



CITY OF HAMILTON
HEALTHY AND SAFE COMMUNITIES DEPARTMENT
Housing Services Division

TO:	Chair and Members Emergency and Community Services Committee
COMMITTEE DATE:	July 13, 2020
SUBJECT/REPORT NO:	Provision of Conditional Grants for the Purposes of Paying Development Charges for Two Non-Profit Affordable Rental Housing Projects (HSC19060(a)) (Ward 3)
WARD(S) AFFECTED:	Ward 3
PREPARED BY:	Kirstin Maxwell (905) 546-2424 Ext. 3846 Jana Amos (905) 546-2424 Ext. 1554
SUBMITTED BY:	Edward John Director, Housing Services Division Healthy and Safe Communities Department
SIGNATURE:	

RECOMMENDATIONS

- (a) That a conditional grant in the total amount of the development charges (DCs) for the 40 units of the 60-unit Hamilton East Kiwanis Non-Profit Homes Inc., 6 – 14 Acorn Street affordable rental housing development project that are not receiving funding under the Ontario Priorities Housing Initiative (OPHI) (“Kiwanis Project”), in the approximate amount of \$1,000,903 be approved in accordance with the terms and conditions contained in the Conditional Grant Term Sheet attached as Appendix “A” to Report HSC19060(a);
- (b) That a conditional grant in the total amount of the development charges (DCs) for the 43-unit building of the 95-unit Indwell Community Homes, 225 East Avenue North affordable rental housing development project that are not receiving funding under Ontario Priorities Housing Initiative (OPHI) (“Indwell Project”), in the approximate amount of \$379,260 be approved in accordance with the terms and conditions contained in the Conditional Grant Term Sheet attached as Appendix “B” to Report HSC19060(a);
- (c) That the conditional grants in the total amount of the development charges (DCs) payable for both projects in the approximate amount of \$1,380,163 as well as the

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deficit of approximately \$43,227 in the Social Housing Stabilization Reserve (110041) once all 2020 commitments have been met, be funded from the Affordable Housing Property Reserve (112256), to the applicable DC Reserve;

- (d) That the General Manager of the Healthy and Safe Communities Department or designate be directed and authorized to enter into a Conditional Grant Agreement respecting the Kiwanis Project with the terms and conditions contained in the Conditional Grant Term Sheet attached as Appendix “A” to Report HSC19060(a) in a form satisfactory to the City Solicitor, and that the General Manager of the Healthy and Safe Communities Department be authorized to execute any such agreements and ancillary documentation;
- (e) That the General Manager of the Healthy and Safe Communities Department or designate be directed and authorized to enter into a Conditional Grant Agreement respecting the Indwell Project with the terms and conditions contained in the Conditional Grant Term Sheet attached as Appendix “B” to Report HSC19060(a) in a form satisfactory to the City Solicitor, and that the General Manager of the Healthy and Safe Communities Department be authorized to execute any such agreements and ancillary documentation;
- (f) That the development charges payable for the Kiwanis Project be payable in 20 equal annual instalments without interest in accordance with the terms and conditions contained in the Payment Agreement Term Sheet attached as Appendix “C” to Report HSC19060(a);
- (g) That the development charges payable for the Indwell Project be payable in 20 equal annual instalments without interest in accordance with the terms and conditions contained in the Payment Agreement Term Sheet attached as Appendix “D” to Report HSC19060(a);
- (h) That the General Manager of the Finance and Corporate Services Department be directed and authorized to enter into a Development Charge Payment Agreement respecting the Kiwanis Project, under section 27 of the *Development Charges Act, 1997*, to require the payment of development charges otherwise payable under Development Charges By-law 19-142 and By-law 11-174, the earlier of the date of first occupancy or issuance of an occupancy permit, on such terms as the General Manager of the Finance and Corporate Services Department may require and including those on the Term Sheet attached as Appendix “C” to Report HSC19060(a), without interest, in a form satisfactory to the City Solicitor, and that the General Manager of the Finance and Corporate Services Department be directed and authorized to execute any such agreements and ancillary documentation; and,

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- (i) That the General Manager of the Finance and Corporate Services Department be directed and authorized to enter into a Development Charge Payment Agreement respecting each of the Indwell Project, under section 27 of the *Development Charges Act, 1997*, to require the payment of development charges otherwise payable under Development Charges By-law 19-142 and By-law 11-174, the earlier of the date of first occupancy or issuance of an occupancy permit, on such terms as the General Manager of the Finance and Corporate Services Department may require and including those on the Term Sheet attached as Appendix “D” to Report HSC19060(a), without interest, in a form satisfactory to the City Solicitor, and that the General Manager of the Finance and Corporate Services Department be authorized to execute any such agreements and ancillary documentation.

EXECUTIVE SUMMARY

Report HSC19060(a) seeks approval to provide conditional grants and development charges (“DCs”) payment agreements for the payment of DCs for two affordable housing projects, one by East Hamilton Kiwanis Non-Profit Homes (“Kiwanis”) and the other by Indwell Community Homes (“Indwell”). A portion of the units of each project have been approved for Ontario Priorities Housing Initiative (OPHI) funding (Report HSC19060) and meet the requirements for a DC exemption in the current by-law; however, both developments have additional affordable units that staff planned to recommend for DC relief when a new program was brought to Council.

When the 2019 Development Charges By-Law No. 19-142 was adopted there was a commitment to replace the by-law exemption for affordable housing with a program that provides greater control of the projects granted DC relief. As the report for the new affordable housing DC program was put on hold due to the COVID-19 crisis and the affordable units in the projects not funded by OPHI do not currently meet the by-law criteria, DC exemptions are not available.

Staff are recommending payment of the DCs in 20 annual instalments to enable the grant advances by the City to be spread over the affordability period of 20 years, thus securing the City’s investment without the need for a mortgage registered on title and waiving the interest on the instalments to reduce the costs to the Housing Services Division.

The grants are to be offset by the Affordable Housing Property Reserve (112256).

Alternatives for Consideration – Not Applicable

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FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial:

Table 1: Total City Investment

Project	*Parkland Fee Relief	Total DC Relief OPHI Units	Total DC Relief Grant Non-OPHI Units	Total DC Relief for Affordability	Total City Capital Contribution
Kiwanis – Acorn St.	*\$146,460	*\$410,080 (20 units)	\$1,000,903 (40 units)	\$1,410,983	\$1,557,443
Indwell – Royal Oaks	*\$90,000	*\$743,671 (52 units)	\$379,260 (+\$374,573 **CIPA) (43 units)	\$1,122,931	\$1,212,931
Total Housing	*\$236,460	*\$1,153,751	\$1,380,163 (+\$374,573 CIPA)	\$2,533,914	\$2,770,374

*DC figures include City and Go Transit DCs after applying demolition credits

Report HSC19060 approved the use of approximately \$1,238,791 from the Social Housing Stabilization Reserve (110041), which is dedicated to DC relief for qualifying affordable housing, to off-set the DCs for the OPHI-funded units of both projects (20 units of the Kiwanis development and up to all 95 units of the Indwell development. The figures in Table 1 differ from Report HSC19060 as the Indwell OPHI units no longer qualify for the Downtown Community Improvement Plan (CIPA) partial exemption.

The grants are to be offset by the Affordable Housing Property Reserve (112256) funded through the sale of properties that have been allocated for affordable housing purposes. The timing of the planned sale of properties may result in the Affordable Housing reserve to go into a deficit. Once the sales are finalized the deficit is expected to be eliminated as a consequence.

Staffing: N/A

Legal: Provision of the conditional grant and DC payment agreement conditions to Kiwanis and Indwell is not bonusing under the *Municipal Act* as both organizations are charitable non-profit corporations.

HISTORICAL BACKGROUND

The June 2019 changes to the *Development Charges Act, 1997 (DCs Act)* allow non-profit housing developers to pay DCs upon occupancy and in 21 equal annual instalments thereafter. Municipalities may choose whether or not to charge interest, and any DCs not paid may be added to properties' tax rolls and collected accordingly.

In July 2019, Council approved Report FCS19050 which adopted the 2019 Development Charges By-law No. 19-142. One of the changes in this by-law was to prohibit developments from benefiting from more than one DC exemption or partial exemption, including affordable housing projects.

On November 13, 2019, Council approved Report HSC19060 which recommended that the Province award Ontario Priorities Housing Initiative: Rental Housing Component funding to a portion of each of the Kiwanis-Acorn St. and Indwell-Royal Oaks affordable housing projects; 20 units of the 60 unit Kiwanis project, and 52 units of the 95 unit Indwell project. This approval qualified these units for DC exemptions under By-Law 19-142. Report HSC19060(a) pertains to the units in these projects that are not being funded through OPHI.

On May 27, 2020, Council approved Report FCS20028/PED20105 which authorized the charging of interest for DC instalments for non-profit housing development, as well as rental housing and institutional development.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Housing and Homelessness Action Plan

Hamilton does not have sufficient affordable rental housing units. In 2013, Council endorsed the 10-Year Housing and Homelessness Action Plan with the first outcome area to increase the supply of affordable housing. The City continues to fall below its targets for developing new units.

RELEVANT CONSULTATION

Corporate Services Department - Legal Services Division
Legal provided advice on the legal and financial mechanisms to offset the cost of DCs for the projects and the agreement terms and reviewed the final documents. Their input is reflected in the final report and appendices.

Corporate Service Department – Financial Planning, Administration, and Policy Division
Finance provided advice on the financial mechanisms to offset the cost of DCs for the

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projects, including terms of the DC payment agreement, provided the financial numbers, and reviewed the documents. Their input is reflected in the final report and appendices.

ANALYSIS AND RATIONALE FOR RECOMMENDATION(S)

A. CMHC Co-Investment Fund/Leveraging Federal Funds

The provision of a conditional grant for the payment of DCs for the non-OPHI units in the Kiwanis and Indwell projects, in addition to the existing exemptions for the OPHI units, would help leverage more Federal funding for the projects. Both projects are applying to the CMHC Co-Investment Fund (CIF), which can provide both a forgivable loan and financing with low interest and other favourable conditions. The CIF has a complex scoring system that determines the strength of proposals, the amount of forgivable loan (if any), and the conditions of the CMHC financing. The amount of the required municipal contribution is a key factor in the scoring. Other factors include energy efficiency, accessibility, the number of larger units, long term financial sustainability, and more. The provision of conditional grants for the payment of DCs for the units not funded by OPHI will increase the scores of these projects, which will increase the amount of funding and improve the conditions of the financing.

Given the small amount of the typical CMHC grant and that CMHC primarily provides repayable loans, CMHC funds alone are not sufficient to make affordable development projects financially viable. The program is predicated on the concept of financial and other “partnerships.” Developer organizations must put together multiple funding sources to create a successful project, and municipalities are required to contribute in a monetarily meaningful way. This doesn’t necessarily mean direct capital, but the municipal contribution must be reported as a monetary contribution and direct capital contributions are valued. Financing affordable housing development is increasingly challenging given the exceptional construction cost increases of the past few years and the added uncertainty of the COVID-19 crisis.

B. Need for the City Investments

The need for affordable housing in Hamilton has been demonstrated in multiple previous reports. Report HSC20009 notes that significant changes to parts of Hamilton’s housing system are needed to increase its resilience to the challenges caused and amplified by COVID-19 and future epidemics.

To maximize peoples’ ability to become as self-sufficient as possible, most congregate living situations must be replaced with small, deeply affordable, low-barrier self-contained units where tenants’ self-sufficiency is fostered through access to appropriate supports.

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In addition to the leveraging of more federal funds for a higher municipal contribution to the projects, the provision of these funds to these projects is important for the following reasons:

C. Affordable Housing Exemption in the DC By-Law

Council approval for the conditional grants for the payment of DCs and specific payment agreement conditions for DC payments for the non-funded units of the Kiwanis and Indwell Projects is needed as the units do not meet the criteria for DC exemption in the by-law. Council approval for the waiving of interest on DC instalment payments for these projects is necessary as this is a new requirement that would place additional costs on the Housing Services Division budget.

By-Law No. 19-142 Respecting Development Charges on Lands within the City of Hamilton exempts dwelling units within an affordable housing project that meet the following criteria from DCs:

1. The project must provide “housing and incidental facilities for persons of low and moderate income;”
2. The units must either have been approved to receive construction funding from the Federal or Provincial Governments under an affordable housing program or approved by the City of Hamilton through an affordable housing program; and,
3. The units must not be eligible for funding for DC liabilities from the Federal or Provincial Government.

The purpose of Criteria 1 and 2 are to ensure the units receiving City support are affordable and rented to those in need in both the short and long-term. The purpose of Criteria 3 is to ensure that the City does not provide funds that could instead be provided by either the Federal or Provincial Governments.

As CMHC has not yet committed the expected construction funding and financing for either project, the units not funded by OPHI do not currently meet Criteria 2 but will upon approval of CMHC funding.

Even with CMHC funding the units will not meet the wording of Criteria 3 but will meet the intent. CMHC requirements are project-wide and CMHC funding/financing is provided on a project-wide rather than unit specific basis. This open-ended use of funds means that DCs are included in the large list of eligible expenses; however, while the CMHC funds can be used for DCs, City conditional grants provided to offset the costs of

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DCs will not replace federal funds. City funds leverage additional federal funds and are needed in addition to all other funding sources.

D. Terms of Conditional Grant Agreement and DC Payment Agreement

Both a conditional grant agreement and a DC payment agreement between the City and each of Kiwanis and Indwell will be required, subject to the terms as outlined in the Term Sheets attached as Appendices “A,” “B,” “C,” and “D” to Report HSC19060(a). Both types of agreement will include provisions that a default, such as part of the development ceasing to be “non-profit housing,” will require the DCs to become payable immediately. Outstanding DC payments to the City can be collected in the same manner as taxes.

Rather than the traditional approach of a forgivable loan with a mortgage registered on title to secure the City’s interests, staff propose that the Grant be advanced annually at the time each instalment is due. The amount of any non-payment of an instalment can be added to the tax roll for the property. Not registering a mortgage on title and financially encumbering the property is beneficial to the developments’ CMHC applications and the ability of the organisations to borrow funds for this and potential additional projects.

The conditional grant agreement terms are standard for affordable housing projects except for the higher potential maximum allowable rents. The final maximum allowable rents will be determined by the General Manager of the Healthy and Safe Communities Department (“GM”) when project costing and budgets are more certain. Project costing is an iterative process in which costs and budgets become more detailed, specific, accurate, and certain with each iteration. The collective goal of staff, Kiwanis, and Indwell is for the rents to be as affordable as possible; however, flexibility is necessary in the current context of uncertainty resulting from the COVID-19 crisis. Many of these factors predate COVID-19 but have become significantly more unpredictable. These include:

- construction cost uncertainty including increased costs as a result of the physical distancing requirements for COVID-19;
- the financing challenges noted above;
- unknown future CMHC requirements, funding amounts, and financing conditions;
- unknown future requirements and financing conditions of other potential lenders/ financial contributors;
- unpredictable changes in the rental market; and,
- the reduced overall amount of government funding as a proportion of total project costs.

E. Implementation

DCs Act O.Reg.82/98 defines “non-profit housing development” as residential development by,

- “(a) a corporation without share capital to which the Corporations Act applies, that is in good standing under that Act and whose primary object is to provide housing;*
- (b) 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; or*
- (c) a non-profit housing co-operative that is in good standing under the Co-operative Corporations Act.”*

The absence of an affordability requirement in this definition is not likely an oversight. The CMHC-Ontario Bi-Lateral Agreement lists mixed-income housing and the promotion of social inclusion through mixed-income housing principles for the agreement and all funding and action plans under it. The absence of a specific affordability requirement makes the administration of mixed-income affordable projects less complex. Mixed-income projects are preferred by many affordable housing advocates for a number of reasons, including the potential for cross-subsidization of rents by more expensive units to increase financial viability and facilitate deeper affordability of some units, social inclusion, and to create communities that meet a range of needs. CMHC’s Co-Investment Fund requires projects to include a mix of rent levels.

While it is possible to treat units within a single project differently according to the rents, doing so is administratively complex. Non-profit housing corporations and co-operatives are best able to determine the rents for their units and do so based on their affordable housing and non-profit mandates. Thus, provided the housing providers are non-profits or co-operatives, specific affordable rent requirements with complex administrative processes are not needed to ensure the rents will be and remain affordable. The DCs Act also enables for-profit rental projects to pay DCs in instalments, but over five rather than 20 years. The approach of not requiring specific levels of affordability by non-profit organisations could be considered by the City in the future but is not proposed at this time.

Municipalities are permitted to charge interest and recover any unpaid DCs by adding the principal and any interest “to the tax roll and collecting it in the same manner as taxes.” Through Report FCS20028/PED20105, Council approved the charging of interest for instalment payments of DCs for non-profit housing developments. Report HSC19060(a) recommends exempting the Kiwanis and Indwell Projects from the interest requirement.

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It is City policy that the amount of the DCs is determined as of the date that the complete building permit application is received and accepted by the Chief Building Official as long as the building permit is issued within 6 months of the next rate increase. July 5, 2020 is the final day that complete applications can be made, and the 2019-2020 fee schedule applied in the DC calculation. The Downtown Hamilton CIPA exemption applies as of the date of permit issuance. For the purposes of this Report, staff has assumed that a complete building permit application will be made on or before July 5, 2020 and that the permit will be issued between July 6, 2020 and Jan 5, 2021.

DC Payment Agreement

The *DCs Act, 1997* permits a municipality to enter into payment agreements related to the timing of DCs. In order to advance the conditional grant concurrent with the required payment timing of the DC instalments it is recommended that a DC payment agreement be entered into in addition to the conditional grant agreement. This will allow the City to formally recognize that the amount of DCs due is fixed at the date of building permit issuance and align the due date with the terms of the conditional grant, being 20 annual payments commencing at the time the building is first occupied or approved for occupancy.

It may be noted that the *DCs Act, 1997* was amended effective January 1, 2020 in part to delay the timing of DC payment for non-profit housing development to the time the building is first occupied, payable in 21 annual instalments. The timing of payments in the agreements is slightly different to align the DC instalment due dates with the advances of the conditional grants and various housing programs.

F. Changes in Affordable Housing Financing

Historically, government capital funding accounted for a much higher portion of project costs that currently (most recently 75% of total costs, but at times up to 100%) and were in the form of grants (forgivable loans). To enable the coordination of the multiple sets of requirements of the multiple sources of funds that are now needed to build a project, the reduced and less certain contributions need to be reflected in less onerous requirements and expectations. Development financing also must protect the long-term financial health of the non-profit housing providers, so they continue to serve vulnerable Hamiltonians long into the future.

Though more flexibility is needed at this time, it is important to recognize that both Kiwanis and Indwell have a legal mandate as charities to provide affordable housing to people in need. Both have a long history of successful partnership with the City and other levels of government to achieve this goal, and long-term ambitious strategic plans to not only continue their current service, but significantly increase the number of people

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they serve. Kiwanis and Indwell each plan to build more than 1,000 units in Hamilton over the next five to eight years. Kiwanis currently operates 997 affordable units, while Indwell manages 425 with another 100 soon to be ready to receive new tenants. All of these units are in Hamilton, though Indwell has additional units in other municipalities. They both have a legal mandate and publicly stated commitment to keep their rents affordable for highly vulnerable tenants.

ALTERNATIVES FOR CONSIDERATION

None

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.

Built Environment and Infrastructure

Hamilton is supported by state of the art infrastructure, transportation options, buildings and public spaces that create a dynamic City.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Report HSC19060(a): Term Sheet: Conditional Grant to Hamilton East Kiwanis Non-Profit Homes Inc.

Appendix “B” to Report HSC19060(a): Term Sheet: Conditional Grant to Indwell Community Homes

Appendix “C” to Report HSC19060(a): Term Sheet: Development Charges Payment Agreement with Hamilton East Kiwanis Non-Profit Homes Inc.

Appendix “D” to Report HSC19060(a): Term Sheet: Development Charges Payment Agreement with Indwell Community Homes