



# Corporate Report

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**PDC** APR 16 2012

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**DATE:** March 27, 2012

**TO:** Chair and Members of Planning and Development Committee  
Meeting Date: April 16, 2012

**FROM:** Edward R. Sajecki  
Commissioner of Planning and Building

**SUBJECT:** **Proposed Corporate Policy and Procedure - Bonus Zoning**

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**RECOMMENDATION:** That the Corporate Policy and Procedure - Bonus Zoning, attached as Appendix 1 to the report titled "Proposed Corporate Policy and Procedure – Bonus Zoning" dated March 27, 2012 from the Commissioner of Planning and Building, be adopted.

**BACKGROUND:** The proposed Corporate Policy and Procedure - Bonus Zoning (attached as Appendix 1) originates from ongoing work aimed at enhancing the City's ability to apply the following planning tools: Bonus Zoning, Community Improvement Plans and Community Infrastructure Impact Studies.

On September 29, 2010 City Council approved the following recommendation:

*PDC-0042-2010*

*"2. That Corporate policies be prepared to clarify the protocol for the implementation of Community Improvement Plans and Bonus Zoning as outlined in the consultant report titled "Assessing*

*Planning Tools for Mississauga” dated July 2010 prepared by GHK International (Canada) Ltd., and N. Barry Lyon Consultants;”*

This report deals specifically with the proposed Corporate Policy and Procedure for Bonus Zoning. Draft Corporate policies for Community Improvement Plans continue to remain under review pending the resolution of certain administrative and staffing resource issues.

Mississauga Plan, 2003 contains policies for the application of bonus zoning. Under these policies the City has secured and achieved one Section 37 Community Benefit contribution. As part of the Assessing Planning Tools Study, revised Mississauga Official Plan, 2011 policies for bonus zoning were prepared and vetted by the public and other stakeholders. At the public meeting held on March 21, 2011 no concerns were raised with the proposed policies. On March 30, 2011 City Council adopted Resolution No. 0073-2011 and forwarded these proposed policies to the Region of Peel for incorporation in the Notice of Decision on the new Mississauga Official Plan. The policies were inadvertently not included in the Notice of Decision. The Region is preparing a report that supports these policies being incorporated into the new official plan by the Ontario Municipal Board when dealing with appeals to the Mississauga Official Plan, 2011. During this transition period, and where there is no conflict, the proposed Corporate Policy and Procedure - Bonus Zoning can assist staff with the negotiation of community benefit contributions under the existing official plan policies.

**COMMENTS:**

The proposed Corporate Policy and Procedure provides direction beyond official plan policies on how to implement bonus zoning. It identifies where and how this tool should be applied by establishing:

- the type and size of developments eligible for bonus zoning;
- guiding principles for negotiating community benefit contributions, including the preferred location, form and value of the community benefit contribution; and

- outlines a process for securing community benefits through legally-binding Section 37 agreements, including clarifying the roles of staff, members of City Council, the development community and other stakeholders.

The proposed protocol has been recommended by the consultant team as a means of augmenting official plan policies. It is in keeping with best practices in other municipalities, such as Toronto, Burlington, Markham and Ottawa (underway), where Council approved guidelines or protocols have been established in addition to official plan policies.

The proposed Corporate Policy and Procedure responds to challenges and issues associated with the application of bonus zoning. It establishes an administrative process, which is transparent and facilitates a practice where the fundamental requirements of bonus zoning can be achieved. It identifies that:

- the proposed development represents good planning on its own merits;
- the public benefits respond to community needs and are consistent with official plan policies; and
- the public benefits must be above and beyond those achieved through other contribution mechanisms associated with the development process (e.g., development charges).

The proposed protocol will allow Mississauga to take advantage of this tool and also allow the municipality to modify its administrative process as it gains more experience with bonus zoning.

**STRATEGIC PLAN:**

The proposed Corporate Policy and Procedure will help to secure community benefit contributions in the form of facilities, services or matters that support all five pillars of the Strategic Plan: Move, Belong, Connect, Prosper and Green. Bonus zoning is also specifically identified as a tool to help direct growth by supporting higher order transit. (MOVE Direct Growth - Action 16).

**FINANCIAL IMPACT:** Section 37 community benefit contributions can be used to fund new community amenities or supplement capital funding for proposed facilities beyond those funded through traditional revenue sources (e.g., development charges, cash-in-lieu of parkland). As the application of bonus zoning increases in Mississauga the long term impact upon staff resources may need to be reassessed in the future.

**CONCLUSION:** Bonus zoning enables municipalities to secure public benefits for the community when permitting increases in density and/or height that are deemed acceptable on the basis that the proposed development represents good planning. Other municipalities in Ontario have used bonus zoning to achieve public benefits that continue to enhance the quality of life in their communities. Mississauga has had limited experience with bonus zoning and no clearly defined expectations or process for negotiating community benefits beyond those identified in the official plan.

The proposed protocol provides greater clarity, transparency and consistency in approach for staff, the development industry, community groups and other stakeholders.

**ATTACHMENTS:** APPENDIX 1: Draft Corporate Policy and Procedure - Bonus Zoning

*Original Signed By:*

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Edward R. Sajecki  
Commissioner, Planning and Building Department

*Prepared By: Paulina Mikicich, Planner, Policy Planning Division*

# Corporate Policy and Procedure



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TAB: COMMUNITY DEVELOPMENT  
SECTION: PLANNING TOOLS  
SUBJECT: BONUS ZONING

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**POLICY STATEMENT** Bonus Zoning enables the City to secure a range of Community Benefits when increases in permitted development are deemed acceptable 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 accordance with the City's Guiding Implementation Principles, 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.

The Bonus Zoning policy and Guiding Implementation Principles 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 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 a developer/owner for specific 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 a developer/owner 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. In circumstances 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. A pre-condition of the approval is that the proposed development represents good planning on its own merits, independent of the Community Benefit contribution.

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.

### Minimum Threshold Size Requirement

The maximum height and density limits will be set out in the Official Plan and/or Zoning By-Law. Subject to the minimum threshold size requirement, any Zoning By-Law amendment in excess of the maximum development limits (where established) in said plans and regulations may be considered eligible for Bonus Zoning Community Benefit contributions.

This policy will be applied mainly to:

- projects where additional height is proposed;
- projects which are or will be larger than 5000 m<sup>2</sup> (54,000 sq. ft.) in size and where the proposed density increase will exceed 1500 m<sup>2</sup> (16,000 sq. ft.) over what would otherwise be permitted; or
- projects where a unit increase of 10 percent of the permitted number of units is proposed.

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## 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. This requirement 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, in particular transit and active transportation modes;
- building a desirable urban form with particular attention paid to compatibility with the existing or planned land uses and the enhancement of the public realm; 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.

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



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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 developer/owner represent a reasonable proportion of the increase in the residual land value resulting from the increase in height and/or density.

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 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 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 The increased value of the land resulting from the height/and or density increase will be determined through the appraisal of increased value, prepared by the City or on the City’s behalf to its satisfaction. The City will use this estimate as the basis for determining fair value of the Community Benefit. The City will charge the developer for the cost of

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retaining an independent real estate appraiser and the cost of preparing an appraisal.

2.2.3 To facilitate the appraisal process, the City will maintain a list of qualified, independent professional appraisers to assess the increase in value.

2.2.4 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 and initiate a dispute resolution process.

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 height and/or density, and an appropriate measured response of Community Benefits to identified community needs. In this regard, the Community Benefits in relation to the height and/or density increases granted may vary from project to project, or from time to time.

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 in the

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determination of appropriate Community Benefits.

3.3 Eligible Community Benefits will not replace or duplicate the provision of, or funding for, specific facilities or services, such as the provision of capital projects related to growth, such as transit or new road infrastructure that should 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*.

3.4 The ward councillor must always be consulted by City staff prior to any negotiation of Bonus Zoning Community Benefits with the developer and may, if he or she wishes, participate in the discussion of possible Community Benefits.

3.5 Planning and Building staff will lead discussions or negotiations for Section 37 Agreements with the developer to ensure compliance with Official Plan requirements. In addition, staff responsible for the administration of the received Community Benefit will be involved in the negotiation.

4. *Ensure that the negotiation process of Section 37 Agreements is transparent.*

4.1 When dealing with a Bonus Zoning proposal, the Planning and Building Department will first deal with the planning merits of the development proposal and, following Council's approval in principle, commence the negotiation for Community Benefits. The Development 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

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the applicant to secure Community Benefits pursuant to Section 37 of the *Planning Act*. The Supplementary Report will further direct Planning staff 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 adoption of the amending Zoning By-Law.

- 4.2 Under no exception will a Community Benefits provision be considered where the development does not represent good planning on its own merits.
- 4.3 To prepare for possible Bonus Zoning applications and 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.
- 4.4 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 responsible for similar capital facilities); and outline the timing of the provision of Community Benefits.
- 4.5 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 to enter into a Section 37 Agreement to secure the Community Benefits outlined in the By-Law.

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## SECURING THE COMMUNITY BENEFIT AND IMPLEMENTING BONUS ZONING

Prior to the enactment of the Official Plan and/or Zoning By-Law amendment, the owner 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 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.

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.

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

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This policy does not affect any previously executed agreements or agreements approved in principle by Council.

## DEVELOPMENT CHARGES

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

Community Benefit contributions towards capital facilities, services or matters will be over and above the facility costs that would be funded through development charges.

REFERENCE:

LAST REVIEW DATE:

CONTACT:

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

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