



NOTICE OF MOTION

Amending Item 2023.TE4.12 49 Ontario Street and 72-94 Berkeley Street - Zoning By-law Amendment Application - Decision Report – Approval And Request to Accept Additional In-Kind Community Benefits

Moved by: Councillor Moise

Seconded by: Deputy Mayor Malik

SUMMARY:

On May 10, 11 and 12, 2023, City Council adopted an amendment to zoning by-law 569-2013, to permit three buildings of 11, 39 and 44 storeys containing 1,099 square metres of retail, 15,206 square metres of office and 1,094 dwelling units, retention of existing heritage rowhouses, an east-west mid-block connection and a 581 square metre public park at 49 Ontario Street and 72-94 Berkeley Street (the “Site”). ([Agenda Item History - 2023.TE4.12](#)) At the time of the application, the proposed tenure for the residential units was not specified.

The Owner of the Site has committed to provide the residential units as rental units through the City’s Rental Housing Supply Program and Purpose-Built Rental Incentives Stream and include approximately 246 affordable units. The change to secured rental housing required 74 square metres of the previously secured 581 square metre public park along Berkeley Street to be secured as an in-kind community benefit pursuant to Section 37 of the Planning Act while still retaining 507 square metres of statutory parkland dedication requirement pursuant of Section 42 of the Planning Act ([Agenda Item History - 2025.MM31.29](#)).

The Owner has proposed converting the approved low-rise building into additional parkland, which would result in a 689.4 square metre expansion of the parkland secured on the Site. Provided that the entire parkland expansion proceeds, the Owner has offered to convey to the City 154 square metres of additional parkland as an in-kind community benefit pursuant to Section 37 of the Planning Act. The remaining 535.4 square metres of land would need to be acquired by the City via an Agreement of Purchase and Sale prior to the conveyance of the Section 42 parkland dedication. In the event the Agreement of Purchase and Sale is not finalized within nine months after the execution of the Agreement, the Owner will not provide the 154 square metres as an in-kind benefit and will pay the CBC in cash. The City and the Owner are currently in discussions regarding this acquisition, but as it is not finalized the City will take a section 118 restriction on the land and letter of credit for the value of the remaining CBC benefit prior to the first building permit until such agreement is entered into or terms cannot be reached at which time the Owner will provide full payment of the remaining CBC benefit and the letter of credit will be released.

The City's Real Estate Management team has appraised the proposed in-kind parkland contribution and has determined that its value is equivalent to the remaining 67% of the 4% that would otherwise have to be paid as a community benefit charge pursuant to section 37 of the Planning Act. City Planning and Development Review staff support accepting the conveyance of the land under section 37 of the Planning Act as an in-kind contribution of parkland.

The Owner has also requested a delay in the conveyance timing for the parkland dedication due to complications in the environmental process and will be required to complete a full Risk Assessment prior to submitting for a Record of Site Condition. As the Site is part of the City's Rental Housing Supply Program and Purpose-Built Rental Incentives Stream, the timing for pulling permits is quite stringent to remain in the program. Because of this, Development Review staff are support delaying the conveyance timing to prior to two years after first above grade building permit to allow enough time to complete the full Risk Assessment required.

This motion is being filed with notice to support the timely provision of purpose-built rental housing through incentives under the Rental Housing Supply Program.

RECOMMENDATIONS:

1. City Council amend its previous decision on Item 2023.TE4.12 by deleting recommendation 3 and replacing it as follows:
 3. City Council approve that, in accordance with Section 42 of the Planning Act, prior to two years after issuance of the first above grade building permit for the development, the Owner shall convey to the City, an on-site parkland dedication, having a minimum size of 507 square metres, to the satisfaction of the Executive Director, Development Review and the City Solicitor.
2. City Council amend its previous decision on Item 2023.TE4.12 by adding new instructions to staff as follows:
 1. Prior to the issuance of the first above grade building permit, City Council require the owner to register in priority a Section 118 Restriction, pursuant to the Land Titles Act against title to the future parkland to be conveyed to the City, that prohibits the transfer or charge of the parkland without the prior written consent of the Executive Director, Development Review, to the satisfaction of the City Solicitor.
3. City Council allow the owner of the proposed development of the Site to convey 154 square metres of land to the City as an in-kind contribution pursuant to subsection 37(6) of the Planning Act to be dedicated as parkland in the event that the City enters into an Agreement of Purchase and Sale to purchase from the Owner the adjacent 535.4 square metres of land for parkland purposes prior to nine months after the first above grade building permit, to the satisfaction of the Chief Planner and Executive Director, City Planning and the Executive Director,

Development Review, and the City Solicitor.

4. If the Agreement of Purchase and Sale is entered into, the proposed parkland will be conveyed in accordance with the following terms:
 - i. The proposed conveyance shall be one hundred and fifty-four square metres (154 m²) in size;
 - ii. The configuration and location of the proposed conveyance shall be to the satisfaction of the Executive Director, Development Review;
 - iii. The proposed conveyance shall be in an acceptable environmental condition to the satisfaction of the Executive Director, Development Review; and,
 - iv. The proposed conveyance shall be free and clear of all liens and encumbrances.
5. City Council attribute a value to the in-kind contribution set out in Recommendation 3 equal to sixty-seven percent (67%) of 4 percent of the value of the land (net of any exclusions or exemptions authorized under the Community Benefits Charge By-law), as determined the day before the day the building permit is issued in respect of the development and direct staff to advise the owner of such valuation.
6. City Council authorize the Chief Planner and Executive Director, City Planning to enter into an agreement pursuant to subsection 37(7.1) of the Planning Act (the "In-kind Contribution Agreement") to address the provision of the in-kind contribution identified in Recommendation 3 to the satisfaction of the Chief Planner and Executive Director, City Planning and the City Solicitor, with such agreement to be registered on title to the lands, which agreement shall be evidence of arrangements for the provision of the in-kind contribution that are satisfactory to City Council.
7. City Council authorize the City Solicitor to take all necessary actions to implement City Council's decision.

March 26, 2026