing temporary accommodation

2. That the words “Hydro One” be deleted from Attachment 1, Section 2.C.2.a. of the April 23, 2010 report, to now read:

2. Buildings owned and used for the purposes of:
  - a. government of Canada, Province of Ontario, the City of Toronto or Toronto Hydro Corporation

### **Financial Impact**

This report will have no financial impact beyond what has already been approved in the current year's budget.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

### **DECISION HISTORY**

At its meeting on May 17, 2010, Executive Committee adopted EX44.5, a report entitled "Proposed Municipal Code Amendment City-Wide Parkland Dedication By-law" with a request for the General Manager of Parks, Forestry and Recreation to report directly to City Council on six issues, as specified in the Comments section below.

See EX44.5:

<http://www.toronto.ca/legdocs/mmis/2010/ex/decisions/2010-05-17-ex44-dd.htm>

### **ISSUE BACKGROUND**

This report provides clarification on issues raised in discussion of Item EX44.5 – Proposed Municipal Code Amendment – City-Wide Parkland Dedication By-law at Executive Committee on May 17, 2010.

### **COMMENTS**

The Executive Committee referred the following Motion [1(a) to 1(e)] by Councillor Howard Moscoe to the General Manager of Parks, Forestry and Recreation for a report directly to City Council and requested that she consult with interested members of Council. The Committee also requested the General Manager to report to Council on possible changes to the proposed by-law, in order to make a distinction between for profit and non-profit nursing homes, with respect to exemptions.

As requested, Parks, Forestry and Recreation staff have met with members of Council who requested further clarification of some of the issues referred by Executive Committee for a further report to Council. As a result of these meetings, a minor wording change to the by-law definition, "*Residential Use*," is being recommended to make it clearer. Additionally, Legal Services staff have done a further review of the legislation respecting the legal status of Hydro One in the context of exemptions to the provisions of the by-law. As a result of this review, staff are recommending a further amendment to the proposed City-Wide Parkland Dedication By-law to remove this corporation from the list of exemptions, as outlined in Recommendation 2 of this report. The rationale for these recommendations and the responses to the referral motions are discussed below.

## **Motion 1(a): Implementing the Residential Use Requirements:**

*1(a). That Part 1 contained in Attachment 1 to the report (April 23, 2010) from the General Manager, Parks, Forestry and Recreation, be amended by adding the following:*

*“that staff be directed to implement these provisions immediately for all properties not currently subject to an active development application.”*

Three Councillors expressed concerns about the recommendation for a transition period for the proposed City-Wide By-law to take effect. They would prefer that the City-Wide By-law take effect immediately upon its enactment by City Council. In that scenario, only development applications that have been submitted prior to the enactment of the By-law and have proceeded to the submission of a building permit (that complies with all applicable zoning requirements) prior to May 3, 2011, would remain subject to the provisions of the existing parkland dedication by-laws of the former municipalities. All development applications received after the date the By-law is enacted by Council would be subject to the new City-Wide Parkland Dedication By-law.

Staff are recommending that the by-law come into full force and effect on May 3, 2011, which would provide a reasonable transition period for applicants to adjust to the new by-law requirements. This proposal is consistent with the recommended transition process that was approved by Council for the new City-Wide Alternate Rate By-law, and would enable City staff to provide advance notification to applicants about the new by-law requirements. In addition, the transition period would allow the Building Services and Real Estate Services Divisions sufficient time to make the necessary adjustments to their resources and administrative practices to fully implement the new by-law.

With this proposed transition period, only complete building permit applications that comply with applicable zoning and are received prior to May 3, 2011, would continue to be subject to the requirements of the existing applicable parkland dedication by-laws of the former municipalities. After this date, all subsequent applications would be subject to the new City-Wide Parkland Dedication By-law.

## **Motion 1(b): Definition of “Residential Use”**

*1(b). That Part 1B, entitled “Definition” contained in Attachment 1 to the report (April 23, 2010) from the General Manager, Parks, Forestry and Recreation, be amended by deleting the word “exclusively” and inserting instead the word “primarily.”*

The definition of “Residential Use” that Parks, Forestry and Recreation staff are recommending for the City-Wide Parkland Dedication By-law is the same definition as was adopted by City Council in 2009 for use in the *Development Charges By-law 279-2009, now Chapter 415, Article 1 of the Municipal Code*:

RESIDENTIAL USE — Land, buildings or structures of any kind whatsoever, or

any portion thereof, used, designed or intended to be used as living accommodations, including accessory uses naturally and normally incidental in purpose and exclusively devoted to the residential use, for one or more individuals and includes a unit designed for combined live/work uses, but does not include a hotel or similar building or structure providing temporary accommodation.

This definition has been widely accepted by the development industry and is currently applied by the Building Division in calculating Development Charges. Adopting this definition for the City-Wide Parkland Dedication By-law will maintain consistency with the definition of Residential Use in the Development Charges By-law with no additional interpretation being required by Building Division staff or developers.

However, after meeting with Councillors who had concerns about the clarification of the definition wording and its possible openness to interpretation, staff would support the following revision:

RESIDENTIAL USE — Land, buildings or structures of any kind whatsoever, or any portion thereof, used, designed or intended to be used as living accommodations. *This includes* accessory uses naturally and normally incidental in purpose as well as those exclusively devoted to the residential use, for one or more individuals. *This also includes* a unit designed for combined live/work uses, but does not include a hotel or similar building or structure providing temporary accommodation.

### **Motion 1(c): Calculating Parkland Dedication Requirements for Mixed Use Developments**

*1(c). That the General Manager, Parks, Forestry and Recreation, be requested to report on additional wording for Attachment 1, Section 4, to the report (April 23, 2010) from the General Manager, Parks, Forestry and Recreation, to ensure accurate calculations for parkland dedication in mixed use developments.*

The City-Wide Parkland Dedication By-law proposes that Residential Uses be subject to a 5% parkland dedication requirement (unless the alternative rate applies) and non-residential uses be subject to a 2% parkland dedication requirement. Where a development includes both residential and non-residential uses, the respective rates apply proportionately to each. If, for example, a new development proposed 90% residential uses and 10% non-residential (commercial and office) uses, the residential rate will apply to 90% of the development and the non-residential rate will apply to the remaining 10% of the development. This is a standard land appraisal method for mixed use developments that has been used by Appraisal Services staff in Real Estate Services Division for many years.

## **Motion 1(d): Delegated Authority**

*1(d). That Attachment 1, Section 4, Subsection B, entitled "Delegation of Authority," to the report (April 23, 2010) from the General Manager, Parks, Forestry and Recreation, be amended by the addition of the following words "in consultation with the local Councillor. In the event of disagreement, staff will report to Council and Council will make the final determination" so that Subsection B reads as follows:*

*"B. Delegation of Authority*

*Council continue to delegate approval authority to the General Manager of Parks, Forestry and Recreation for choosing a land or cash-in-lieu of land dedication and for the attributes of the conveyance in consultation with the local Councillor. In the event of a disagreement, staff will report to Council and Council will make the final determination."*

In response to this motion, Parks, Forestry and Recreation staff met with three Councillors to discuss their concerns. Staff do not support the Motion to revise Attachment 1, Section 4B for the following reasons:

Local Councillors are formally advised of all development applications by City Planning staff through their Preliminary Reports to the appropriate Community Councils. These reports introduce the scope of the development application. The local Ward Councillors have the opportunity, at that time, to raise questions to staff about the parkland dedication requirements of the development and the opportunity of pursuing a parkland conveyance. City Planning and Parks, Forestry and Recreation staff do meet with individual Councillors to review planning applications in their Wards and to discuss any issues that may arise from the Preliminary Report and in preparation for the public consultation meetings.

City Council makes the final decision on the approval of all development applications involving Official Plan and Zoning amendments, as well as "bumped-up" site plan applications. The rationale for requiring either land or cash-in-lieu payments is included in all City Planning reports on development applications. If a member of Council has any questions or concerns on a particular development application, staff are available to meet with them and discuss their recommendations prior to submission of the final staff report to City Council.

The current delegation of authority to the General Manager of Parks, Forestry and Recreation is a practical administrative procedure that ensures that Council's approved policies and priorities (as set out in the Official Plan) and the Division's strategic and service plans, including its parkland acquisition requirements and approved capital budget, are fulfilled. Parks, Forestry and Recreation staff are frequently required to

appear as expert witnesses before the Ontario Municipal Board to defend the City's position on parkland dedication or cash-in-lieu of parkland requirements from development. Staff's ability to negotiate these requirements with proponents that are based on Council approved policies and plans and which also recognize the individual circumstances of each development property, strengthens the City's position at the OMB.

Finally, Parks, Forestry and Recreation staff must continue to have the ability to meet with developers in a timely manner to negotiate the City's parkland dedication requirements and achieve the deadlines for processing development applications.

### **Motion 1(e): Implementation**

*1(e). That the proposed City-wide Parkland Dedication requirement come into effect for any application that has been submitted after the date the by-law attains final approval.*

Staff response to this Motion is included in the discussion of Motion 1(a) above.

### **Motion 2: Nursing Homes**

*2. The General Manager, Parks, Forestry and Recreation to submit a report directly to City Council on possible changes to the proposed by-law in order to make a distinction between for profit and non-profit nursing homes with respect to exemptions.*

The proposed City-Wide Parkland Dedication By-law report recommended that all nursing homes be exempt from parkland dedication requirements, as they function more like hospitals than residential units and their occupants have a limited demand for parkland. For this reason, no distinction has been made between profit and non-profit providers.

"Nursing Homes" or "long term care" homes are designed for people who require the availability of 24-hour nursing care and supervision. They offer higher levels of personal care and support than retirement homes or other types of supportive housing and are operated both by for-profit and not-for-profit corporations, (such as a municipality, faith, community, ethnic or cultural group).

In the proposed by-law, where a seniors' development application provides for both "nursing home" and independent living ("retirement home") components, the residential parkland dedication requirement would be applied only to the independent living component. A parkland dedication requirement will also be required if the "nursing home" (in whole or in part) was converted to a type of development that was comprised of dwelling units or dwelling rooms, that allows the residents to live more independently.

All "long term care" homes are regulated by the Ministry of Health and Long Term Care (MOHLTC). Currently, separate legislation exists for the various types of long term care

facilities, including: nursing homes, charitable homes for the aged and municipal homes for the aged through the *Nursing Homes Act*, *Charitable Institutions Act*, and the *Homes for the Aged and Rest Homes Act*. The Provincial government has introduced the new omnibus *Long-Term Care Homes Act*, under Bill 140, to replace these separate Acts, and the new Act is expected to be proclaimed into law on July 1, 2010.

Although the *Long Long-Term Care Homes Act* will replace the terms “nursing home” and “home for the aged” with “long term care home,” the continued use of the term “nursing home” in the by-law will be consistent with the terms used in the Development Charges By-law and the draft Zoning By-law.

Once the *Long-Term Care Homes Act* is in force and effect, the definition of Nursing Homes, proposed by staff in Attachment 1, Section 5D, will be amended to reflect the change in legislation, to read as follows:

NURSING HOME – Living accommodation for persons dependent on regular nursing care, in a building where there are personal and medical facilities, common lounges and dining areas, and licensed under the *Long-Term Care Homes Act*.

Should Council decide that an exemption from the parkland dedication by-law requirements be approved only for non-profit nursing home providers, applicants would be required to provide proof of their non-profit or charitable status as part of their planning applications.

## **OTHER ISSUES**

### Hydro One Exemption

Attachment 1, Section 2.C.2.a. of the April 23, 2010 report provides an exemption for the government of Canada, province of Ontario, and crown corporations, including Hydro One. It should be noted that Hydro One is not a crown agency and is, therefore, subject to the *Planning Act*. Accordingly, we recommend that the exemption for Hydro One as set out in Attachment 1 of the April 23, 2010 report be removed.

### Application of the Alternative Rate

The April 23, 2010 report did not state the full alternative parkland dedication rate detail in Attachment 1, Section 1.A. To clarify, the alternative parkland dedication rate (including established dedication caps) and its associated policies as currently stipulated in *Municipal Code Chapter 415, Article III* will continue to apply to residential developments in Parkland Acquisition Priority Areas (PAPAs).

See *Municipal Code Chapter 415, Article III*:

[http://www.toronto.ca/legdocs/municode/1184\\_415.pdf](http://www.toronto.ca/legdocs/municode/1184_415.pdf)

## **CONTACT**

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## **SIGNATURE**

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