



**CITY OF HAMILTON**  
**PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT**  
**Economic Development Division**

**CITY MANAGER'S OFFICE**  
**Legal Services Division**

<b>TO:</b>	Mayor and Members General Issues Committee
<b>COMMITTEE DATE:</b>	January 18, 2017
<b>SUBJECT/REPORT NO:</b>	Criminal Conviction Record Checks for Applicants under Certain City Financial Incentives (PED17004) / (LS17003) (City Wide)
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY:</b>	Hazel Milsome (905) 546-2424 Ext. 2755 Lisa Pasternak (905) 546-2424 Ext. 7292
<b>SUBMITTED BY:</b>	Jason Thorne General Manager Planning and Economic Development Department  Janice Atwood-Petkovski City Solicitor City Manager's Office
<b>SIGNATURE:</b>	

**RECOMMENDATION**

- (a) That the following Policy amendment be inserted into the Program Descriptions of the financial incentives administered by the Planning and Economic Development Department and highlighted in application packages for financial incentives:

“Without limiting the discretion as set out in paragraph XX herein, the City Council or its delegate, whether or not an Applicant satisfies the requirements of the Program, may reject any application received from an Applicant where there is credible information that an Applicant has been involved recently or repeatedly in illegal activity supporting the conclusion that he or she will not conduct himself or herself with honesty and integrity in undertaking the activity, operation or business for which the loan / grant is sought. For Corporate Applicants, it will be the Corporation and the principals of the Corporation whose illegal activity will be considered.”

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## **EXECUTIVE SUMMARY**

This Report recommends amending the Financial Incentive Policy Descriptors to set out how information about illegal activity may be used, explicitly authorizing Council or its delegate to refuse applications where there is credible information that an Applicant has been involved recently or repeatedly in illegal activity supporting the conclusion that he or she will not conduct himself or herself with honesty and integrity in undertaking the activity, operation or business for which the loan / grant is sought.

The vetting process for applications for financial incentives, which currently includes a review of illegal activity, will be amended as well. Application forms for grants that exceed \$25,000 or loans that are \$100,000 or more would ask the Applicant if they have been convicted of a criminal offence for which a pardon has not been issued or granted. The Applicants would be required to certify the answer they provide. For Corporate Applicants, the question would be answered for the Corporation and the principals of the Corporation. In addition, the Google search already undertaken for illegal activity on each loan application will be undertaken for each grant application as well.

### ***Alternatives for Consideration – Not applicable***

## **FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

**Financial:** The recommendation has no financial implications.

**Staffing:** There will be no additional staffing requirements resulting from Council's approval of Report PED17004 / LS17003. Applications to the Financial Incentive Programs will continue to be processed by the Urban Renewal Section of the Planning and Economic Development Department.

**Legal:** Any City request for personal information for its loan / grant programs must meet the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA) tests of being necessary to the proper administration of the loan / grant programs while collecting the least of personal information possible. By limiting the request for information about criminal convictions to grants that exceed \$25,000 and loans of \$100,000 or more and to using the answer as well as the results of Google search only where there is credible information that an Applicant has been involved recently or repeatedly in illegal activity supporting the conclusion that he or she will not conduct himself or herself with honesty and integrity in undertaking the activity, operation or business for which the loan / grant is sought, the City meets these tests.

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## **HISTORICAL BACKGROUND**

The City offers Financial Incentive Programs in the form of loans and grants to assist with various costs associated with development / redevelopment of properties in specific geographic areas within the City i.e. Downtown Hamilton, Community Downtowns, Mount Hope / Airport Gateway, Business Improvement Areas and commercial corridors as identified in the Downtown and Community Renewal Community Improvement Project Area. Incentives are also offered to properties designated under Parts IV or V of the *Ontario Heritage Act* that are located within the City of Hamilton including the rural area.

The following provides a list of the financial incentives:

- Hamilton Downtown, Barton and Kenilworth Multi-Residential Property Investment Program
- Hamilton Tax Increment Grant Program
- Office Tenancy Assistance Program
- Commercial Corridor Housing Loan and Grant Program
- Business Improvement Area Commercial Property Improvement Grant Program
- Commercial Property Improvement Grant Program
- Hamilton Heritage Property Grant Program
- Hamilton Community Heritage Fund Loan Program
- Hamilton Heritage Conservation Grant Program
- Barton / Kenilworth Tax Increment Grant Program
- Barton / Kenilworth Commercial Corridor Building Improvement Grant Program
- Barton / Kenilworth Planning and Building Fee Rebate
- ERASE Redevelopment Grant Program
- ERASE Study Grant Program
- Hamilton Downtown / West Harbourfront Remediation Loan Program
- LEED Grant Program

## **POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

Not Applicable.

## **RELEVANT CONSULTATION**

Information and Privacy Commissioner of Ontario.

## **ANALYSIS AND RATIONALE FOR RECOMMENDATION**

City Council at its meeting held August 16, 2012 directed staff to report back to the General Issues Committee with policy options that would give the discretion to reject loan and grant applications as a result of convictions listed in a recent criminal record.

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**SUBJECT: Criminal Conviction Record Checks for Applicants under Certain City Financial Incentives (PED17004) / (LS17003) Page 4 of 6**

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In August 2013, staff reported back in Report PED16214 / LS16024 recommending a policy amendment to the financial incentives that would provide City Council the discretion to reject any application received from an applicant where the applicant's criminal conviction record raises concerns. Staff were directed to submit the proposed amendment to the Information and Privacy Commissioner (IPC) for comment prior to implementation.

The Information and Privacy Commissioner has responded to staff, emphasizing that the City must comply with section 28(2) of the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA), which requires that any personal information collected, including criminal conviction records, must be necessary to the proper administration of the loan / grant programs. In addition, the City, in determining what is necessary to the proper administration of the loan / grant programs, must collect the least amount of personal information possible. In other words, if information short of a criminal conviction record will suffice for "proper administration", then only that information can be collected.

There is currently a thorough vetting process for applications for financial incentives. The vetting process collects information about illegal activity. Illegal activity is not limited to criminal convictions, and could, for example, include orders under provincial legislation or municipal By-laws affecting a property.

Applications for all financial incentives are subject to an extensive review by Planning and Economic Development Department staff and governed by the terms of each program. The review includes the information listed below. Only the outstanding taxes, if the property is owned by individuals, are personal information and are obtained with the individuals' permission:

- Zoning Verification (*to ensure compliance*)
- Building Code, Fire Code and Property Standards violations (*violations to be addressed prior to final advancement of funding*)
- Outstanding Taxes on property to be developed as well as taxes on other properties in Hamilton owned by the application (*any outstanding taxes to be paid prior to advancement of monies if approved for funding*)
- Title Search and Corporate Search (*to confirm ownership and individuals behind the corporation and, for loans, to confirm the amount of the mortgages registered on title*)
- Search to determine if the applicant is in litigation with the City of Hamilton (*to ensure the applicant is not in litigation with the City of Hamilton and the commercial relationship has not been impeded*)
- Review by Building Inspector of quotes for work proposed (*to ensure the quotes are competitive*)

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**SUBJECT: Criminal Conviction Record Checks for Applicants under Certain City Financial Incentives (PED17004) / (LS17003) Page 5 of 6**

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As listed below, additional information is reviewed for loan applications. Of these items, only the personal net-worth statements are personal information and are obtained with the individuals permission.

- Google search
- Credit check
- Bankruptcy check
- Evaluation of personal-net-worth statements, financial statements, pro-formas, cash-flow projections, marketing plans and the results of the Google search, credit check and bankruptcy check is undertaken by a multi-disciplinary team of staff comprising Urban Renewal and Financial Planning and Policy to determine applicants' financial capacity to repay loans under the Hamilton Downtown, Barton and Kenilworth Multi-Residential Property Investment Program
- Review of development proposals by a multi-disciplinary team of staff comprising Urban Renewal, Community Planning and Design and Development Planning
- Review of personal net-worth statements, financial statements, pro-formas and cash-flow projects undertaken by Urban Renewal for all other loan applications
- Peer review by Real Estate staff of appraisals submitted with applications

### **Proposed Amendments**

Staff is recommending an amendment to the Policy Descriptors that explicitly authorizes Council or its delegate to refuse applications where there is credible information that an Applicant has been involved recently or repeatedly in illegal activity supporting the conclusion that he or she will not conduct himself / herself with honesty and integrity in undertaking the activity, operation or business for which the loan / grant is sought.

Application forms for all applications for grants that exceed \$25,000 or loans that are \$100,000 or more will be amended to ask the applicant if they have been convicted of a criminal offence for which a pardon or record suspension has not been received (record suspensions, formerly pardons, can be obtained five years after the sentence for a summary conviction is completed and ten years after the sentence for an indictable conviction is completed). The applicant would be asked to certify the answer they provide. For Corporate Applicants, it will be the corporation and the principals of the Corporation who will be considered.

At these levels of funding there is sufficient risk to the City to support asking this question. The question asks for the same information as would be contained in a criminal record check as authorized under the *Police Record Checks Reform Act, 2015* (which has been enacted but is not yet in force).

In addition, the Google search already undertaken for illegal activity on each loan application will be undertaken for each grant application as well.

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**SUBJECT: Criminal Conviction Record Checks for Applicants under Certain City Financial Incentives (PED17004) / (LS17003) Page 6 of 6**

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The results of the certified answer and the Google search will be used to determine if there is credible information that an Applicant has been involved recently or repeatedly in illegal activity supporting the conclusion that he or she will not conduct himself or herself with honesty and integrity in undertaking the activity, operation or business for which the loan / grant is sought. If there is such credible information, staff will pursue the details with the applicant which may include requiring a criminal record check being submitted. The applicant will have the opportunity to withdraw their application, or to confirm that staff are to continue processing the application.

This process, as amended, continues to meet the requirements of MFIPPA: that the least amount of personal information possible be collected for the proper administration of the programs. It also meets the generally accepted principles behind current reforms to the use of criminal conviction information in various application processes, such as hiring and university / college applications, which require assessing mitigating factors including how recent and frequent any conviction(s) are as well as their relatedness to the application.

**ALTERNATIVES FOR CONSIDERATION**

Not Applicable.

**ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN**

**Economic Prosperity and Growth**

*Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.*

**Healthy and Safe Communities**

*Hamilton is a safe and supportive city where people are active, healthy, and have a high quality of life.*

**APPENDICES AND SCHEDULES ATTACHED**

Not Applicable.

HM/JAP/dt