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LAWYERS

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File #: 21121

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**By Email** [kross@markham.ca](mailto:kross@markham.ca)

Mr. Kevin Ross  
Manager, Development Finance & Payroll  
City of Markham  
101 Town Centre Boulevard  
Anthony Roman Centre  
Markham, ON, L3R 9W3

Dear Mr. Ross:

**Re: City of Markham's Proposed Community Benefits Charge By-Law**

We are legal counsel to BILD with respect to the City's ongoing Community Benefits Charge By-Law ("CBC BL"). Please accept this letter as BILD's (York Chapter) comments on same.

BILD acknowledges and thanks city staff and its external consultants for meeting with BILD representatives through the study process. BILD believes strongly that constructive dialogue with the industry is essential to offer the greatest chance of success for consensus on this important matter. That is why BILD brought a full team to participate with city staff and the external consultants during the consultation meetings to date and why BILD, through those meetings, provided constructive comments to the city.

The draft CBC BL (section 4) establishes the charge as 4% of the "Value of the Land". That term is defined in section 1(16) as:

**"Value of the Land"** means for the purposes of determining the **Community Benefits Charge** payable, the appraised value of the land in an appraisal prepared by or for the **Municipality** and in accordance with generally accepted appraisal principles and standards"

This means that the 4% is calculated over the entirety of the parcel including all buildings, improvements and uses on the parcel, including existing one and non-residential uses. This could lead to unintended consequences and a far higher CBC charge than is warranted. A couple of examples will help illustrate this concern.

**SCENARIO 1: EXISTING IMPROVEMENTS WITH LATER ADDITION**

A redevelopment parcel might already be improved with existing buildings and/or structures which will be retained post-redevelopment. Those existing buildings or structures contribute considerable value to the parcel's "Value of the Land". The redevelopment might add 10 residential units and be 5 stories in height thus triggering the CBC BL yet the value of the

addition (redevelopment) might be only a fraction of the parcel's "Value of the Land". Nevertheless, the CBC will be calculated on the value of the entire parcel including all existing buildings and structures.

**BILD requests that the CBC BL be revised to only assess the charge on the value of the redevelopment component and only where such redevelopment component itself is 5 stories or greater and contains at least 10 residential units. In other words existing height, number of residential units and value of a parcel should be netted out before the CBC is applied and calculated.**

**SCENARIO 2: MIXED-USE BUILDING WITH SMALLER RESIDENTIAL COMPONENT**

In this scenario the proposed development is for a multi-storey (perhaps high-rise) mixed-use building. For example, the building could be 15 storeys high with 5 large residential units, one unit on each of the top 5 floors. The first floor might contain retail uses and floors 2-10 might be a hotel. Once again, the CBC BL would assess the CBC against the entire development and the "Value of the Land" would be calculated on all uses and the entirety of the building.

**BILD requests that the CBC BL be revised to only assess the charge on the value of the development component which is comprised of the residential units and only where such residential units occupy 5 floors or more. In other words, the "Value of the Land" should exclude non-residential uses.**

These recommendations will not only help mitigate the cost of housing by applying the CBC only against residential development with 5 stories or more and at least 10 residential units, but will also avoid discouraging non-residential uses in mixed-use buildings by avoiding the 4% charge on such uses.

BILD thanks you for considering this submission, hopes that City Council will give serious consideration to it.

Yours very truly,

A handwritten signature in cursive script, reading "Ira Kagan".

Ira T. Kagan  
Encl. (Markham draft CBC BL)

cc. BILD  
Daryl Keleher (Altus Group Economic Consulting)



## BY-LAW 2022-XX

### **A BY-LAW TO ESTABLISH COMMUNITY BENEFITS CHARGES FOR THE CORPORATION OF THE CITY OF MARKHAM**

**WHEREAS** authority is given to Council under section 37 of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, (hereinafter called the “Act”) to adopt a Community Benefits Charge by-law; and

**AND WHEREAS** the City of Markham (hereinafter the “City”) has prepared a Community Benefits Charge Strategy pursuant to subsection 37(9) of the Act;

**AND WHEREAS** the City has consulted with appropriate persons and public bodies in the preparation of this by-law.

### **NOW THEREFORE THE COUNCIL OF THE CITY OF MARKHAM ENACTS AS FOLLOWS:**

#### **DEFINITIONS**

1. In this by-law,

- (1) **"Basement"** means all portions of a Building below the first storey of a Building;
- (2) **"Building"** means a building, or part thereof, occupying an area greater than ten square metres (10m<sup>2</sup>) consisting of a wall, roof and floor or a structural system serving the function thereof, and includes an above-grade storage tank and an industrial tent;
- (3) **"Building Code Act"** means the *Building Code Act, 1992*, S.O. 1992, c.23, as amended from time to time;
- (4) **"Building Permit"** – means a permit issued under the *Building Code Act, 1992*, which permits the construction or change in use of a **Building** including but not limited to the construction of the foundation of a **Building**;

- (5) **"Building Permit Application"** means an application submitted to and accepted by the **Chief Building Official** for a **Building Permit** which complies with the applicable zoning-by-law and with all technical requirements of the **Building Code Act** and includes payment of all applicable fees;
- (6) **"Chief Building Official"** means a chief building official for the City appointed or constituted under section 3 of the Building Code Act or their designate;
- (7) **"Community Benefits Charge"** means a charge imposed pursuant to this by-law;
- (8) **"Community Benefits Strategy"** means the community benefit strategy prepared pursuant to subsection 37(9) of the Act;
- (9) **"Condominium Act"** means the *Condominium Act, 1998*, S.O. 1998, c.19 as amended from time to time;
- (10) **"Development or Redevelopment"** means any activity or proposed activity in respect of any land, **Building** or structure, whether existing or proposed, that requires:
- (a) the passing of a zoning by-law or of an amendment to a zoning by-law;
  - (b) the approval of a minor variance;
  - (c) a conveyance of land to which a part lot control exemption by-law applies;
  - (d) the approval of a plan of subdivision;
  - (e) a consent to sever;
  - (f) the approval of a description of a plan of condominium pursuant to the Condominium Act; or
  - (g) the issuing of a permit under the Building Code Act, in relation to a building or structure;
- (11) **"Gross Floor Area"** means the sum of the total area of each floor level of a **Building** or structure, above and below the ground, measured from the exterior of the main wall of each floor level;
- (12) **"In-kind contribution"** means facilities, services or matters identified in a **Community Benefits Strategy** and required because of **Development or Redevelopment** provided by an owner of land, in lieu of payment of a portion or all of the **Community Benefits Charge** otherwise applicable;
- (13) **"Region"** means the Regional Municipality of York;

- (14) **"Residential Unit"** means a unit that:
- (a) consists of a self-contained room or set of rooms located in a Building or structure,
  - (b) is used or intended for use as residential premises,
  - (c) contains kitchen and bathroom facilities that are intended for the use of the unit only, and
  - (d) functions as a housekeeping unit used or intended for use as a domicile by one or more persons.
- (15) **"Storey"** means a level of a **Building** or structure, other than a **Basement**, located between any floor and the floor, ceiling or roof immediately above it;
- (16) **"Value of the Land"** means for the purposes of determining the **Community Benefits Charge** payable, the appraised value of the land in an appraisal prepared by or for the **Municipality** and in accordance with generally accepted appraisal principles and standards.

#### **APPLICABLE LANDS**

- 2.
- (1) Subject to subsection 2(2) herein, this by-law applies to all lands within the City of Markham.
  - (2) This by-law shall not apply to land or **Buildings** within the City of Markham that are owned by or used for the purposes of the **Municipality** or the **Region**.

#### **APPLICATION OF BY-LAW**

- 3.
- (1) A **Community Benefits Charge** shall be payable for the capital costs of facilities, services, and matters required for **Development or Redevelopment** of all lands in the geographic area of the City of Markham unless subsection 2(2) herein applies.
  - (2) The **Community Benefits Charge** shall be imposed on all **Development or Redevelopment** of a **Building** or structure with five or more **Storeys** and that contains (for development) or adds (for redevelopment) ten or more **Residential Units**.

#### **AMOUNT OF CHARGE**

4. The amount of the **Community Benefits Charge** payable is 4% of the **Value of the Land** that is the subject of the **Development or Redevelopment** on the day before the first

**Building Permit** is issued in respect of the **Development or Redevelopment**.

5. The **Community Benefits Charge** otherwise payable shall be reduced on a proportionate basis based on the percentage of the Building comprised of the **Gross Floor Area** for the types of **Development** or **Redevelopment** set out in section 1 of Ontario Regulation 509/20 to the Act.

#### **TIMING OF CALCULATION AND PAYMENT**

6.
  - (1) **The Community Benefits Charge** is payable prior to the issuance of the first **Building Permit** issued for the **Development or Redevelopment**.
  - (2) If a **Development or Redevelopment** is to be constructed in phases, each phase of the development is deemed to be a separate **Development or Redevelopment** for the purposes of this by-law and the amount of the **Community Benefits Charge** for each phase is 4% of the **Value of the Land** of that phase on the day before the first **Building Permit** for the **Development or Redevelopment** of that phase is issued.

#### **EXEMPTIONS**

7. The onus is on the owner or applicant to produce evidence to the satisfaction of the **Municipality** establishing that the owner or applicant is entitled to an exemption under the provisions of this by-law.

#### **IN-KIND CONTRIBUTIONS**

8. In the event that City Council has allowed an owner of land to provide an **In-kind contribution** in-lieu of payment of a portion or all of the **Community Benefits Charge** otherwise payable and arrangements for the provision of the **In-kind contribution** that are satisfactory to City Council have been made, the **Community Benefits Charge** otherwise payable for the **Development or Redevelopment** shall be reduced by the value that the City has attributed to the **In-kind contribution**.

#### **REVIEW**

9. Within five years after this by-law is passed City Council shall ensure that a review of this by-law is undertaken and shall pass a resolution declaring whether a revision to the by-law is needed and thereafter shall further review the by-law and pass a resolution within every five years after the previous resolution was passed.

#### **SHORT TITLE**

10. The by-law may be cited as the “City of Markham Community Benefits Charge By-law”.

READ A FIRST, SECOND, AND THIRD TIME AND PASSED THIS  
31<sup>st</sup> DAY OF MAY, 2022.

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CITY CLERK  
KIMBERLEY KITTERINGHAM

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MAYOR FRANK SCARPITTI