

Corporate Policy and Procedure



Policy No. 07-03-01

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Effective Date 2012 09 26

Supersedes

TAB: COMMUNITY DEVELOPMENT

SECTION: PLANNING TOOLS

SUBJECT: BONUS ZONING

POLICY STATEMENT Bonus Zoning enables the City to secure a range of Community Benefits when increases in permitted development are deemed good planning by Council through the approval of a rezoning application.

PURPOSE The purposes of this policy are to outline:

- how Section 37 of the *Planning Act* (Bonus Zoning) will be applied in order to meet the objectives of the Mississauga Official Plan (“Official Plan”);
- the type and size of developments eligible for Bonus Zoning; and
- the process for negotiating Section 37 Agreements, including the role of staff and Members of Council.

SCOPE Unless exempt, this policy is applicable to all rezoning applications for increases in height and/or density in the City, in accordance with the Official Plan and the Guiding Principles outlined below. This policy does not affect any previously executed agreements or agreements approved in principle by Council.

The Bonus Zoning policy will be applied in conjunction with the Implementation policies contained within the Official Plan.

LEGISLATIVE AUTHORITY

This policy will be implemented in accordance with the *Planning Act*, Section 37 and the Official Plan, both as amended.

DEFINITIONS

For the purposes of this policy:

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“Bonus Zoning” means the planning tool, authorized by Section 37 of the *Planning Act*, which enables municipalities to secure Community Benefits through Section 37 Agreements in conjunction with a rezoning that permits increased height and/or density over and above existing planning permissions. Through Bonus Zoning the owner/developer and the community share in the increased value of the development.

“Community Benefit” means facilities or cash secured by the City and provided by an owner/developer for specific public capital facilities, services or matters. Chapter 19.8.2 of the Official Plan provides examples of potential Community Benefits; however, the list is not exhaustive. Through local area plan reviews, and as determined on a case by case basis, additional appropriate Community Benefit contributions may be identified.

“Section 37 Agreement” means a legally enforceable agreement negotiated between the City and an owner/developer that outlines the terms of the exchange of density and/or height for Community Benefits. Section 37 Agreements may include other matters that may be important for the City to meet its Official Plan objectives, but which may fall outside of the purview of other agreements, such as the protection of rental housing, public art or heritage features. These matters may be secured in a Section 37 Agreement as conditions of approval.

“Supplementary Report” means the staff report from the Commissioner of Planning and Building which recommends approval or refusal of an Official Plan Amendment and/or rezoning application.

ADMINISTRATION

This policy will be administered by the Commissioner, Planning and Building Department or his/her designate(s), in writing, in consultation with Legal Services, Finance, Community Services, Transportation and Works and other City staff as required.

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APPLICATION

Requests for increases in the height and/or density of development are considered by Council through Official Plan amendment and/or rezoning applications, subject to the tests of good planning (i.e. the proposed development represents good planning on its own merits). Where Council has deemed the proposed increase in height and/or density from that permitted by the existing Zoning By-Law to be acceptable, the City of Mississauga may require, as a condition of final approval, the provision of certain Community Benefits.

Council may choose to exempt applications where other strategic objectives will be achieved (e.g. provision of non-profit housing; downtown office development).

The City may request a Section 37 Community Benefit contribution where development applications have been appealed to the Ontario Municipal Board (OMB).

Minimum Threshold Size Requirement

The maximum height and density limits will be set out in the Official Plan and/or Zoning By-Law. Any Zoning By-Law amendment in excess of the maximum development limits (where established) may be considered eligible for Bonus Zoning Community Benefit contributions. This policy will be applied mainly, but not exclusively, to:

- projects where additional height is proposed;
- projects which are or will be larger than 5000 m² (54,000 sq. ft.) in size and where the proposed density increase will exceed 1500 m² (16,000 sq. ft.) over what would otherwise be permitted.

While this policy is not intended to apply to smaller development projects, there may be circumstances in lower density areas where proposed development may not meet the minimum threshold size noted above but could still be a suitable candidate to provide a Community Benefit contribution. Such lands could include large

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vacant or underdeveloped parcels, greyfield sites or smaller properties assembled for larger infill redevelopment. A Community Benefit contribution may be requested for such development applications where:

- additional height is proposed; and/or
- a unit increase of more than 10 percent over the permitted number of units is proposed.

GUIDING IMPLEMENTATION PRINCIPLES

The following Guiding Implementation Principles will apply to all development in the City of Mississauga:

1. *Development must represent good planning.*

Good planning is a basic requirement for all developments in the City of Mississauga and must be satisfied prior to any consideration of Community Benefit contributions. Good planning includes addressing all policies contained in the Official Plan, including but not limited to the following:

- consideration of the City structure and role of elements in this structure;
- protection, enhancement and, where possible, restoration of environmental features and natural areas;
- the creation of complete communities;
- supporting multi-modal transportation; and
- contribution to the economic sustainability of the City.

2. *A reasonable planning relationship between the secured Community Benefit and the proposed increase in development is required.*

This principle refers to the proximity of the Community Benefit to the proposed development, as well as a comparison of the monetary value of the additional development rights being proposed with the monetary value of the Community Benefits.

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2.1 The provision of eligible Community Benefits will be considered on the following location basis:

- highest priority - on-site or in the immediate vicinity of the site;
- next priority - Community Benefit contributions in the form of funds used to address City-wide needs which are related to the site, but which cannot economically be included on-site, e.g. the provision of transit, affordable housing or other capital facilities; and
- other eligible Community Benefits.

2.2 The City will secure Community Benefits for which the costs to the owner/developer represent a reasonable proportion of the increase in the residual land value resulting from the increase in height and/or density. The amount or value of the Community Benefits in relation to the value of the density or height increase will vary from project to project, as a standard City-wide calculation is not imposed. The City will strive to achieve a value of a Community Benefit that is consistent with practices in surrounding municipalities, e.g., in the approximate range of 20% to 40% of the land lift value.

2.2.1 The height/and or density increase to be valued is measured from the existing permitted height and/or density expressed in the Zoning By-Law, to the proposed height and/or density. Where lands are currently designated to allow greater development through the Official Plan or are currently zoned "D" (Development) and, therefore, recognize the potential for future development, yet do not permit any additional buildings, alternative base level height and/or density assumptions may be considered for the purposes of land valuation. These base level assumptions will be determined by the City and may

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be established through an evaluation of several criteria, including but not limited to current Official Plan permissions, recent sales and market value assessment.

2.2.2. Realty Services, City of Mississauga, will retain an independent real estate appraiser to determine the increased value of the land resulting from the height and/or density increase, based upon Terms of Reference provided by the City. The appraisal will serve as the basis for determining fair value of the Community Benefit. The City will charge the developer for the cost of an appraiser, selected from a list of qualified, independent real estate appraisers.

2.2.3 City staff and the applicant will work cooperatively and respectfully in the negotiation process. In the event that the applicant does not agree with the City appraisal, he or she may initiate, at their own expense, a second appraisal from the City's approved list of appraisers subject to the same Terms of Reference as the original appraisal. City staff and the applicant will attempt to resolve disputes in a timely manner through the comparison of the two appraisals and relevant factors such as data sources, assumptions etc. Realty Services staff will confirm in writing to the Planner when the appraisal is satisfactory.

3. *Community Benefit contributions should respond to community needs.*

3.1 Section 37 Agreements will be negotiated with the owner/developer on a case-by-case basis and will be based on a reasonable planning relationship between the increase in land value resulting from the City granting the increase in

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height and/or density, and an appropriate measured response of Community Benefits to identified community needs.

- 3.2 Where Council has approved studies or plans for particular geographic areas of the City (e.g. the Strategic Plan, Future Directions, Capital Budget Plans, Local Area Plans and Community Infrastructure Impact Studies) outlining the range of community facilities, services or matters that should be provided or supported on a priority basis, these findings will inform site-specific negotiations for Community Benefits in these areas. The long term sustainable funding of capital facilities will also be taken into consideration.
- 3.3 The ward councillor must always be consulted by City staff prior to any negotiation of Bonus Zoning Community Benefits with the owner/developer in order to participate in the identification of possible Community Benefits.
- 3.4 Prior to the commencement of the negotiation process and, as soon as it is available, staff will provide the applicable ward councillor with the following information:
- advice as to whether Section 37 benefits are appropriate and desirable;
 - advice on appropriate types of community benefits;
 - interests of the owner/developer; and
 - an appraisal of the total land value uplift.
- 3.5 Community Benefit contributions towards capital facilities, services or matters will be over and above the facility costs that would be funded through or dedicated to the City through the Development Charges By-Law, as amended from time to time, or parks contributions under Section 42 of the *Planning Act*.

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- 3.6 Planning and Building staff, in consultation with staff responsible for the administration of the received Community Benefit, will lead discussions or negotiations for Section 37 Agreements with the owner/developer to ensure compliance with Official Plan requirements.
4. *Ensure that the negotiation process of Section 37 Agreements is transparent.*
- 4.1 The Planning and Building Department will commence the negotiation for community benefits following Council's approval of the development proposal in principle. The Planner will prepare a Supplementary Report assessing the merits of the planning application. If the Supplementary Report recommends approval, and unless exempt from this policy, the report will also request Council to direct staff to hold discussions with the applicant to secure community benefits and to return to Council with a Section 37 report outlining the recommended community benefits upon conclusion of the discussions. The Section 37 report will go to Council for its approval prior to enactment of the amending Zoning By-Law.
- 4.2 To prepare for possible Bonus Zoning applications and to address the issue of transparency, the applicable ward councillor and other interested Members of Council may, in consultation with City staff, the local community and the relevant service providers, identify local and City-wide priorities for potential community benefits.
- 4.3 A statement of the mutually agreed-upon financial contribution will be included in the Section 37 report which will summarize the community benefits that are to be secured; indicate the value of the community benefits (to be prepared in conjunction with staff in other departments

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responsible for similar facilities, services or matters); and outline the timing of the provision of community benefits.

- 4.4 Height and/or density increases will be approved by an amendment to the Official Plan and/or Zoning By-Law, after consultation with community groups. Bonus Zoning will be implemented through a site-specific Zoning By-Law which, in addition to all of the typical requirements pertaining to the development, also requires the owner/developer to enter into a Section 37 Agreement to secure the Community Benefits outlined in the By-Law.

SECURING THE COMMUNITY BENEFIT AND IMPLEMENTING BONUS ZONING

Prior to the enactment of the Official Plan and/or Zoning By-Law amendment, the owner/developer will execute the Section 37 Agreement securing the Community Benefits in consultation with City staff. The agreement will be registered on title of the subject lands.

Section 37 Agreements will specifically identify the Community Benefits, including how any cash benefit will be used. The agreements will separately identify matters normally secured in the development process that are not part of the consideration for Community Benefits.

The Planning and Building Department will monitor Community Benefit contributions to ensure that they reflect Section 37 agreements approved by Council.

Payments in Cash

The payment of Community Benefits in the form of cash will occur prior to Council approval of the Zoning By-law. In the event that the application(s) are appealed to the OMB, staff may be directed by Council to seek a Community Benefit contribution as part of the conditions of approval by the OMB. Cash payments will not be spent until a decision on the appeal is reached.

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In a large phased development, cash payments may be phased, subject to the consideration of staff recommendation and Council approval. An “H-Zone” (holding zone) may be used to ensure receipt of negotiated Community Benefits in the form of cash.

Cash benefits received from a Section 37 agreement will be collected by the Planning and Building Department and held in a Section 37 Reserve Fund set up for that purpose. This fund will be managed by Accounting, Corporate Financial Services, who are responsible for maintaining a record of all cash payments received under this policy.

DEVELOPMENT CHARGES

There will be no reductions, waivers or exemptions for developments subject to Section 37 Agreements from development charges.

REFERENCE: Resolution 0213-2012 - 2012 09 26 - PDC-0028-2012

LAST REVIEW DATE:

CONTACT: For more information on Bonus Zoning and Community Benefit contributions contact the Policy Division, Planning and Building Department.