

# The Corporation of the Town of Essex

## By-Law Number 2404

Being a by-law to provide for the dedication of parkland or the payment in lieu thereof for all development or redevelopment in the Town of Essex

**WHEREAS** section 42 of the Planning Act provides that for the development or redevelopment of land, the council of a local municipality may, by By-Law, require that land in an amount not exceeding, in the case of land proposed for Development or Redevelopment for Commercial or Industrial purposes 2 per cent, and in all other cases 5 per cent, be conveyed to the municipality for park or other public recreational purposes;

**AND WHEREAS** section 51.1 of the Planning Act provides that an approval authority may impose, as a condition of the approval of a plan of subdivision, that land be conveyed to the local municipality for park or other public recreational purposes, such land not to exceed, in the case of a subdivision proposed for Commercial or Industrial purposes 2 per cent, and in all other cases 5 per cent;

**AND WHEREAS** section 53 of the Planning Act provides that section 51.1 of the Planning Act also applies to the granting of consents;

**AND WHEREAS** a Parks Plan was prepared in consultation with the local school boards and other persons or public bodies the municipality considered appropriate, and made publicly available on November 20, 2023;

**AND WHEREAS** the Council of the Town of Essex wishes to use the provisions of the Planning Act for the purposes of acquiring and providing parkland for the use and enjoyment of the residents of the Town of Essex;

**NOW THEREFORE** be it resolved that the Council of The Corporation of the Town of Essex hereby enacts as follows:

### Part 1: Interpretation

#### Definitions

1. In this By-Law:
  - (a) **"Act"** means the Planning Act, R.S.O. 1990, c.P.13
  - (b) **"Affordable Residential Unit"** means a residential unit that meets the criteria set out in subsection 4.1(2) or 4.1(3) of the *Development Charges Act*;
  - (c) **"Apartment"** means a Residential Dwelling comprised of a building containing more than four Dwelling Units where the units are connected by an interior corridor;
  - (d) **"Attainable Residential Unit"** means a residential unit that meets the criteria set out in subsection 4.1(4) of the *Development Charges Act*;
  - (e) **"Board of Education"** has the same meaning as "board", as defined in the Education Act, R.S.O. 1990, c.E.2, as amended;
  - (f) **"Commercial"** means the use of land, buildings, or structures for a use which is not industrial, and which are used in connection with:
    - i. the selling of commodities to the general public; or
    - ii. the supply of services to the general public; or

- iii. office or administrative facilities.
- (g) **“Council”** means the Council for the Town of Essex;
- (h) **“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;
- (i) **“Dwelling unit”** means any part of a building or structure used, designed or intended to be used as a domestic establishment in which one or more persons may sleep and are provided with culinary and sanitary facilities for their exclusive use;
- (j) **“Gross Floor Area”** has the same meaning as in the Town’s Development Charges By-Law, as amended.
- (k) **“Industrial”** means the use of land, buildings, or structures in connection with:
- i. manufacturing, producing, or processing of raw goods;
  - ii. warehousing or bulk storage of goods;
  - iii. a distribution centre;
  - iv. a truck terminal; or
  - v. research or development in connection with manufacturing, producing or processing of raw goods;
- and includes office uses and the sale of commodities to the general public where such office or retail uses are ancillary to an industrial use, but does not include a building used exclusively for office or administrative purposes unless it is attached to an industrial building or structure as defined above, and does not include a retail warehouse;
- (l) **“Institutional”** means the use of land, buildings, or structures for hospitals, correctional institutions and associated facilities, municipal facilities, elementary and secondary schools, colleges, universities, places of worship and ancillary uses, military and cultural buildings, daycare centres, residential care facilities for more than ten persons and long term care centres;
- (m) **“Mixed Use”** means the physical integration of two or more of the following uses within a building or structure or separate buildings or structures on the lands proposed for Development or Redevelopment: Commercial; Industrial; Institutional; Residential; or any other use not noted herein;
- (n) **“Multiple Dwellings”** means all dwellings other than single-detached, semi-detached and apartment unit dwellings;
- (o) **“Non-profit housing development”** means development of a building or structure intended for use as residential premises by,
- i. a corporation without share capital to which the Corporations Act applies, that is in good standing under that Act and whose primary object is to provide housing;
  - ii. a corporation without share capital to which the Canada Not-for-profit Corporations Act applies, that is in good standing under that Act and whose primary object is to provide housing; or
  - iii. a non-profit housing co-operative that is in good standing under the Co-operative Corporations Act, or any successor legislation.
- (p) **“Official Plan”** means the Town’s Official Plan, as amended.
- (q) **“PIL”** means payment-in-lieu of parkland otherwise required to be conveyed.
- (r) **“Planning Act”** means the Planning Act, R.S.O. 1990, c.P.13, as amended,
- (s) **“Redevelopment”** means the removal of a building or structure from land and the

further Development of the land or, the expansion or renovation of a building or structure which results in a change in the character or density of the use in connection therewith;

- (t) **“Residential”** means the use of land, buildings, or structures for human habitation;
- (u) **“Residential Unit”** means one or more habitable rooms each of which is accessible from the others and which function as an independent and separate housekeeping unit in which separate kitchen and sanitary facilities are provided for the use of the occupants, with a private entrance from outside the building or from a common hallway or stairway inside the building;
- (v) **“Rural Area”** means those areas designated as not being within a settlement area by the Official Plan;
- (w) **“Semi-detached Dwelling”** means a building divided vertically into two dwelling units each of which has a separate entrance and access to grade;
- (x) **“Shared Use Agreement”** means an agreement between a Board of Education and the Town of Essex for the sharing of buildings and/or property;
- (y) **“Single Detached Dwelling”** means a residential building consisting of one dwelling unit and not attached to another structure;
- (z) **“Town of Essex”** means The Corporation of the Town of Essex; and
- (aa) **“Zoning By-Law”** means the By-Law passed by the Town of Essex pursuant to section 34 of the Planning Act.

## Rules of Interpretation

2. (1) The following rules of interpretation shall be applied to interpretation of this By-Law:
  - (a) References to items in the plural include the singular, as applicable.
  - (b) The words "include", "including" and "includes" are not to be read as limiting the phrases or descriptions that precede them. Any examples provided are intended to be representative examples and not intended to be an exhaustive list.
  - (c) Headings are inserted for ease of reference only and are not to be used as interpretation aids.
  - (d) Specific references to laws or By-Laws are meant to refer to the current laws applicable at the time that this By-Law was enacted and shall be interpreted to include amendments, restatements and successor legislation.
  - (e) The obligations imposed by this By-Law are in addition to obligations otherwise imposed by law or contract.
  - (f) Where this By-Law provides metric and imperial units of measure, the metric unit of measure shall prevail. For convenience only, approximate imperial measurements may be provided but are of no force or effect. The abbreviation "mm" stands for millimetres and "m" stands for metres.
  - (g) Terms with capitals shall be read with the meaning in section 1 and other words shall be given their ordinary meaning.
  - (h) If any court of competent jurisdiction finds any provision of this By-Law is illegal or *ultra vires* of the jurisdiction of the Town, such provision shall be deemed to be severable and shall not invalidate any of the other provisions of this By-Law.
  - (i) Nothing in this By-Law relieves any person from complying with any provision of any federal or provincial legislation or any other By-Law of the Town.
  - (j) Where a provision of this By-Law conflicts with the provisions of another By-Law in force

in the Town, the more specific By-Law shall prevail.

## **Application**

3. The provisions of this By-Law apply to the entire geographic area of the Town of Essex.

## **Exemptions**

4. Development or Redevelopment described in the subsections (a) through to and including (g) shall be exempt from the obligations to convey land or make a PIL under Parts 2 and 3 of this By-Law:
  - a) Development or Redevelopment of land, buildings or structures owned by and used for the purposes of the Town of Essex;
  - b) Development or Redevelopment of land, buildings or structures owned by and used for the purposes of a Board of Education, where a Shared Use Agreement exists;
  - c) The replacement of any building that is a direct result of destruction due to accidental fire or other accidental cause provided that no intensification or change of use is proposed, including but not limited to an increase in total Residential Units count or Gross Floor Area;
  - d) The enlargement of an existing Residential Unit provided that the enlargement does not result in additional Residential Units;
  - e) The enlargement of an existing Commercial, Industrial, or Institutional building or structure if the Gross Floor Area is enlarged by 50% or less. The area of the existing building or structure shall be calculated by reference to the first building permit which was issued in respect of the building or structure for which the exemption is sought;
  - f) Development or Redevelopment of land, buildings or structures for temporary construction uses as defined by the Town's Zoning By-Law; and
  - g) Development or Redevelopment or location of,
    - i. a second residential unit in a detached house, semi-detached house or rowhouse on a parcel of land on which residential use, other than ancillary residential use, is permitted, if all buildings and structures ancillary to the detached house, semi-detached house or rowhouse cumulatively contain no more than one residential unit;
    - ii. a third residential unit in a detached house, semi-detached house or rowhouse on a parcel of land on which residential use, other than ancillary residential use, is permitted, if no building or structure ancillary to the detached house, semi-detached house or rowhouse contains any residential units; or
    - iii. one residential unit in a building or structure ancillary to a detached house, semi-detached house or rowhouse on a parcel of urban residential land, if the detached house, semi-detached house or rowhouse contains no more than two residential units and no other building or structure ancillary to the detached house, semi-detached house or rowhouse contains any residential units.

## **Part 2: Conveyance of Land for Park Purposes**

5. Land shall be required to be conveyed to the Town of Essex for park purposes as a condition of Development or Redevelopment of land in an amount to be determined in accordance with subsections (a) through to and including (e).
  - a) In the case of lands proposed for Residential uses, at a rate of five per cent (5%) of the land being Developed or Redeveloped:

- i. With respect to land proposed for development or redevelopment that will include affordable residential units or attainable residential units, as defined in subsection 4.1 (1) of the Development Charges Act, 1997, or residential units described in subsection 4.3 (2) of that Act, the amount of land that may be required to be conveyed shall not exceed 5 per cent of the land multiplied by the ratio of A to B where,
  - “A” is the number of residential units that are part of the development or redevelopment but are not affordable residential units, attainable residential units or residential units described in subsection 4.3 (2) of the Development Charges Act, 1997; and
  - “B” is the number of residential units that are part of the development or redevelopment; or
- b) In the case of lands proposed for Commercial, Industrial or Institutional uses, land in the amount of two per cent (2%) of the land to be Developed or Redeveloped.
- c) In the case of a Mixed-Use Development or Redevelopment, land in the aggregate, calculated as follows:
  - i. the Residential component, if any, as determined by the Town of Essex, of the lands being Developed or Redeveloped, shall require the conveyance of land as determined in accordance with subsection 5(a) of this By-Law; plus
  - ii. the Commercial, Industrial, or Institutional component of the lands being Developed or Redeveloped, if any as determined by the Town of Essex, shall require the conveyance of land as determined in accordance with subsection 5(b) of this By-Law; plus
  - iii. the component of the lands proposed for any use other than Residential, Commercial, Industrial or Institutional, if any as determined by the Municipality, shall require the conveyance of land as determined in accordance with subsection 5(d) of this By-Law.
- d) In the case of lands proposed for Development or Redevelopment for a use other than those referred to in subsections (a), (b) and (c) of this section, land in the amount of five per cent (5%) of the land to be Developed or Redeveloped.
- e) Where the development of land results from the approval of a site plan or zoning By-Law amendment and the approval of the application occurred within 18 months of building permit issuance, the conveyance shall be determined on the date of the planning application. Where both planning applications apply, conveyance shall be determined on the date of the later planning application.

### **Location of Conveyance and Condition of Title**

6. Subject to restrictions in the Planning Act, the location and configuration of land required to be conveyed pursuant to this By-Law shall be as determined by the Town of Essex and all such lands shall be free of all encumbrances, including but not limited to such easements which the Town of Essex, in its sole and absolute discretion, is not prepared to accept and shall be free of any contamination, including but not limited to any toxic, noxious or dangerous contaminants, and shall otherwise be in a condition satisfactory to the Town of Essex.
7. A requirement as part of Development or Redevelopment to convey any valley land or watercourse corridors, woodlands, natural heritage system lands and associated buffers, easements, vista blocks and storm water management ponds, as those terms are defined in the Official Plan or any secondary plan adopted under the Official Plan, shall not be considered to be a conveyance of land for park purposes in satisfaction of a requirement under this By-Law.

## Timing of Conveyance

8. Where land is required to be conveyed in accordance with this By-Law, the lands shall be conveyed as follows:
  - a) in the case of Development or Redevelopment to be approved pursuant to sections 51.1 or 53 of the Planning Act, the conveyance of land may be required as a condition of approval, and said lands shall be conveyed to the Town of Essex either prior to or immediately upon registration of the plan of subdivision or upon the consent being given, as determined by the Town of Essex; and
  - b) in the case of Development or Redevelopment where land has not been conveyed or has not been required pursuant to sections 51.1 or 53 of the Planning Act, the Town of Essex shall require the conveyance of land as a condition of Development or Redevelopment prior to building permit issuance in accordance with section 42 of the Planning Act.

## Part 3: Payment-in-Lieu of Parkland

9. In lieu of requiring the conveyance of land required by part 2 of this By-Law, the Town of Essex may require the payment of the value of the lands otherwise required to be conveyed, calculated in accordance with the following:
  - a) For all residential development or redevelopment, the PIL may be calculated and imposed by unit type based on Schedule 1. These rates shall be indexed annually on January 1<sup>st</sup> of each year commencing January 1, 2025 by the Statistics Canada New Housing Price Index (house and land, most recent month year-over-year) and posted by the Town of Essex. The Town of Essex's failure to post the indexed rate shall not waive the requirement for compliance with this by-law.
  - b) Where an applicant does not agree with the per unit rate identified in Schedule 1 to this By-Law, the applicant shall commission an appraisal from an agreed upon appraiser and the PIL shall be based on the equivalent value of the land as per the following:
    - i. in the case of lands proposed for Residential development, at a rate of five per cent (5%) of the value of land being Developed or Redeveloped
    - ii. With respect to land proposed for development or redevelopment that will include affordable residential units or attainable residential units, as defined in subsection 4.1 (1) of the Development Charges Act, 1997, or residential units described in subsection 4.3 (2) of that Act, the PIL that may be required shall not exceed 5 per cent of the value of the land multiplied by the ratio of A to B where,
      - "A" is the number of residential units that are part of the development or redevelopment but are not affordable residential units, attainable residential units or residential units described in subsection 4.3 (2) of the Development Charges Act, 1997; and
      - "B" is the number of residential units that are part of the development or redevelopment; or
  - c) For commercial, industrial, and institutional development or redevelopment, as well as Mixed-Use Development, the PIL shall be calculated as the equivalent value of the land required based on a property appraisal provided by the applicant (undertaken by an agreed upon appraiser), as follows:
    - i. in the case of lands proposed for Commercial, Industrial, or Institutional uses, the value of two per cent (2%) of the land to be

- Developed or Redeveloped;
- ii. in the case of a Mixed-Use Development or Redevelopment, the value of the land in the aggregate, calculated as follows:
    - 1) the Residential component, if any as determined by the Town of Essex, of the lands being Developed or Redeveloped, shall require the PIL of the value of land as determined in accordance with subsection 9(b) of this By-Law; plus
    - 2) the Commercial, Industrial, or Institutional component of the lands being Developed or Redeveloped, if any as determined by the Town of Essex, shall require the PIL of the value of land as determined in accordance with paragraph (i) of this subsection; plus
    - 3) the component of the lands proposed for any use other than Residential, Commercial, Industrial, or Institutional if any as determined by the Town, shall require the PIL of the value of land as determined in accordance with subsection 9(b) of this subsection; and
  - iii. in the case of lands proposed for Development or Redevelopment for a use other than those referred to in paragraphs (i) and (ii) of this subsection, the value of five per cent (5%) of the land to be Developed or Redeveloped.

### **Timing of PIL Payment and Determination of Value**

10. PIL shall be paid as follows:

- a) For Development or Redevelopment where the payment of PIL is not required as a condition of an approval or a consent, pursuant to either sections 51.1 or 53 of the Planning Act, the PIL shall be paid prior to the issuance of the building permit in respect of the Development or Redevelopment in accordance with section 42 of the Planning Act. The value of the land shall be determined as of the day before the day the building permit is issued in respect of the Development or Redevelopment or, if more than one building permit is required for the development or redevelopment, as of the day before the day the first permit is issued.
- b) In the event that an extension of an approval described in subsection (a) is requested, the value of the land shall be determined as of the day before the day of the approval of the extension.
- c) Where the development of land results from the approval of a site plan or zoning By-Law amendment and the approval of the application occurred within 18 months of building permit issuance, the PIL shall be calculated on the value of the land on the date of the planning application. Where both planning applications apply, PIL shall be calculated on the value of the land on the date of the later planning application.

### **Part 4: Other**

#### **Previous or Required Conveyances**

11. Notwithstanding parts 2 and 3 of this By-Law, if land has been conveyed or is required

to be conveyed to the Town of Essex for park or other public recreational purposes or PIL has been received by the Town of Essex or is owing to it pursuant to a condition imposed pursuant to sections 42, 51.1 or 53 of the Planning Act, no additional conveyance or payment in respect of the lands subject to the earlier conveyance or payment will be required by the Town of Essex in respect of subsequent Development or Redevelopment unless:

- a) There is a change in the proposed Development or Redevelopment which would increase the density of the development; or
  - b) Land originally proposed for Development or Redevelopment for Commercial, Industrial, or Institutional uses is now proposed for Development or Redevelopment for other uses.
12. Where there is a claim of previous conveyance or PIL payment, it is the applicant's/owner's responsibility to provide suitable evidence of such previous conveyance or PIL payment, to the Town of Essex's satisfaction.
13. Land or PIL required to be conveyed or paid to the Town of Essex for park or other public recreation purposes pursuant to parts 2 and 3 of this By-Law shall be reduced by the amount of land or PIL previously received by the Town of Essex pursuant to sections 42, 51.1 or 53 of the Planning Act in respect of the lands being Developed or Redeveloped.

### **Phased Development**

14. Where approvals are issued in phases for Development or Redevelopment, the Town of Essex shall calculate and require the conveyance of land for park purposes or the payment of PIL, in accordance with parts 2 and 3 of this By-Law, on a phase by phase basis.

### **Redevelopment**

15. In the case of redevelopment, the maximum amount of the parkland dedication and/or PIL shall not exceed an amount equal to the amount calculated as per the previous sections of this By-Law, multiplied by the ratio of "A" to "B" where,
- a) "A" is the floor area of any part of a building or structure, which part is proposed to be erected or located as part of the development or redevelopment, and
  - b) "B" is the floor area of all buildings and structures that will be on the land after the development or redevelopment.

### **Part 5: General**

16. Where a determination is required to be made by the Town of Essex in this By-Law, that determination shall be made by the Director, Community Services. The Director, Community Service's decision shall be final.
17. This By-Law shall be referred to as the "Parkland Dedication By-Law".
18. Policies made prior the adoption of By-Law 2404 respecting conveyance of land for park purposes and payment in lieu of conveyance of land for park purposes are rescinded.
19. This By-Law comes into force on January 1, 2025.

### **Schedules**

The following schedule shall form part of this By-Law:



Schedule 1: PIL of Parkland Per Unit for Residential Development

**Read a first and a second time and provisionally adopted on December 2, 2024.**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk

**Read a third time and finally passed on December 16, 2024.**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk

**Schedule 1 to By-Law 2404**

**PIL Per Unit for Residential Development**

<b>Unit Type</b>	<b>PIL per Unit</b>		
	<b>January 1, 2025 to December 31, 2025</b>	<b>January 1, 2026 to December 31, 2026</b>	<b>January 1, 2027 onwards</b>
Single-detached Rural	\$2,600	\$4,300	\$6,000
Single-detached Urban	\$4,000	\$6,700	\$9,400
Semi-detached and Multiples	\$1,700	\$2,300	\$3,200
Apartments	\$600	\$1,000	\$1,400

*\*Rates are subject to indexing as per Section 9(a)*