



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Economic Development Division

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| TO: | Mayor and Members General Issues Committee |
| COMMITTEE DATE: | June 15, 2016 |
| SUBJECT/REPORT NO: | Hamilton Multi-Residential Property Investment Program and Hamilton Tax Increment Grant Program – Change in Corporate Control – 137 - 149 Main Street West, Hamilton (PED16132) (Ward 2) |
| WARD(S) AFFECTED: | Ward 2 |
| PREPARED BY: | Hazel Milsome (905) 546-2424 Ext. 2755 |
| SUBMITTED BY: | Jason Thorne General Manager Planning and Economic Development Department |
| SIGNATURE: | |

RECOMMENDATION

- (a) That prior to the sale by Azim Kassam of his 50% shares of Jackson Hospitality Inc. to Jose Fernandez which would result in Jose Fernandez being 100% shareholder and Director of Jackson Hospitality Inc., the \$2,325,000 loan advanced under the Hamilton Downtown Multi-Residential Property Investment Program to Jackson Hospitality Inc. for the development of 137 - 149 Main Street West, Hamilton be paid in full;
- (b) That the City consents to the transfer of Azim Kassam’s shares of Jackson Hospitality Inc. to Jose Fernandez and further consents to the approval for the grant under the Hamilton Tax Increment Grant Program given by City Council on April 10, 2013 to Jackson Hospitality Inc. continuing upon Jose Fernandez being 100% shareholder and Director of Jackson Hospitality Inc.;
- (c) That the Mayor and City Clerk be authorized and directed to execute the Grant Agreement in a form satisfactory to the City Solicitor.

EXECUTIVE SUMMARY

The shareholders of Jackson Hospitality Inc. are Azim Kassam (50%) and Jose Fernandez (50%). Azim Kassam has agreed to sell his shares in Jackson Hospitality Inc. to Jose Fernandez. Corporate control of Jackson Hospitality Inc. will change upon

the sale of the shares held by Azim Kassam which would result in Jose Fernandez being 100% shareholder and Director of Jackson Hospitality Inc. Under the terms of the Hamilton Downtown Multi-Residential Property Investment Program (HDMRPIP), and the Hamilton Tax Increment Grant Program (HTIGP), the owner may not sell any of their shares which results in the transfer of the legal or beneficial interest of any of the shares of the owner without the written consent of the City being first obtained.

Jose Fernandez has agreed to pay in full the \$2,325,000 loan advanced under the HDMRPIP upon his purchase of the 50% shares of Jackson Hospitality Inc. held by Azim Kassam. Staff supports the continuation of the grant under the HTIGP upon the aforementioned transaction as Jackson Hospitality Inc. will continue to be the registered owner of the property and an individual who was a 50% shareholder would own 100% of the shares. The HTIGP prohibits a transfer of shares unless consented to in writing by the City.

Alternatives for Consideration – See Page 6

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: **HDMRPIP:** The cost to fund the HDMRPIP is the interest lost to the City which is funded through Urban Renewal's operating budget contained in Account Number 52901-815010. Repayment of the \$2,325,000 loan under the HDMRPP would result in a reduced interest cost to Urban Renewal's operating budget until additional loans under the program are approved by City Council and advanced.

As of April 30, 2016, \$19,142,680 was outstanding in loans under the HDMRPIP that are in various stages of repayment. There were no loans committed that had not been advanced. Therefore, based on a maximum of \$35 M in loans being out at one time, there is the potential of an additional \$15,857,320 in future loans being approved by City Council and advanced. However, Report PED16114 to be considered by City Council May 25, 2016 recommends approval of a \$4,811,225 loan for the development of 220 Cannon Street East, Hamilton under the HDMRPIP. If approved, \$11,046,095 would be available for future loans being approved by City Council and advanced. Repayment of the \$2,325,000 being considered in Report PED16132 would bring the total to \$13,371,095.

HTIGP: The City will collect full property taxes on the property and, in turn, provide a grant for five years, declining each year after the first year by 20%, based on the increase in the municipal portion of the taxes, post-development completion of 137 - 149 Main Street West, Hamilton. Following year one of the grant payment, the City will start to realize the positive results of the Program from a financial perspective. In April 2013,

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City Council approved the estimated tax increment over five years totalling \$302,553.55 of which the applicant would receive a grant totalling \$181,532.11 and the City retaining taxes totalling \$121,021.44.

The estimated grant was based on the projection that the proposed redevelopment would increase the current value assessment (CVA) of the property from \$745 K to approximately \$6.5 M. The municipal share of the annual tax increase (municipal tax increment) was projected to be \$60,510.71 with the five-year grant estimated at \$181,532.11. Upon development projects approved for grants under the HTIGP being completed and the Municipal Property Assessment Corporation (MPAC) reassessing the property, staff informs Council through an Information Update of the actual amount of the grant. In late 2015 the City received the Final Supplemental Assessment Roll for 2015 that included 137 - 149 Main Street West. Partial year supplemental assessments were levied by MPAC in and for 2015 with property taxes billed as a result. 2016 is the first full year of assessment at \$10,991,000. The estimated tax increment over five years totals \$566,221.60 of which the applicant would receive a grant totalling \$339,732.94 and the City will retain taxes totalling \$226,488.66. The first year grant cheque will be advanced December 2016 estimated at \$113,244.32.

Staffing: Grant payments under the HTIGP are processed by the Urban Renewal Section and Taxation Division. There are no additional staffing requirements.

Legal: Section 28 of the *Planning Act* permits a municipality, in accordance with a Community Improvement Plan, to make loans and grants which would otherwise be prohibited under Section 106(2) of the *Municipal Act*, to registered / assessed owners and tenants of lands and buildings. A Community Improvement Plan can only be adopted and come into effect within a designated Community Improvement Project Area. Changes to a Community Improvement Plan or Community Improvement Project Area require formal amendments as dictated by the *Planning Act*.

The grant will be supported by a Grant Agreement developed in consultation with the Legal Services Division and will be executed by the applicant prior to commencing grant payments.

HISTORICAL BACKGROUND

HDMRPIP: The HDMRPIP applies to properties within the Downtown Hamilton Community Improvement Project Area. The Program is intended to provide 0% interest loans for residential development and uses accessory to the residential development

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such as parking. Terms of the Program offer a 0% interest loan to a maximum of 25% of the cost to construct budget.

The HDMRPIP was developed as a catalyst for stimulating residential development within Downtown Hamilton. Projects that are funded under the Program assist in achieving an increased Downtown density that brings more people and more activity into the Downtown and an increased demand for shops, restaurants and nightlife.

City Council at its meeting held April 10, 2013, approved a conditional loan commitment under the HDMRPIP in the amount of \$2,325,000 for Jackson Hospitality Inc., the registered owner of the property at 137 - 149 Main Street West. At that time, Azim Kassam owned 100% of the shares of the Jackson Hospitality Inc. On May 28, 2014, City Council amended its resolution of April 10, 2013 adding additional conditions to the loan, and recognized that a change in corporate control had occurred when Jose Fernandez became a 50% shareholder.

The loan commitment was for the development of a seven-storey, 73 unit apartment building being constructed on a former vacant commercial lot. The project is now complete.

HTIGP: The terms of the HTIGP offers a five-year grant not to exceed the increase in municipal realty taxes as a result of the development. The grant is to be in an amount which does not exceed 100% of the municipal realty tax increase during the first year, 80% in year two, 60% in year three, 40% in year four and 20% in year five.

City Council at its meeting held April 10, 2013 approved an estimated five-year grant in the amount of \$181,532.11 for Jackson Hospitality Inc. (Azim Kassam) for the development of the aforementioned project.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Report PED16132 relates to applications under the HDMRPIP and HTIGP which are contained within the Downtown and Community Renewal Community Improvement Plan.

A “multiple dwelling” is a permitted use in the applicable Downtown Mixed Use (D3) Zone (Zoning By-law 05-200). The seven-storey building was accommodated within the 30 metre maximum building height. The Downtown Hamilton Secondary Plan anticipates buildings oriented to the street. It applies the “Central Business District” land use designation to the north portion of the property fronting Main Street. Office, institutional, residential and retail uses will be accommodated in this area” (Policy A.6.2.5.3.1.3b). Mid-rise apartments are permitted in the Mixed Use land use designation applied to the south portion of the property reaching Jackson Street: “Mixed Use areas are intended to serve as a buffer between intensive commercial

activities and the residential areas within and around the Downtown” (Policy A.6.2.6.3.3a).

The completed project meets the requirements of the Zoning By-law and the intent of the Urban Hamilton Office Plan.

RELEVANT CONSULTATION

Staff from the Taxation Division, Corporate Services Department and the Legal Services Division, City Manager’s Office, were consulted and the advice received is incorporated into Report PED16132.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

The terms of the HDMRPIP dictates the following:

“Change of Corporate Control

Where the Owner is a corporation the Owner covenants and agrees that in the event that:

- a) the Owner fails to supply the City, in a form satisfactory to the City such information relating to the ownership of its shares as the City may from time to time require: or*
- b) without the written consent of the City first had and obtained:*
 - i) the Owner issues or redeems any of its shares or transfers any of its shares;*
 - ii) there is a sale or sales of the shares of the Owner which result in the transfer of the legal or beneficial interest of any of the shares of the Owner; or*
 - iii) the Owner amalgamates, merges or consolidates with any other corporation*

and the result of any of the foregoing is a change in the effective control of the majority of the voting shares of the Owner, or the requested information is not provided, then all monies secured by the mortgage together with accrued interest thereon shall forthwith become due and payable at the option of the City and the City’s powers of sale hereby given and all other remedies for enforcement shall be exercisable.”

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The terms of the HTIGP has similar language however refers to future grant payments under the program ceasing at the absolute discretion of the City.

Staff was advised of the pending sale of the shares of Jackson Hospitality Inc. in April 2016. At that time the shareholders requested that both the loan and the tax grant continue upon change of ownership of the Corporation.

One of the objectives of the financial incentives is to encourage development in specific geographic areas of the City. The development at 137 - 149 Main Street West has been completed and the City's objective has been met. The financial incentives are not to be transferred to new owners of property as they could inflate the market value of the property however, in this instance, ownership of the property will not change: Jackson Hospitality Inc. will remain as the registered owner of 137 - 149 Main Street West and one of the shareholders will be 100% shareholder. Therefore, staff supports the continuation of the tax grant under the HTIGP. Staff would not support the continuation of a grant if all shareholders were changing or the registered owner of the property was changing.

The loan advanced under the HDMRPIP is joint and several guaranteed by Azim Kassam and Jose Fernandez. Therefore, staff's recommendation is that the loan be paid in full as the personal guarantees of the loan would change and the City's risk would increase. Jose Fernandez has agreed to repay the loan in full.

ALTERNATIVES FOR CONSIDERATION

Decline the Continuation of the Grant

Council may decide to decline the continuation of the grant under the HTIGP. However the registered owner of 137 - 149 Main Street West would remain as Jackson Hospitality Inc. and one of the original shareholders would own 100% of the shares. This alternative is not recommended.

ALIGNMENT TO THE 2012 – 2015 STRATEGIC PLAN

Strategic Priority #1

A Prosperous & Healthy Community

WE enhance our image, economy and well-being by demonstrating that Hamilton is a great place to live, work, play and learn.

Strategic Objective

- 1.1 Continue to grow the non-residential tax base.
- 1.3 Promote economic opportunities with a focus on Hamilton's downtown core, all downtown areas and waterfronts.

- 1.5 Support the development and implementation of neighbourhood and City wide strategies that will improve the health and well-being of residents.
- 1.6 Enhance Overall Sustainability (financial, economic, social and environmental).

Strategic Priority #2

Valued & Sustainable Services

WE deliver high quality services that meet citizen needs and expectations, in a cost effective and responsible manner.

Strategic Objective

- 2.3 Enhance customer service satisfaction.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Report PED16132 - Location Map

HM/dt