

December 2, 2024

Mayor Meed Ward and Members of Council
City of Burlington
426 Brant Street
Burlington ON
L7R 3Z6

Sent via email to clerks@burlington.ca

RE: **CITY OF BURLINGTON**
Item 8.1: Draft Community Benefits Charge Strategy and By-law
COW Dec 2 | Council December 10

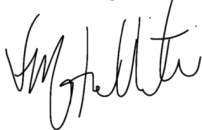
The Building Industry and Land Development Association (BILD) is pleased to provide this correspondence for consideration at the December 2nd Committee of the Whole and again at the December 10th Council meeting regarding Item 8.1: the 2024 Community Benefits Strategy and By-law. While BILD initially submitted our comments to staff on November 25th, we note that they remain outstanding. Accordingly, we respectfully submit our comments directly to the Committee for review and consideration.

On behalf of our Halton forum members, BILD would like to take this opportunity to thank City staff and its consultant or their collaboration with the development industry through the City's CBC Consultation Committee. We greatly value the ongoing dialogue and look forward to continuing this constructive engagement as the process progresses.

To support our review, BILD retained Ira Kagan of Kagan Shastri DeMelo Winer Park LLP and Daryl Keleher of Keleher Planning & Economic Consulting (KPEC) to analyze the Draft CBC Strategy and related materials. Enclosed, please find their respective comments on both the strategy and the by-law. We look forward to a response prior to Council consideration.

As committed community-building partners, we appreciate the opportunity to provide our feedback. Should you have any questions or require further clarification, please do not hesitate to contact the undersigned.

Kind regards,



Victoria Mortelliti, MCIP, RPP.
Senior Manager, Policy & Advocacy

CC: BILD Halton Members
BILD's Review Team
Ellen Chen, City of Burlington

The Building Industry and Land Development Association is an advocacy and educational group representing the building, land development and professional renovation industry in the Greater Toronto Area. BILD is the largest home builders' association in Canada, and is affiliated with the Ontario Home Builders' Association and the Canadian Home Builders'

Association. It's 1,200 member companies consists not only of direct industry participants but also of supporting companies such as financial and professional service organizations, trade contractors, as well as manufacturers and suppliers of home-related products.



November 25, 2024

Ms. Ellen Chen
Financial Analyst of Strategies & Business Planning
City of Burlington
426 Brant Street
Burlington ON
L7R 3Z6

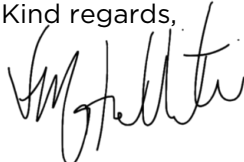
Sent via email to Ellen.Chen@burlington.ca

RE: **CITY OF BURLINGTON**
Draft Community Benefits Charge Strategy and By-law

The Building Industry and Land Development Association (BILD) acknowledges receipt of the Draft Community Benefits Charge Strategy and By-law, which will be presented to Council in early December. On behalf of our Halton forum members, BILD would like to take this opportunity to thank City staff and the consultant team for their collaboration with the development industry through the City's CBC Consultation Committee. We greatly value the ongoing dialogue and look forward to continuing this constructive engagement as the process progresses.

To support our review, BILD retained Ira Kagan of Kagan Shastri DeMelo Winer Park LLP and Daryl Keleher of Keleher Planning & Economic Consulting (KPEC) to analyze the Draft CBC Strategy and related materials. Enclosed, please find their respective comments on both the strategy and the by-law. We look forward to a response prior to Council consideration.

As committed community-building partners, we appreciate the opportunity to provide our feedback. Should you have any questions or require further clarification, please do not hesitate to contact the undersigned.

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November 17, 2024

Memorandum to: Victoria Mortelliti
BILD

From: Daryl Keleher, MCIP, RPP, Principal
Keleher Planning & Economic Consulting Inc.

Re: Burlington CBC
Our File: P1168

Keleher Planning & Economic Consulting Inc. was retained by BILD to review the City of Burlington's 2024 Community Benefits Charge Study ("2024 CBC Study"). This memorandum presents questions and comments stemming from my review of the 2024 CBC Study and draft CBC by-law, as well as other related documents.

Questions and Comments

- 1) Does the City have information on how much revenue was generated since the adoption of the 2022 CBC By-law, including information on how much the money was spent, what projects money was spent on, and what the year-end 2023 (or more recent) balance in the CBC reserve fund is?
- 2) The 2024 CBC Study is based on an estimated high-density land value of \$21.4 million per hectare. This has fallen by 16% since the 2022 CBC Study, where a per hectare land value of \$25.4 million per hectare was used. However, the 2024 CBC Study's land value estimate is based on a higher density per hectare, which has increased from 364 units/ha in the 2022 CBC Study to 490 units/ha in the 2024 CBC Study.

These implications of these two changes, when converted to an implied land value per buildable SF, implies that high-density land value in the City has actually fallen by 37% from \$78 per buildable square foot (per BSF) to \$49 per BSF. This should have a proportionate reduction in the expected CBCs per dwelling unit at the full 4% rate, from \$2,791 per unit to \$1,747 per unit. This may mean that the City should temper its revenue estimates in moving from the current per unit CBC rates to a 4% maximum rate.

Changes in Land Value, Burlington CBC Study Assumptions

		2022 CBC Study	2024 CBC Study	% Change
Land Value / Hectare	A	\$ 25,400,000	\$ 21,400,000	-16%
Units / Hectare Assumption	B	364	490	35%
Land Value / Unit	C=A/B	\$ 69,780	\$ 43,673	-37%
CBC Rate	D	4%	4%	
CBC per unit	E=DxC	\$ 2,791	\$ 1,747	-37%
Assumed Unit Size (sf)	F	900	900	
Land Value per Buildable SF	G=C/F	\$ 78	\$ 49	-37%

Source: KPEC based on City of Burlington 2024 CBC Study

- 3) The City's Parks Provisioning Master Plan (PPMP) shows that the City's parkland provision rate is 3.78 hectares per 1000 population, well in excess of the City-wide target parkland provision of 3.0 hectares per 1000.

Despite the City-wide surplus of parkland, the PPMP finds that there is a lack of parkland in MTSAs, including an estimated shortfall of 2.88 hectares in the Appleby GO MTSA, 6.62 hectares in the Aldershot GO MTSA, 7.76 hectares needed in the Burlington GO UGC/MTSA. In total, the PPMP identifies a total of over 50 hectares of parkland needs.

The capital program in the City's 2024 CBC Study is based on collecting funds towards an estimated \$141 million shortfall in Planning Act funding for parkland acquisition, however it is unclear from the PPMP or the 2024 CBC Study what residual amount is needed from each category/area (MTSAs, BUA, DGA, etc.), and how the residual amount that the CBC Study is seeking to recover (\$141 million) relates to the analysis from the PPMP.

The text from section 5.1 of the CBC Study, indicates that at \$21.4 million/ha, the \$373.9 million in parkland needs equates to 17.5 hectares of residual parkland need, but these figures are not found in the PPMP. Can clarification or calculations be provided to show how the \$141 million amount carried in the CBC Study was calculated?

- 4) Table 5-1 of the 2024 CBC Study shows a \$7.4 million deduction to CBC-eligible costs to account for "existing population incline". Can the details behind this calculated amount be provided?



The Corporation of the City of Burlington

City of Burlington By-law XX

A By-law to establish Community benefits Charges for the City of Burlington, and to repeal By-law 66-2022, Community Benefits Charges By-law for the City of Burlington (F-XX-XX)

Whereas the City of Burlington (the “City”) will experience growth through development and re-development; and

Whereas Council desires to impose Community Benefits Charges against land to pay for the capital costs of facilities, services and matters required because of development or redevelopment in the area to which the by-law applies; and

Whereas the *Planning Act, 1990* (the “Act”) provides that the council of a municipality may by by-law impose Community Benefits Charges against higher density residential development or redevelopment; and

Whereas a Community Benefits Charge strategy report, dated November 4, 2024, has been completed which identifies the facilities, services and matters that will be funded with Community Benefits Charges and complies with the prescribed requirements; and

Whereas the City has consulted with the public and such persons and public bodies as the City considers appropriate; and

Whereas on December 10, 2024, Council for the City of Burlington approved Report F-05-24, dated December 2, 2024, in which certain recommendations were made relating to the Community Benefits Strategy and By-law.

The Council of the City enacts as follows:

1. INTERPRETATION

1.1 In this By-law, the following items shall have the corresponding meanings:

“Act” means the *Planning Act, R.S.O. 1990, CHAPTER P.13*;

“Affordable Residential Unit” means a Dwelling Unit that meets the criteria set out in subsection 4.1 (2) or 4.1(3) of the *Development Charges Act, 1997, c.27* as amended;



“Apartment” means a dwelling unit in an apartment building;

"Apartment Building" means a residential building or the residential portion of a mixed-use building consisting of more than 3 dwelling units, which dwelling units have a common entrance to grade, but does not include a triplex, duplex, or townhouse. Notwithstanding the forgoing an Apartment Building includes a Stacked Townhouse;

“Attainable Residential Unit” means a Dwelling Unit that meets the criteria set out in subsection 4.1(4) of the *Development Charges Act, 1997, c.27* as amended;

“Bedroom” means a habitable room of at least seven (7) square metres, including a den, loft, study, or other similar area, but does not include a kitchen, bathroom, living room, family room, or dining room;

“Building” means any structure or building as defined in the *Ontario Building Code (O Reg 332/12 under the Building Code Act*, but does not include a vehicle;

“Building Code Act” means the *Building Code Act, 1992, SO 1992, c 23* as amended;

“Capital Costs” means growth-related costs incurred or proposed to be incurred by the City or a Local Board thereof directly or by others on behalf of, and as authorized by, the City or Local Board,

- (a) to acquire land or an interest in land, including a leasehold interest,
- (b) to improve land,
- (c) to acquire, lease, construct or improve buildings and structures,
- (d) to acquire, construct or improve facilities including,
 - (i) furniture and equipment, and
 - (ii) rolling stock;
- (e) to undertake studies in connection with any of the matters referred to in clauses (a) to (d) above, including the Community Benefits Charge strategy study,

required for the provision of Services designated in this By-law within or outside the City, including interest on borrowing for those expenditures under clauses (a) to (e) above;



“City” means The City of Burlington or the geographic area of the municipality, as the context requires;

“Community Benefits Charge” means a charge imposed pursuant to this By-law;

“Council” means the Council of the City of Burlington;

“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 increasing the size or usability thereof or any development requiring any of the actions described in subsection 2.4(a), and includes Redevelopment;

"Dwelling Unit" means a room or suite of rooms used, or designed or intended for use by one person or persons living together, in which culinary and sanitary facilities are provided for the exclusive use of such person or persons;

“Grade” means the average level of proposed or finished ground adjoining a building at all exterior walls;

“Land” (or “Lot”) means, for the purposes of this By-law, the lesser of the area defined as:

- (a) The whole of a parcel of property associated with the Development or Redevelopment and any abutting properties in which a person holds the fee or equity of redemption in, power or right to grant, assign or exercise a power of appointment in respect of, or;
- (b) The whole of a lot or a block on a registered plan of subdivision or a unit within a vacant land condominium that is associated with the Development or Redevelopment;

But not including any hazard lands, natural heritage features, or ecological buffers identified in the City’s Official Plan, an approved Secondary Plan, or through an environmental impact study accepted by the City.

“Owner” means the owner of Land or a person who has made application for an approval for the Development of land for which a Community Benefits Charge may be imposed;



“Prescribed” means prescribed in the regulations made under the Act;

“Redevelopment” means the construction, erection or placing of one or more Buildings on Land where all or part of a Building on such Land has previously been demolished, or changing the use of a Building from a Non-Residential Use to a Residential Use, or changing a Building from one form of Residential Use to another form of Residential Use and including any development or redevelopment requiring any of the actions described in subsection 2.4(a);

“Residential Unit” means a room or suite of rooms used, or designed or intended for use by one person or persons living together, in which culinary and sanitary facilities are provided for the exclusive use of such person or persons;

“Residential Use” means lands, buildings or structures used, or designed or intended for use as a home or residence of one or more individuals, and shall include, but is not limited to, a single detached dwelling, a semi detached dwelling, a townhouse, a plex, a stacked townhouse, an apartment building, a mobile home, a retirement residence and a residential dwelling unit accessory to a non-residential use;

“Service” means a service designated in subsection 1.3, and “Services” shall have a corresponding meaning;

“Stacked Townhouse” means a building containing two or more dwelling units, each dwelling separates horizontally and/or vertically from another dwelling unit by a common wall;

“Storey” means the portion of a building, excluding roof top enclosure space used for no other purpose than roof top access, and/or elevators and other building service equipment, that is:

- (a) that is situated between the top of any floor and the top of the floor next above it,
or
- (b) that is situated between the top of the floor and the ceiling above the floor, if there is no floor above it.

“Valuation date” means, with respect to land that is the subject of development or redevelopment,



- (a) the day before the day the building permit is issued in respect of the development or redevelopment, or
- (b) if more than one building permit is required for the development or redevelopment, the day before the day the first permit is issued.

“Zoning By-Law” means any by-laws enacted by the City under section 34 of the *Planning Act*.

1.2 The reference to any applicable statute, regulation, by-law, or to the Official Plan in this Community Benefits Charge By-law shall be deemed to refer to the statute, regulation, by-law, and/or Official Plan as they may be amended from time to time and shall be applied as they read on the date on which Community Benefits Charges are due to the City.

Designation of Services

- 1.3 A Community Benefits Charge may be imposed in respect of the following:
- (a) Land for park or other public recreational purposes in excess of lands dedicated or cash-in-lieu payments made under section 42 or subsection 51.1 of the *Planning Act*.
 - (b) Services not provided under subsection 2(4) of the *Development Charges Act*.
 - (c) As per the November 4, 2024, Community Benefits Charges Strategy, the City intends to recover Capital Costs relating to the following services through this by-law:
 - (i) Parkland.

2. PAYMENT OF COMMUNITY BENEFITS

- 2.1 Community Benefits Charge shall be payable by the Owner of Land proposed for Development in the amounts set out in this By-law where:
- (a) the Land proposed for Development is located in the area described in subsection 3.2; and



- (b) the proposed Development requires any of the approvals set out in subsection 2.4(a).

Area to Which By-law Applies

- 2.2 Subject to subsection 2.3, this By-law applies to all lands in the City.
- 2.3 This By-law shall not apply to lands that are owned by and used for the purposes of:
- (a) The City or a Local Board thereof;
 - (b) a Board of Education;
 - (c) The Region of Halton, or a Local Board thereof.

Approval for Development

2.4

- (a) A Community Benefits Charge shall be imposed only with respect to Development that requires one or more of the following approvals:
- (i) the passing of a Zoning By-Law or of an amendment to a Zoning By-Law under section 34 of the *Planning Act*;
 - (ii) the approval of a minor variance under section 45 of the *Planning Act*;
 - (iii) a conveyance of land to which a by-law passed under subsection 50(7) of the *Planning Act* applies;
 - (iv) the approval of a plan of subdivision under section 51 of the *Planning Act*;
 - (v) a consent under section 53 of the *Planning Act*;
 - (vi) the approval of a description under section 9 of the *Condominium Act*, 1998, SO 1998, c 19, as amended, or any successor thereof; or
 - (vii) the issuing of a permit under the *Building Code Act, 1992* in relation to a building or structure.



- (b) Despite subsection 2.4(a) above, a Community Benefits Charge shall not be imposed with respect to:
- (i) Development of a proposed building or structure with fewer than five storeys at or above ground;
 - (ii) Development of a proposed building or structure with fewer than 10 residential units;
 - (iii) Redevelopment of an existing building or structure that will have fewer than five storeys at or above ground after the redevelopment;
 - (iv) Redevelopment that proposes to add fewer than 10 residential units to an existing building or structure; or
 - (v) such types of Development or Redevelopment as are prescribed.
- (c) For the purposes of this section, the first Storey at or above ground is the Storey that has its floor closest to Grade and its ceiling more than 1.8m above Grade.

Exemptions

- 2.5 Notwithstanding the provisions of this By-law, Community Benefits Charges shall not be imposed with respect to:
- (a) Development or Redevelopment of a building or structure intended for use as a long-term care home within the meaning of subsection 2(1) of the *Long-Term Care Homes Act, 2007*
 - (b) Development or Redevelopment of a building or structure intended for use as a retirement home within the meaning of subsection 2(1) of the *Retirement Homes Act, 2010*;
 - (c) Development or Redevelopment of a building or structure intended for use by any of the following post-secondary institutions for the objects of the institution:
 - (i) a university in Ontario that receives direct, regular and ongoing operating funding from the Government of Ontario;



- (ii) a college or university federated or affiliated with a university described in subparagraph (i);
 - (iii) an Indigenous Institute prescribed for the purposes of section 6 of the *Indigenous Institutes Act, 2017*.
- (d) Development or Redevelopment of a building or structure intended for use as a memorial home, clubhouse or athletic grounds by an Ontario branch of the Royal Canadian Legion.;
- (e) Development or Redevelopment of a building or structure intended for use as a hospice to provide end-of-life care;
- (f) Development or Redevelopment of a building or structure intended for use as residential premises by any of the following entities:
- (i) a corporation to which the *Not-for-Profit Corporations Act, 2010* 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;
 - (iii) a non-profit housing co-operative that is in good standing under the *Co-operative Corporations Act*.

Amount of Charge

- 2.6 The amount of a Community Benefits Charge payable in any particular case shall be determined as follows:
- (a) Where there is Development or Redevelopment other than that described in subsection 2.4(b) and which requires one or more of the approvals set out in subsection 2.4(a), on land to which this By-law applies, the Community Benefits Charges payable pursuant to this By-law shall be four (4) percent of the value of the land being developed as of the Valuation date.
 - (b) Land referred to in subsections 2.6(a) and 2.6(c) means the entire Parcel or Parcels on which the Development or Redevelopment is occurring regardless of



whether the Development or Redevelopment is only on a part of the Parcel or Parcels or is a phase of a Development or Redevelopment.

- (c) If a Development or Redevelopment consists of two or more above grade Buildings that will not be constructed concurrently, will be subject to separate building permits and are anticipated to be completed at different times, each phase of the Development or Redevelopment is deemed to be a separate Development or Redevelopment for the purposes of this By-law. The Community Benefits Charges for the first of the above grade Buildings will be calculated in accordance with subsection 2.6(a). For each subsequent above grade Building the Community Benefits Charges payable shall be calculated as follows:

4% of the value of the land being developed as of the Valuation Date minus the Community Benefits Charges payable for the previous above grade Building(s).

If the difference in the aforesaid calculation is zero or a negative value no Community Benefits Charge is payable, and no credit or refund will be payable.

- (d) Notwithstanding subsections (a), (b), or (c), the amount of a Community Benefits Charge payable in any particular case shall not exceed an amount equal to the prescribed percentage of the value of the land, as of the Valuation date, multiplied by the ratio of "A" to "B" where, "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" is the floor area of all buildings and structures that will be on the land after the Development or Redevelopment.

- (e) Development or redevelopment that includes affordable residential units, attainable residential units, or residential units described in subsection 4.3(2) of the *Development Charges Act*, the Community Benefits Charge applicable to such a development or redevelopment shall not exceed the amount determined under subsection 37(32) multiplied by the ratio of A to B where:

"A" is the gross floor area of all buildings that are part of the Development or Redevelopment minus the gross floor area of all affordable residential units, attainable residential units and residential units described in subsection 4.3 (2) of the *Development Charges Act*; and



“B” is the gross floor area of all buildings that are part of the Development or Redevelopment.”

In-Kind Contributions

- 2.7 The City may, at its discretion, allow an Owner of Land to provide to the City facilities, services or matters required because of Development or Redevelopment in the area to which the By-law applies in lieu, or partially in lieu of a Community Benefits Charge that would otherwise be payable.
- 2.8 For in-kind contributions pursuant to the preceding subsection to be considered, an application for consideration of in-kind contributions must be submitted to the City with supporting documentation as to the suggested value thereof no less than 180 days prior to the first building permit being granted for the proposed Development or Redevelopment.
- 2.9 In-kind contributions pursuant to subsection 2.7 shall only be accepted as if the same are approved by resolution of Council. The determination of Council as to whether in-kind contributions shall be accepted in full or partial satisfaction of Community Benefits Charges shall be final and binding.
- 2.10 The value attributed to an in-kind contribution under subsection 2.7 shall be as determined by Council, based on one or more third-party valuations to the satisfaction of Council. Council's determination of the value to be attributed to any in-kind contribution shall be final and binding.

delete the word "as"

Time of Payment of Community Benefits Charges

Section 2.11 violates s.37.1(3) of the Planning Act and should be deleted in its entirety. There is no CBC payable where there exists a prior s.37 agreement.

- 2.11 Any developments that were subject to an agreement under the prior Section 37 of the *Planning Act* prior to this by-law coming into force and effect shall have the amount paid under the Section 37 agreement credited against the Community Benefit Charge payable:
- (a) The amount credited against the charge payable shall be the amount paid under the prior Section 37 agreement that relates to the proposed Development
 - (b) In no case shall the credit be greater than the Community Benefits Charge otherwise payable.



Section 2.12 violates s.37.1(3) of the Planning Act and should be deleted in its entirety. There is no CBC payable where there exists a prior s.37 agreement.

Credits

2.12 Any developments that were subject to an agreement under the prior Section 37 of the *Planning Act* prior to this by-law coming into force and effect shall have the amount paid under the Section 37 agreement credited against the Community Benefit Charge payable:

- (a) The amount credited against the charge payable shall be the amount paid under the prior Section 37 agreement that relates to the proposed Development
- (b) In no case shall the credit be greater than the Community Benefits Charge otherwise payable.

Interest on Refunds

2.13 If it is determined that a refund is required, the City shall pay interest on a refund in accordance with subsections 37(28) and 37(29) of the Act at a rate not less than the prescribed minimum interest rate, from the day the amount was paid to the municipality to the day it is refunded.

3. SEVERABILITY

3.1 If, for any reason, any provision of this By-law is held to be invalid, it is hereby declared to be the intention of Council that all the remainder of this By-law shall continue in full force and effect until repealed, re-enacted, amended or modified.

4. DATE BY-LAW IN FORCE

4.1 This By-law shall come into effect at 12:01 A.M. on January 1, 2025.

5. REPEAL

5.1 By-law 66-2022 is hereby repealed upon the coming into force of this By-law.

Passed this 10th day of December 2024.

Mayor Marianne Meed Ward _____

City Clerk Kevin Arjoon _____