RECOMMENDATION(S)

(a) That the Tenant Defence Fund Pilot Program as outlined in the Tenant Defence Fund Program Guidelines attached as Appendix “A” to Report HSC19011 be approved;

(b) That the General Manager of the Healthy and Safe Communities Department or his designate be delegated the authority to administer the Tenant Defence Fund Pilot Program and approve grant applications;

(c) That the General Manager of the Healthy and Safe Communities Department or his designate be delegated the authority to revise the Tenant Defence Fund Program Guidelines as needed in accordance with current community needs and the funds available for the program; and,

(d) That the Outstanding Business List items identified as Landlord and Tenant Board Decisions, and the Tenant Defence Fund, be removed from the OBL and considered complete.

EXECUTIVE SUMMARY

On December 19, 2018, Council directed staff to establish a Tenant Defence Fund (TDF) to assist with Above Guideline Increase (AGI) applications at the Landlord and Tenant
Board (LTB). This report proposes a Tenant Defence Fund Pilot Program (TDFPP) to provide financial and other support to assist eligible tenant groups prepare and present a defence against AGI applications.

The proposed TDFPP will provide a grant of up to $1,000 to groups of tenants to defray the costs of hiring a paralegal/lawyer licensed by the Law Society of Ontario and the costs of case preparation to defend AGI applications at the Landlord Tenant Board.

Additional services may also be provided to the tenant group by the City of Hamilton Housing Services Tenant Relations Officer ("TRO"), prior to the group retaining a legal agent or if the tenant group chooses to represent themselves at the LTB hearing and requires administrative support or direction.

The recommendation to adopt the TDFPP does not suggest that AGI applications are not a legitimate means to offset exceptional necessary capital expenditures landlords may incur. The costs of some repairs are appropriately covered through fair rent increases and many AGIs meet the criteria in the Residential Tenancies Act, 2006 (RTA). Rather, the intent of this pilot is to provide tenants, many of whom are vulnerable and lack resources, the financial assistance and support to defray the costs of participating in an AGI hearing, levelling the playing field in the legal forum of the Landlord and Tenant Board (LTB).

On December 19, 2018, Council also directed staff to investigate the staffing and timeliness of other types of decisions by the LTB, consult with the Ontario Ombudsman, and report back to the Healthy and Safe Communities Committee. This report includes information from the LTB on their response standards.

Alternatives for Consideration – Not Applicable

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: On December 19, 2018, Council directed staff to establish a Tenant Defence Fund in the amount of $50,000 from the 2018 Housing Services Division year end positive variance to assist tenants opposing Above Guideline Increase applications at the Landlord Tenant Board. Capital Project ID 673184801 has been set up for the Tenant Defence Fund with a balance of $50,000. Any additional funds for the Tenant Defence Fund would require Council approval.

Staffing: Staffing to administer and support the TDFPP will be provided through existing Housing Services Division staff. During the pilot period the time required to administer the program will be monitored and those impacts will be reflected evaluation of the pilot.

Legal: There are no legal implications associated with Report HSC19011.
HISTORICAL BACKGROUND

On December 19, 2018, Council approved a motion establishing a TDF to assist tenants defend against Above Guideline Increase applications to the Landlord and Tenant Board as follows:

(a) That $50,000 be allocated to establish a Tenant Defence Fund in the City of Hamilton to assist with Above the Guidelines Increase applications at the Landlord and Tenant Board;

(b) That Housing Services staff report back to the Healthy and Safe Communities Committee with a Terms of Reference that addresses the intake and granting process; and,

(c) That the Tenant Defence Fund be funded from the existing Housing Services year end positive variance (estimated to be $2.8M in 2018).

Additionally, on December 19, 2018, Council directed staff:

“to investigate the staffing and timeliness of Decisions by the Landlord and Tenant Board and consult with the Ontario Ombudsman, with a report back to the Healthy and Safe Communities Committee.”

This report includes information from the LTB with respect to their response standards.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

There are no policy implications or legislated requirements associated with Report HSC19011.

RELEVANT CONSULTATION

Staff consulted with the following organizations and people in the preparation of the TDFPP and this report:

- City of Toronto, Shelter, Support and Housing Administration, Housing Stability Services provided information regarding the Toronto TDF program model which is outlined in the Analysis and Rationale Section as well as recent program changes and funding increases. Toronto staff noted the importance of the education and support components of the TDF program.

- Federation of Metro Tenants’ Association provided information as to its role in the Toronto TDF program and emphasized the need for outreach and education to tenants.
• Various tenants provided their experience and the challenges for tenants with the LTB process for AGI applications and emphasized the need for tenant groups to hire a legal agent.

• Hamilton Community Legal Clinic (HCLC) outlined their role in providing tenant support at the LTB and the gaps in support to tenants at the LTB. Due to their limited resources and the much larger volume of eviction cases compared to AGI cases, the HCLC does not provide representation for AGI cases, but provides summary or basic advice.

• The Landlord Engagement Specialist at the Hamilton Housing Help Centre provided comments on AGIs and the challenges Hamilton`s rapidly increasing rents create for tenants.

• Representatives from the Hamilton District Apartment Association provided a landlord perspective on the concept of a TDF and expressed concern about perceptions of bias on the part of the City in providing direct support to tenants in LTB disputes. They also noted that there are benefits to the landlord if tenant groups having legal representation. Landlord and Tenant Board provided data specific to Hamilton LTB cases, which is shown in Table 1 in the Analysis and Rationale Section of this report.

• City of Hamilton, Legal Services provided input on legal compliance and other program considerations for this report and the proposed TDFPP.

• City of Hamilton, Corporate Services, Financial Planning, Administration, and Policy reviewed and confirmed the financial aspects of this report.

ANALYSIS AND RATIONALE FOR RECOMMENDATIONS

A quickly tightening rental market has reduced Hamilton`s supply of affordable rental housing with more renters now competing for fewer affordable units. Since 2012, city-wide rents have increased annually by an average of 4.1%, a pace twice the rate of inflation that far surpasses income increases. Pressure on Hamilton`s rental market will continue to increase as more and more households are priced out of the GTA. While Hamilton rents are high, they remain lower relative to rents in the GTA.

A TDF may help maintain housing affordability in Hamilton by enabling some tenants to oppose unreasonable AGIs. Providing support to enable tenants to avoid excessive rent increases may prevent evictions that increase pressure on housing programs and funding and can lead to homelessness.

Some of Hamilton`s rental housing needs major repair, without which tenant safety could be at risk. Much of Hamilton`s purpose-built rental housing stock is old and many buildings either require major systems replacements such as roofs, parking garages, balconies,
elevators, etc., or have recently received such upgrades. Hamilton’s Housing and Homelessness Action Plan recognizes the need to rehabilitate Hamilton’s aging housing stock.

The cost of some repairs is appropriately covered through a fair rent increase and many AGIs meet the criteria in the RTA. The purpose of this report and the TDFPP are to address AGI applications that do not meet the RTA criteria and provide the opportunity for vulnerable tenants to participate in the legal forum of the LTB.

Above Guideline Increase Applications to the LTB

The Rent Increase Guideline is the maximum amount rents are allowed to be increased for sitting tenants in Ontario in any given year. It is released annually by the Ontario Government and is based on the Ontario Consumer Price Index. The Rent Increase Guideline applies to all rental units covered by the RTA. In 2019 (and 2018) it is 1.8%.

Landlords may apply to the LTB to raise rents above the Rent Increase Guideline if:

- The complex’s costs for municipal taxes or utilities have increased by an extraordinary amount;
- The landlord incurred eligible significant capital expenditures (renovations, repairs, replacements or additions); and,
- The landlord incurred additional operating costs related to security services or initiated security features.

Tenants, including groups of tenants, may dispute an AGI application they believe does not meet the RTA requirements, but are responsible to gather supporting documentation and make a case against the increase. This work must be completed in a short period of time and can be costly. Navigating the formal legal processes of the LTB and mounting a case is a significant challenge for many tenants who are not familiar with the LTB and/or have limited time or resources.

Details of the LTB process for AGI applications are outlined in the brochure "Information about Applications for a Rent Increase Above the Guideline" on the LTB website at http://www.sjto.gov.on.ca/ltb/brochures/.

Hamilton Community Legal Clinic

The Hamilton Community Legal Clinic (HCLC) offers a range of legal services to the community for a variety of legal matters, including housing issues. More specifically, the HCLC provides information, consultation, legal advice, and, in some circumstances, representation to tenants in need. Tenants who have received a notice from a landlord under the RTA or need information about their rights and obligations as a tenant, may seek assistance from the HCLC. There is no fee for receiving summary legal advice and representation may be provided to tenants who meet financial eligibility requirements.
As requests for the services of the HCLC surpass its limited resources and capacity, the clinic must make difficult choices about who to serve. Thus, in AGI cases the HCLC does not represent tenants, but provides summary advice. Summary advice outlines the procedures of the hearing, the legislation, and the roles and responsibilities of both parties. The HCLC also provides guidance on which case documents tenants are entitled to receive and obtaining records to support the tenants’ case. This means that tenants in need of legal representation for an AGI case are responsible for the costs themselves. The TDF is intended to fill this gap by providing legal representation and other supports to tenant groups facing AGIs.

AGI applications are frequently contested by tenants at the LTB, but this is challenging for tenants given their relative lack of support and resources when compared to landlords, particularly large landlords with the resources to hire professional legal experts.

Toronto Tenant Defence Fund Program Model

In 1999, the City of Toronto established their Tenant Defence Fund Program with the following components:

Grants: ($100,000/year as of 2019) grants are provided to tenant groups for the costs of a range of activities involved in disputing an AGI application. The grants are administered by the City of Toronto, and the levels are:

1) A Basic Grant of up to $1,000 to:
   - Prepare and hire legal representation to dispute an AGI application; or
   - Prepare and submit a tenant application regarding maintenance issues.

2) An Additional Grant of up to $5,000–$10,000 to:
   - hire expert advice to significantly support the tenant group in an AGI dispute;
   - dispute a landlord's appeal of a Board Order; or
   - apply for a judicial review of a Board Order to divisional court.

3) An Additional Grant of up to $15,000 to dispute an application before the Local Planning Appeal Tribunal to demolish rental homes or convert them to condominiums. Staff does not recommend this component of the Toronto program as rental unit demolition and conversion to condominium are Council decisions and beyond the scope of the council motion.

Outreach and Organizing: ($199,216) hands-on support is provided to help tenants organize and prepare for the hearing, administered through a contract with the Federation of Metro Tenants’ Association (FMTA).

Tenant Hotline: ($205,800) information is provided to tenants over the phone. Administered through a contract with the FMTA.
Toronto TDF eligibility criteria include:

- If there are fewer than 100 units in a complex, tenants from at least 25% of the affected units must sign on to the case; and,
- If there are 100 or more units, tenants of at least 25% of the affected units must sign, to a maximum of 30.

Proposed Hamilton Tenant Defence Fund Pilot Program

Staff propose the Hamilton TDFPP, utilizing the $50,000 suggested for this purpose. The proposed TDFPP would include two components:

1) A $1,000 grant for the purpose of hiring legal support from a paralegal or lawyer;

2) In addition to the $1,000 for legal representation, support services (up to a maximum value of $250) provided by the Housing Services Division for photocopying, printing, postage, and meeting space rental, either prior to a tenant group retaining a legal agent, or if the tenant group chooses to represent themselves. Support may also include services such as securing meeting space, help preparing the grant application, or other relevant services that are pre-approved by the Tenant Relations Officer, Housing Services Division.

Staff recommend these components for the TDFPP to stay within the allocated funding envelope, and because the consultation revealed that, with respect to AGI cases, the lack of legal representation and the costs of preparing a defence are the primary gaps that disadvantage tenants relative to their landlords.

Details of the proposed program can be found in the TDFPP Guidelines attached as Appendix “A” to this Report.

While Council requested that the TDFPP include an income threshold eligibility criterion, staff does not recommend this approach. An income requirement would be administratively problematic for a group application and would not contribute to the purpose of the program.

Advantages to hiring a legal agent:

Only lawyers or paralegals licensed by the Law Society of Ontario are proposed to be eligible to be paid by the TDFPP. Tenant groups may find it an advantage to hire a legal agent for several reasons:

- In defence against AGI applications, affected tenants can raise issues concerning outstanding repairs and maintenance orders. If there is an outstanding order, the AGI will not apply to that unit until the landlord complies with the order. A legal agent can more easily navigate this process that tenant groups.
• Tenants often feel a power imbalance when representing themselves against a corporate lawyer representing a landlord. While not all landlords have the resources to hire professional legal expertise, many, particularly large landlords, do. Even small landlords typically have more resources than tenants.
• A lawyer hired by a landlord may prefer negotiating or dealing with one legal agent rather than multiple tenants.

• Legal agents have greater experience and knowledge preparing cases against AGI applications, negotiating fair rent settlements, and appearing before the LTB.

• The Hamilton Community Legal Clinic (HCLC) only provides tenants facing AGI applications with summary advice and information on what to expect at the LTB. It does not represent tenants in AGI cases.

It has been determined that $1,000 is sufficient to hire a legal agent to prepare an AGI case and represent a tenant group at a LTB hearing.

Education and Outreach:

Education and outreach are integral to the success of a TDF Program and can empower tenants by helping them understand their rights and responsibilities and to shape their capacity in the future. The bulk of the funds allocated to the Toronto model are for education and outreach and these components are considered essential to the TDF process. With limited resources, there is an opportunity within the proposed Hamilton TDFPP to leverage an existing internal expertise using the Tenant Relations Officer in the Housing Services Division who can provide basic education, including LTB materials., help tenants organize to prepare for their defence, help tenants prepare the TDFPP grant application and build capacity to support groups of tenants to negotiate their rights with landlords long-term.

The HCLC provides summary advice about how to prepare and present a case against an unfair AGI application, and the TDFPP will enable tenant groups to hire a legal agent to provide legal expertise and representation. This approach ensures there is no duplication of existing services and funds are provided where most needed. The TDFPP will be reviewed after 18 months to determine whether this level of education and outreach is appropriate.

Numbers of Landlord and Tenant Board Case Types in Hamilton:

Over 2016-2018, the LTB received a total of 15,401 applications in Hamilton, according to data provided by the LTB. This total includes landlord, tenant and co-op applications of all types, including AGIs, terminations and evictions, and maintenance issues.

Table 1 (below) shows that this overall Hamilton case volume has remained quite consistent year over year and that AGI cases comprise only a small portion of the
approximately 5,200 annual cases. While AGI cases are a very small portion of LTB cases, the number doubled from 2017 to 2018.

### Table 1: Hamilton Landlord and Tenant Board Applications by Year and Type

<table>
<thead>
<tr>
<th>LTB Case Types</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Cases</td>
<td>% of total</td>
<td>Cases</td>
</tr>
<tr>
<td>Above Guideline Increase</td>
<td>18</td>
<td>0.35%</td>
<td>16</td>
</tr>
<tr>
<td>Terminations &amp; Evictions for Non-Payment of Rent</td>
<td>3,492</td>
<td>67%</td>
<td>3,478</td>
</tr>
<tr>
<td>Other (including termination &amp; eviction for other reasons, sublets, maintenance)</td>
<td>1,692</td>
<td>32%</td>
<td>1,705</td>
</tr>
<tr>
<td>Total</td>
<td>5,202</td>
<td></td>
<td>5,199</td>
</tr>
</tbody>
</table>

While the data shows that many more Hamiltonians are impacted by non-AGI than AGI applications, the TDFPP should apply only to AGIs because:

- The Hamilton Legal Clinic represents tenants for non-AGI cases and it would be inappropriate for the City to duplicate these services; and,

- Funding allocated for the TDFPP is limited to $50,000. This funding is expected to last for a year if there is no significant increase in AGI cases in 2019. However, $50,000 would be insufficient to provide representation for tenants for other types of LTB cases.

### Ontario Ombudsman

Although the Ombudsman is not an appeal body and cannot overturn LTB decisions, they review the fairness of the LTB processes. The LTB is required by law to have a code of conduct and a public complaints process. Complaints about the LTB are reviewed by the Ombudsman, and recommendations on processes are made when appropriate. Table 2 below shows the total number of complaints about the LTB made to the Ontario Ombudsman over the last three years. There are very few complaints to the Ombudsman about the LTB relative to the overall number of LTB cases. The Ombudsman does not track complaints by municipality.

### Table 2: Ontario-Wide Complaints to the Ombudsman about the LTB vs. Total Cases

<table>
<thead>
<tr>
<th></th>
<th>2015-2016</th>
<th>2016-2017</th>
<th>2017-2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complaints about the LTB</td>
<td>131</td>
<td>128</td>
<td>149</td>
</tr>
<tr>
<td>Total LTB Cases</td>
<td>71,514</td>
<td>73,206</td>
<td>72,511</td>
</tr>
</tbody>
</table>
Ontario LTB Service Standards

Service Delays:

Recently the LTB website has noted a delay in service: “Over past months, parties have experienced service delays at the Landlord and Tenant Board (LTB). The LTB continues to work with the government to improve its services. A number of experienced adjudicators have recently been reappointed and recruitment is under way to fill other adjudicator vacancies. On January 1, 2019, the LTB became part of the newly created Tribunals Ontario organization. A review will be conducted of all tribunals, including the LTB, to identify areas for improvement to make services more streamlined, cost-effective and efficient”.

LTB Service Standards:

In the last two years there has been a decrease in the number of LTB hearings and a modest increase in the time from application to hearing (see Table 3 below). The historical LTB service standard was to schedule hearings within 25 business days of the date of application and issue decisions within five days of end of the hearing, 80% of the time. In December 2017, the LTB introduced new service standards. The LTB will report on the new service standards starting in 2018-19.

Between 2015-16 and 2017-18, there was a significant reduction in the number of hearings held within the 25-day standard [(from 69% to 49%). The average length of time in excess of the standard was 4.7 days. The standard for decisions to be issued following a hearing is five days. This was exceeded for 22% of cases in 2016-17, but on average by only 0.2 days. There was improvement in decision time for 2017-18 (19% & 0.1 days).

Table 3: Landlord and Tenant Board Performance

<table>
<thead>
<tr>
<th>Time to:</th>
<th>2015-2016</th>
<th>2016-2017</th>
<th>2017-2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hold Hearing (25-day standard)*</td>
<td>23.3 days</td>
<td>26.6 days</td>
<td>28 days</td>
</tr>
<tr>
<td>Cases Meeting Service Standard</td>
<td>69%</td>
<td>52%</td>
<td>49%</td>
</tr>
<tr>
<td>Issue Decisions (5-day standard)*</td>
<td>4.6 days</td>
<td>5.2 days</td>
<td>5.1 days</td>
</tr>
<tr>
<td>Cases Meeting Service Standard</td>
<td>83%</td>
<td>78%</td>
<td>81%</td>
</tr>
</tbody>
</table>

*Service standard changed as of April 2018
The impacts of the LTB timelines are variable. For tenants facing eviction, a delay is of benefit, but to a landlord evicting a tenant, it is problematic. For an AGI, the effective date of an increase is the same regardless of the time to issue the decision.

The overall number of calls to the LTB Call Centre (all of Ontario) and the average length of calls have remained consistent over the past three years, but the average call wait time almost doubled, increasing from 5:06 to 9:04 minutes (see table 4 below).

### Table 4: Calls to the Ontario Landlord and Tenant Board Call Centre

<table>
<thead>
<tr>
<th></th>
<th>2015-16</th>
<th>2016-17</th>
<th>2017-18</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Calls to the LTB</td>
<td>299,143</td>
<td>261,154</td>
<td>272,719</td>
</tr>
<tr>
<td>Average Length of Calls (Minutes)</td>
<td>4:45</td>
<td>5:19</td>
<td>4:57</td>
</tr>
<tr>
<td>Average Wait Time for Calls (Minutes)</td>
<td>5:06</td>
<td>9:46</td>
<td>9:04</td>
</tr>
</tbody>
</table>

It is hoped that the time efficiency of the LTB will improve as a result of the review of the LTB and the other provincial tribunals. Staff will continue to monitor Hamilton LTB cases and report back to the Emergency and Community Services Committee with any notable changes or issues.

**ALTERNATIVES FOR CONSIDERATION**

Not applicable

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

**Community Engagement and Participation**

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community.

**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**

Appendix “A” to Report HSC19011: Tenant Defence Fund Pilot Program Guidelines