



**CITY OF HAMILTON**  
**PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT**  
**Economic Development Division**  
**and**  
**HEALTHY AND SAFE COMMUNITIES DEPARTMENT**  
**Housing Services Division**

<b>TO:</b>	Mayor and Members General Issues Committee
<b>COMMITTEE DATE:</b>	October 2, 2019
<b>SUBJECT/REPORT NO:</b>	Financial Incentive Program Amendments Respecting Potential Tenant Displacement (PED19178/HSC19052) (City Wide)
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY:</b>	Phillip Caldwell (905) 546-2424 Ext. 2359
<b>SUBMITTED BY:</b>  <b>SIGNATURE:</b>	Glen Norton Director, Economic Development Planning and Economic Development Department
<b>SUBMITTED BY:</b>  <b>SIGNATURE:</b>	Edward John Director, Housing Services Division Healthy and Safe Communities Department

**RECOMMENDATION**

- (a) That the amended program terms and administrative procedures for the Commercial Corridor Housing Loan and Grant Program, the Hamilton Tax Increment Grant Program, the Barton/Kenilworth Tax Increment Grant Program and the Barton/Kenilworth Commercial Corridor Building Improvement Grant Program, which form part of Appendix "A" to the Downtown and Community Renewal Community Improvement Plan, and attached as Appendix "A" to Report PED19178/HSC19052, be approved with an effective date for new applications submitted beginning January 1, 2020;

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OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

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- (b) That the Economic Development Division be authorized and directed to revise applicable application forms and other program-related materials necessary to implement the amended program terms and administrative procedures attached as Appendix “A” to Report PED19178/HSC19052;
- (c) That the General Manager of the Planning and Economic Development Department continue to be authorized to execute agreements under the amended program terms for the Commercial Corridor and Housing Loan and Grant Program to a maximum grant/loan of \$250 K with agreement content continuing to be satisfactory to the General Manager and in a form satisfactory to the City Solicitor;
- (d) That the General Manager of the Planning and Economic Development Department continue to be authorized to execute agreements under the amended Barton/Kenilworth Commercial Corridor and Housing Loan and Grant program with agreement content continuing to be satisfactory to the General Manager and in a form satisfactory to the City Solicitor;
- (e) That with respect to the Commercial Corridor Housing Loan and Grant Program, the Hamilton Tax Increment Grant Program, the Barton/Kenilworth Tax Increment Grant Program and the Barton/Kenilworth Commercial Corridor Building Improvement Grant Program (the Programs), City Council:
  - (i) Direct the Housing Services Division to initiate quarterly requests to the Landlord and Tenant Board to obtain information regarding requests for Above Guideline Increases (also referred to as “L5” requests) received within the City of Hamilton on an on-going basis;
  - (ii) Direct the Housing Services Division to collaborate with appropriate community partners to prepare and distribute a comprehensive tenant education package that, at a minimum, include information on the rights of tenants; and,
  - (iii) Direct and authorize the Legal Services Division to develop appropriate conditions for inclusion in agreements and other materials related to the programs necessary to implement the amended terms and administrative procedures attached as Appendix “A” to Report PED19178/HSC19052, in a form satisfactory to the City Solicitor.

## **EXECUTIVE SUMMARY**

On July 12, 2019 City Council approved a Motion directing staff to bring forward recommended amendments to various City financial incentive programs to ensure property improvements funded by City financial incentive programs do not result in the

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permanent displacement of existing tenants. The Motion also directed staff to undertake additional actions with respect to the development of a comprehensive information package regarding tenant rights and to make submissions regarding the value of City financial incentives to the Landlord and Tenant Board (LTB) in certain circumstances. The Motion and associated staff directions, as approved by Council, can be found in Appendix “B” attached to this Report.

Through collaborative discussions between Economic Development, Housing Services and Legal Services as well as engagement with external subject experts at the LTB and Hamilton Community Legal Clinic, (HCLC) staff identified specific challenges with the implementation of the staff directions contained in the Motion including the following:

- Anticipated difficulties with correlating a property improvement as being the sole factor in the displacement of a tenant;
- Staff’s inability to retroactively address tenant displacements which have occurred prior to a property owners intent to apply for a financial incentive being established;
- Staff’s inability to independently verify potentially competing claims as to the nature of a tenant’s displacement; matters generally addressed in Tribunal settings such as the LTB; and,
- Limitations on the ability of a third party, such as the City, to submit evidence to the LTB.

These challenges and limitations have shaped the development of the potential program amendments which staff are recommending in response to the Motion. These potential amendments are summarized below:

- Requiring applicants to disclose which residential units, if any, are occupied at the time an application or pre-application for a financial incentive has been made to the City;
- Providing tenants of units occupied at the time of application to the City with a comprehensive education package regarding their legal rights, Hamilton rental market conditions and available resources should they be required;
- That approvals be subject to new conditions that require non-condominium residential unit(s) which are occupied at the time of application to the City to not be the subject of an approved Above Guideline Increase (AGI) request by the LTB, except in certain circumstances as outlined in this Report, for a period beginning from the date the application is received by the City and ending upon completion of the prescribed term of the incentive to be provided, or five years from the date

of the initial financial disbursement, whichever is greater. This condition would continue to apply whether or not the tenancy of the unit(s) changes during this period. In the event an AGI request is approved by the LTB and determined to be in contravention of the City's condition, and this approval occurs after the City's approval under the applicable incentive program but prior to the entering into any agreement required by the incentive program, the application approval would be deemed to be rescinded, no incentive would be provided, and no agreement would be entered into by the City. Where the AGI approval occurs after the City's approval and after the execution of any agreement required by the incentive program, any remaining incentive yet to be provided over the remaining term of the program would be cancelled and enforcement action would be initiated to recoup financial incentives provided to-date;

- Initiating quarterly requests to the LTB to receive a summary of property addresses which have been the subject of an AGI request within the City of Hamilton to facilitate staff's monitoring of approval conditions; and,
- Providing written notice to each occupied unit that discloses the program under which the property has been approved for a financial incentive, the estimated value of that incentive and the improvements the incentive is intended to facilitate for use by the tenant as needed, including as evidence at the LTB.

Staff are recommending that the amended program terms and administrative procedures, discussed in this Report and contained in Appendix "B", be approved with an effective date for new applications submitted beginning January 1, 2020, to provide staff time to develop the required materials and administrative processes required to implement the program changes.

#### **Alternatives for Consideration – N/A**

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

**Financial:** There are no financial implications arising from this Report with the exception of those arising from circumstances addressed under the Staffing Implications section.

**Staffing:** Increased administrative measures for City financial incentive programs will be provided by existing Economic Development Division staff. However, staff anticipate lengthier application review and approval time frames for all financial incentive programs as a result.

Support for tenants as well as liaising with the LTB and the HCLC will be provided using existing Housing Services Division staff.

Enforcement of new program conditions, where required, will require staff resources from Legal Services Division. At this time, staff are unable to anticipate the number of enforcement actions, if any, that staff will be required to act upon. However, if enforcement actions are such that they are beyond the capacity of existing Legal Services Division staff to address, the use of outside legal staff, at a cost to the City, may be required.

The additional staff time required to administer the amended programs will be monitored with any impacts identified through a joint one-year process review between staff from Economic Development, Housing Services and Legal Services Divisions. Should this review identify significant impacts on staff resources and/or budgets, staff will make further recommendations to City Council which may include, but may not be limited to, further refinement to program terms and administrative processes, requests for additional staffing or the reduction of financial incentive programs offered to align with existing staffing capacity.

Legal: Appropriate conditions will be required for the agreements applicants enter into with the City to receive incentives pursuant to the Commercial Corridor Housing Loan and Grant Program, the Hamilton Tax Increment Grant Program, the Barton/Kenilworth Tax Increment Grant Program and the Barton/Kenilworth Commercial Corridor Building Improvement Grant Program. The ability to enforce these conditions will be limited to civil proceedings for breach of contractual terms which can present challenges for the collection of incentives already paid at the time a contravention is identified. Staff will monitor the level of enforcement action required and the outcomes and circumstances associated with any civil proceedings which the City is required to undertake. Specific challenges/issues which arise from these proceedings may require further amendments to the program terms and conditions in response.

## **HISTORICAL BACKGROUND**

Since 2002, the City has provided financial incentive programs which support the improvement of under-utilized and/or derelict properties within Downtown Hamilton, the community Downtowns, Business Improvement Areas and other key commercial corridors throughout the City's urban area. The private sector investment leveraged with these incentives have increased the supply of safe and legal housing, provided an increase to the City's assessment base and facilitated efficient and cost-effective population growth within the existing urban area. To-date, the programs subject to this Report have collectively assisted with the renovation of 134 residential units and the creation of approximately 700 new units, of which approximately 400 units were rental.

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On July 12, 2019, City Council approved a Motion arising from community concern that improvements being undertaken with the assistance of City financial incentives could potentially contribute to the displacement of vulnerable tenants. The Motion and associated staff directions, as approved by Council, can be found in Appendix “B” attached to Report PED19178/HSC19052.

**POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

This Report contains recommended amendments to the program terms and administrative procedures, for the Commercial Corridor Housing Loan and Grant Program, the Hamilton Tax Increment Grant Program, the Barton/Kenilworth Tax Increment Grant Program and the Barton/Kenilworth Commercial Corridor Building Improvement Grant Program. These programs are implemented as an appendix to the authorizing Downtown and Community Renewal Community Improvement Plan (CIP). As the CIP’s appendices do not form part of the approval of the CIP or the implementing By-Law No.16-126 by Council, and as staff’s recommended amendments do not alter the intent of the authorizing CIP, an amendment under Section 28 of the *Planning Act* to implement the recommendations of this Report is not required.

**RELEVANT CONSULTATION**

Staff from Economic Development, Housing Services and Legal Services Divisions worked collaboratively to develop the amendments contained in this Report.

The Landlord and Tenant Board (LTB) was consulted regarding the provision of data specific to Hamilton LTB cases required to implement the staff directions.

The Hamilton Community Legal Clinic (HCLC) was consulted to outline 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 Above Guideline Increase (AGI) cases, the HCLC does not provide representation for AGI cases but provides summary information and basic legal advice.

With respect to direction (a) of the Motion, no requests for meetings/consultations were received by staff prior to the development of the recommendations contained in this Report.

**ANALYSIS AND RATIONALE FOR RECOMMENDATION**

The following analysis and rationale is presented in the order of the core staff directions contained in the Motion and is intended to speak to staff recommendations as they apply to the Commercial Corridor Housing Loan and Grant Program, the Hamilton Tax

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Increment Grant Program, the Barton/Kenilworth Tax Increment Grant Program and the Barton/Kenilworth Commercial Corridor Building Improvement Grant Program.

Although included in the approved Motion, the Barton/Kenilworth Commercial Corridors Planning and Building Fee Rebate program has been excluded from the recommendations of this Report. Staff's review of this program concluded that it is primarily intended to support commercial uses and to-date has been utilized only in association with commercial uses. Although planning and building fees for some applications related to residential occupancies may be eligible, staff believe any such applications would be in conjunction with other programs which are already the subject of the recommended program amendments contained in this Report.

**“(i) That any property improvements funded by these incentive programs do not result in the permanent displacement of an existing tenant, as a result of the improvement;”**

Staff have identified challenges with the implementation of this direction. In particular, staff note that there are inherent limitations to its ability to address the displacement of tenants which may have occurred prior to an application being submitted to the City for a Financial Incentive Program. This is due to staff's inability to retroactively and independently identify and verify the personal contact information, and current location of, former tenants. Furthermore, if contact could be made, staff anticipate further difficulties with independently verifying potentially competing claims as to the cause of a tenant's displacement. Determinations of this nature are generally addressed in formal tribunal settings such as the LTB.

As a result, staff's recommended amendments are focused on mitigating potential displacement of tenants who are occupying a unit at the time an application for a City financial incentive program has been submitted to the City. It is at this point that staff can establish a clear intent for the City's programs to be utilized for a property improvement and where the City can institute program and administrative measures to support existing tenant(s). Specifically, staff focused on program amendments that would address what staff believe to be the two-primary means by which tenant displacement could occur in connection with improvements to a property:

- A tenant(s) ending their tenancy at a property prior to improvements being undertaken but who may unknowingly have difficulty locating similarly affordable housing elsewhere; and/or,
- Approval of requests for Above Guidelines Increases (AGI) by the LTB as a result of the improvements made to a property which render the unit no longer affordable for the existing or returning tenant(s).

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Staff believe the former matter is best addressed by ensuring that existing tenants are informed of their rights under Provincial legislation and made aware of the existing rental market conditions within the City. This is addressed through staff's recommendations under item (ii) later in this section.

With respect to the latter, recipients of City financial incentives for property improvements are not currently subject to conditions regarding increases in rents resulting from the improvements undertaken. City administrative processes currently focus on due diligence matters including, but not limited to, ensuring adherence to City planning policies, building regulations (including the building and fire codes) and confirming that properties and applicants are in good standing with the City in terms of municipal taxes and property standards. Upon approval of a financial incentive application, recipients are required to agree to a variety of conditions prior to receiving any grant, loan or exemption which include, among other matters, the City's right to cancel and/or recover financial incentives should program conditions be violated over the term the incentive is provided.

The conditions imposed by the City are the most practical and effective means by which staff can ensure that financial incentives are meeting Council's priorities and the objectives of the authorizing CIP. As such, staff are recommending that applicants be subject to new approval conditions that address the intent of the Notice of Motion. Specifically, staff are recommending the following:

- Where the City receives an application for a financial incentive for a property that contains occupied, non-condominium, residential units, the occupied unit(s) would not be permitted to be the subject of an AGI request to the LTB for a period beginning from the date the application is received by the City and ending upon completion of the prescribed term of the incentive to be provided, or five years from the date of the initial financial disbursement, whichever is greater. This condition would continue to apply whether or not the tenancy of the unit(s) changes during this period; and,
- In the event an AGI request is approved by the LTB and determined to be in contravention of the City's condition, and this approval occurs after the City's approval under the applicable incentive program but prior to entering into any agreement required by the incentive program, the application approval would be deemed to be rescinded, no incentive would be provided, and no agreement would be entered into by the City. Where the AGI approval occurs after the City's approval under the applicable incentive program and after the execution of any agreement required by the incentive program, any remaining incentive yet to be provided over the remaining term of the program would be cancelled and enforcement action would be initiated to recoup financial incentives provided to-date.



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A specific advantage of these conditions is that the limits on future AGI requests would apply to the rental unit itself and not a particular tenant. As a result, the limit on AGIs would continue to apply despite any tenancy changes to the unit during the period the unit(s) are subject to the City's condition.

In developing this approach, staff have noted that there may be instances where exceptions to this condition may be warranted. As such staff are proposing that the program terms allow for exceptions in the following circumstances:

- Staff recognize there may be instances where a tenant(s) are able and willing to accommodate a proposed AGI resulting from an improvement to a property. For example, the requested AGI may be of a scale that continues to maintain the rental rate at an affordable level for the tenant relative to the broader Hamilton rental market while still facilitating needed improvements to the property and/or unit(s). In such instances, an exception would be provided where it can be demonstrated, to the satisfaction of the City, that affected tenant(s) have consented to the proposed AGI. It should be noted, that where there is more than one occupied unit in the building at the time of application to the City, this exception could only be available where all affected tenants have consented to the proposed AGI request;
- Where it can be demonstrated, to the City's satisfaction, that the requested AGI is a result of improvements or other matters not related to improvements facilitated by the City's financial incentive; and,
- Where it can be demonstrated, to the City's satisfaction, that notwithstanding the provision of a financial incentive by the City, an AGI request would be required to facilitate the property improvements due to site or building specific circumstances. This could include instances where the maximum value of eligible City incentives are not sufficient to viably rehabilitate a derelict property due to the extent of improvements which may be required.

Notwithstanding the above exceptions, the City's conditions would continue to apply to any additional or subsequent AGI requests during the remainder of the City's condition.

To implement the amended program terms, Legal Services will be required to develop the appropriate conditions in a form appropriate to include in agreements the City enters into with applicants at the time of approval. Staff note that these conditions, and the enforcement thereof, have not previously been undertaken by the City and that the City may face challenges and uncertainties to their implementation and enforcement. These uncertainties range from challenges arising as a result of enforcement of conditions being limited to civil proceedings for breach of contractual terms to specific circumstances which pose challenges to staff such as where properties are sold or change legal ownership

within the prescribed period of the City's condition. These uncertainties and potential challenges will be addressed to the extent they can be anticipated and addressed by the City through the conditions developed by Legal Services and subsequently implemented via agreements with applicants. However, given the uncertainty and potential complexity associated with the enforcement of said conditions, staff will be monitoring the outcomes and circumstances of any civil proceedings undertaken by the City resulting from the enforcement of conditions, where/if required, to identify any recurring challenges arising that may require subsequent program amendments to address. Any subsequent amendments would be developed collaboratively between the Economic Development, Housing Services and Legal Services Division staff and brought forward for City Council consideration, as required.

In addition to the above, implementation of these new program conditions will require the following:

- Amendments to the applicable program terms and administrative processes which form part of Appendix "A" to the Downtown and Community Renewal Community Improvement Plan. These amended program details are contained in Appendix "A" attached to Report PED19178/HSC19052; and,
- To monitor all AGI requests made to the LTB within the City of Hamilton on an on-going basis to ensure conditions are enforced.

With respect to the latter, municipalities are not currently notified by the LTB of requests it receives for an AGI, also referred to as "L5" requests. Staff have been in contact with the Province and been advised by a representative of the LTB that requests for AGIs within the City of Hamilton can be provided on a quarterly basis, subject to staff making such a request to the LTB each quarter on an on-going basis. Staff have previewed the information which can be provided and are comfortable that the level of detail provided is sufficient to facilitate staff's implementation and monitoring of these new conditions. However, it is important to note that staff's ability to monitor and act on any contravention of conditions will be entirely dependent on information provided by the LTB and staff will have no control over the level of detail or completeness of information provided by the LTB.

As making these requests is necessary to ensure the City has the required information to monitor and enforce its conditions going forward, it is recommended that staff be directed to make the required information requests to the LTB each quarter going forward and that the Housing Services Division be the recipient of this information.

Staff recommend that the amended program terms and administrative procedures, as contained in Appendix "A", be approved with an effective date of January 1, 2020, to

provide staff time to develop and implement the revised application forms and other program-related materials and administrative processes.

**“(ii) Tenants are provided full and comprehensive information, verified by, and in consultation with Housing Services staff, regarding their legal rights if any property improvements that are funded by these incentive programs have the potential to disrupt or impact the tenants;”**

To support staff's development of this tenant education package, staff have engaged with the HCLC; a non-profit community legal clinic serving low income residents with poverty law services including legal advice, referrals and public legal education. HCLC's experience working with displaced tenants and the LTB is invaluable in supporting staff's development of this information which will provide tenants of buildings which are the subject of an application for a City financial incentive program with important information and resources regarding their rights as tenants. It is therefore recommended that staff continue its engagement with appropriate community partners, including HCLC, to prepare and distribute this comprehensive tenant education package.

To facilitate the distribution of this information, additional information will be required of applicants at the time an application for a City financial incentive is submitted to the City.

Therefore, it is recommended that Committee direct staff to undertake various administrative amendments to application forms and other associated program documents including:

- Requiring applicants to disclose if any residential units are occupied at the time an application has been submitted to the City; and,
- Where occupied units have been disclosed, require the applicant to identify the specific units occupied.

This information will assist staff to initiate proactive measures which will include Housing Services staff making contact with residents of occupied units to provide the tenant education package, answer questions and refer tenants to the appropriate resources, such as HCLC, as needed. For additional clarity, staff will only be requiring unit numbers of occupied units and will not request or require the disclosure of tenant names or any other personal contact information due to privacy concerns.

To support broader knowledge of legal rights and resources for tenants throughout the city, staff will also be making the tenant education package available on the City's website.

**“(iii) The explicit value and nature of the City’s financial contribution to any property improvement is disclosed to the Landlord and Tennant Board in any matter involving an application for an above-guideline rent increase; and,”**

Through discussions with HCLC, staff have been advised that the City, as a third party to an AGI request, would face limitations in its ability to make submissions of evidence to the LTB. This is due to the LTBs status as a quasi-judicial forum and the associated requirement for evidence to be introduced in the same manner as a Court; by the AGI requestor or the affected party (the tenant). As such, staff have been advised by HCLC that evidence regarding the value and nature of financial incentives provided by the City would be best introduced as evidence to the LTB via the affected tenant.

Therefore, staff are recommending an alternative administrative process whereby written notice of an approval under a City Financial Incentive Program will be provided to the occupied units disclosed to the City. This notice will identify the financial incentive program that the property has been approved under, the estimated or actual value of the incentive to be provided and the nature of the improvements the incentive is intended to facilitate. This process will provide the tenant with information to allow for informed submissions to the LTB, with the support and guidance of the HCLC where required.

## **ALTERNATIVES FOR CONSIDERATION**

N/A

## **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**

Appendix “A” – Amended Program Terms and Administrative Procedures forming part of Appendix “A” to the Downtown and Community Renewal Community Improvement Plan.

Appendix “B” – Motion, General Issues Committee, July 8, 2019.

PC:dt