

BARTON / KENILWORTH TAX INCREMENT GRANT (BKTIG) PROGRAM



A. PROGRAM DESCRIPTION

The Barton/Kenilworth Tax Increment Grant Program (the Program) is intended to provide a Grant to incentivize property owners located along the Barton Street and Kenilworth Avenue North commercial corridors to develop, redevelop or otherwise improve properties and/or buildings (including designated heritage buildings) in a manner that will support the broader revitalization of these districts as well as generate new municipal property tax revenue through increased property assessments.

As a tax increment-based program, Grants are provided relative to the actual increase in municipal property taxes that are generated as a result of an improvement/development undertaken on a property. Grants are provided over a maximum term of nine annual payments and subject to City Council approval. The pre-development municipal property taxes used for determining the actual municipal property tax increment are those from either the year in which the building permit that initiated the improvement/development was issued or, for projects that do not require a building permit, the year in which City Council approved the Program application. Each annual payment is to be provided based on the municipal property tax increment generated in each of the nine years. The maximum annual Grant prescribed under this program is identified in the following Table 1:

**Table 1 – Prescribed Maximum Grant as
a Percentage of Actual Municipal Tax
Increment**

Year of Grant	Maximum annual Grant amount as a percentage of actual municipal tax increment generated from improvement/development
1	100%
2	100%
3	100%
4	100%

5	100%
6	80%
7	60%
8	40%
9	20%

This Program will apply within the Barton Village Business Improvement Area (BIA) Community Improvement Project Area (CIPA), the Barton Street and Kenilworth Avenue North Commercial Corridor CIPAs and properties within the Downtown Hamilton CIPA which front on Barton Street East between James Street North and Victoria Avenue North as collectively defined through the Revitalizing Hamilton’s Commercial Districts Community Improvement Project Area By-law.

Grants provided under this program shall be provided to the Applicant who is the Owner registered on title and who will be undertaking the improvement/development that is the subject of the Program application except where provided for, and in accordance with, Section B, paragraph 20 and 21.

The Economic Development Division will periodically review the terms and availability of this Program and undertake updates from time to time subject to City Council approval and/or direction.

All costs associated with the improvement/development and the requirements of this Program are to be borne by the Applicant including construction, design, development charges, administration fees, appraisals, inspections, Municipal Property Assessment Corporation (MPAC) post development assessment estimates, legal and registration fees, where applicable.

B. PROGRAM ELIGIBILITY AND GRANT CRITERIA

1. Applications to this Program must meet the goals of the Revitalizing Hamilton’s Commercial Districts Community Improvement Plan (RHCD CIP).
2. The improvement/development must be undertaken on a property within the Barton Village BIA CIPA, the Barton Street and Kenilworth Avenue North Commercial Corridor CIPAs and properties within the Downtown Hamilton CIPA which front on Barton Street East between James Street North and Victoria Avenue North as collectively defined through the Revitalizing Hamilton’s Commercial Districts Community Improvement Project Area By-law.

3. Notwithstanding paragraph two, this program shall not apply to a currently operating or proposed adult entertainment parlour, body rub establishment, correctional facility, corrections residence, emergency shelter, lodging house or residential care facility as defined in the applicable Zoning By-law or to a property where a designated heritage building has been demolished.
4. This Program shall not apply where the improvement/development does not generate an increase in municipal property taxes.
5. Prior to any Grant being provided:
 - a. Any outstanding building code, fire code or property standards orders or any other order applicable to the property(s) or the project by any governmental authority shall be rectified; and
 - b. Any tax arrears on the subject property(s) as well as tax arrears on other properties owned by the Applicant within the City of Hamilton shall be paid.
6. The Applicant will be required to enter into a Grant Payment Agreement with the City of Hamilton that sets out the conditions of the annual Grant. Before any Grant is provided, the Applicant and subject property(s) shall be in compliance with the Program's requirements and conditions as set out in the Grant Payment Agreement. Conditions in the Agreement include, but are not limited to, the following:
 - a. The total value of the eligible Grant provided under the Program will be reduced by:
 - i. the amount by which property taxes have been cancelled or reduced for the subject property pursuant to any other City programs and/or tax appeals under Sections 357 and 358 of the *Municipal Act*;
 - ii. the amount by which property taxes have been cancelled or reduced for the subject property pursuant to a Request for Reconsideration; and
 - iii. the amount by which property taxes have been reduced or cancelled for the property pursuant to any relief or reduction permitted under any legislation or order of any court or the Assessment Review Board; and
 - b. If the Applicant, third party or the municipality has appealed the change in the property assessment, the Grant will not be advanced until the appeal has been finally determined through the Assessment Review Board or Courts and revised property taxes have been calculated and adjusted.
7. The pre-development municipal property taxes used for determining the actual municipal property tax increment shall be those from either the year in which the building permit

that initiated the improvement/development was issued or, for projects that do not require a building permit, the year in which City Council approved the Program application.

8. The first year of the Grant is payable in accordance with the following:
 - a. At the end of the calendar year in the first full year of reassessment, post completion of the improvement/development (subject to property taxes being paid in full and no pending appeal or confirmation that the assessment will not be appealed). An Applicant has the option of receiving the Grant at the end of the first year of reassessment, however they will forfeit the Grant for the months of the year the reassessment does not apply i.e. if reassessment occurs on the 1st of March of a year, the first year of the Grant will be based on March-December (ten months) of the year only. (Calculation is based on actual taxes, therefore the post development taxes in year one would include the first part of the year at a lower assessment and the remaining part of the year at the higher assessment – which would result in minimal to no Grant for the period January 1 to the reassessment date);
 - b. For commercial projects, the first year of the Grant is payable at the end of the first full year of reassessment, post completion, of the improvement/development regardless of the number of commercial units occupied;
 - c. For condominium projects, the first year of the Grant is payable by the end of the calendar year in which 75% of the condominium units within the project are fully assessed. In years previous to 75% of the condominium units being fully assessed within the project, taxes are to be paid as billed and no Grants will be payable;
 - d. For mixed-use projects (commercial, residential or industrial condominium), the first year of the Grant is payable by the end of the calendar year in which 75% of the condominium units within the project are fully assessed. In years previous to 75% of the condominium units being fully assessed within the project, taxes are to be paid as billed and no Grants will be payable; and
 - e. For residential rental projects/mixed use rental residential projects the first year of the Grant is payable at the end of the first full year of reassessment, post completion, of the improvement/development regardless of the number of residential units occupied.

For the purposes of this Program, the completion of a development shall be when a building/space is capable of being occupied, subject to tenant improvements, and, in the case of a condominium development, the Plan of Condominium having been registered.

9. The eligible amount of the increase in municipal property taxes shall exclude special charges, including BIA levies, from the calculation.
10. Annual grant payments shall be adjusted to reflect changes in the municipal property taxes levied for each year that a grant payment is to be provided.
11. For residential condominium projects, the units must be assessed as residential condominiums. If the development is assessed as multi-residential or new-multi-residential, no Grant will be payable.
12. For condominium and mixed-use condominium projects, the Grant will not be calculated on a per unit basis.
13. The annual Grant will be calculated by taking the difference between the sum of the post-project municipal taxes (for each year the Grant is payable) and the pre-project municipal taxes in accordance with paragraph seven herein and applying the percentage based on the applicable stream and year of the Grant as described in Section A, Table 1.
14. If the one year period following the date of registration of the Plan of Condominium for the project expires after December 31 of the year in which 75% of the condominium units within the project are fully assessed the Grant will be payable to the Applicant by the end of the first quarter of the year following the year in which 75% of the condominium units within the project are fully assessed.
15. Work on the portion of the improvement/development that is at or above grade shall commence no longer than two years from the date an application under this Program was approved by City Council and the improvement/development shall be completed and capable of being fully occupied, and, in the case of a condominium development also have a Plan of Condominium registered, within five years from the date an application under this Program was approved by City Council. Extensions may be granted for phased/comprehensive developments or due to development specific extenuating circumstances outlined in a formal request submitted by the Applicant to the City and considered at the discretion of the General Manager of Planning and Economic Development (GM).
16. Approval and the receiving of Grants under this Program shall not preclude eligibility, approval and the receiving of Grants/Loans for the same subject property(s) under any other available municipal program with the exception of any other tax increment-based program which shall not be permitted to be combined with assistance under this Program.
17. The total Grant provided over the maximum nine-year term of this Program shall not exceed the total cost of the property's improvement/development.

18. A Grant under this Program will be provided to an approved Applicant if all terms and conditions of this Program have been satisfied including payment of all property taxes.
19. For condominium developments, the annual Grant to the Applicant will be reduced by 25% if an appeal has been filed with MPAC by any of the condominium unit owners, whether such owner is the initial purchaser or a subsequent purchaser. The 25% holdback will not be released until the appeals are finally determined through the Assessment Review Board or Courts, and the revised property taxes have been calculated. The first year of the Grant is payable during the calendar year in which 75% of the condominium units within the project are fully assessed. The Grant is calculated by taking the difference between the post and pre-project municipal taxes. The post-project municipal taxes are calculated by taking the sum of the municipal taxes of each of the condominium units within the project. The Grant is calculated as a whole, and not calculated on a per condominium unit basis.
20. A Grant under this Program may be assigned to the City of Hamilton except where an Applicant has been approved for a loan under the Downtown Hamilton/West Harbourfront Remediation Loan Program (RLP) in which case the Applicant shall be required to assign the Grant under this Program to the City of Hamilton as payment towards their loan under the RLP. Any Grant amount under this Program in excess of the total loan outstanding under the RLP shall be provided to the Applicant in accordance with the criteria of this Program.
21. In the event of the sale, conveyance, transfer or entering into of any agreement of sale or transfer of the title of the Property (for projects other than condominium or mixed use condominium projects), any future Grants will be terminated except in extenuating circumstances where the current Applicant has submitted a written request to the City with accompanying rationale subject to acceptance at the sole discretion of the GM. The future owner who has been requested to become the Program Applicant and receive future grant payment shall be subject to appropriate due diligence for the purposes of paragraph 24, 25 and 26 herein. An assignment or transfer may require the assignee or transferee to submit an application, assignment or transfer agreement and/or such other documents as determined by the GM in their sole, absolute and unfettered discretion. The assignment of an application submitted but not yet approved may be permitted at the sole, absolute and unfettered discretion of the GM. The assignment of an approved application will be at the discretion of City Council.
22. In the event of a Change of Corporate Control where the Owner is a corporation, the Owner covenants and agrees that in the event that:
 - a. the Owner fails to supply the City, in a form satisfactory to the City such information relating to the ownership of its shares as the City may from time to time require or;

- b. without the written consent of the City first had and obtained:
 - i. the Owner issues or redeems any of its shares or transfers any of its shares;
 - ii. there is a sale or sales of the shares of the Owner which result in the transfer of the legal or beneficial interest of any of the shares of the Owner or;
 - iii. the Owner amalgamates, merges or consolidates with any other corporation; and

The result of any of the foregoing is a change in the effective control of the majority of the voting shares of the Owner, or the requested information is not provided, then future Grant payments under the Program shall cease at the absolute discretion of the City.

- 23. Approval of the Program application is at the absolute discretion of City Council and subject to the availability of funds.
- 24. Without limiting the discretion as set out in paragraph 23 herein, City Council or its delegate, whether or not an Applicant satisfies the requirements of the Program, may in its sole discretion, reject any application received from an Applicant where, in the opinion of Council, the commercial relationship between the City and the Applicant has been impaired by, but not limited to, the Applicant being involved in litigation with the City. Applicants shall include but not be limited to the following: the Applicant identified on the application form and, if a corporation, any person or entity with an interest in the corporation or any officer or director of the Corporation as determined by the City in its sole, absolute and unfettered discretion.
- 25. Without limiting the discretion as set out in paragraph 23 herein, City Council or its delegate, whether or not an Applicant satisfies the requirements of the Program, may in its sole discretion, reject any application without further consideration where due diligence undertaken by the City identifies property tax arrears owed on the subject property(s) or other properties owned by the Applicant within the City of Hamilton, non-compliance with respect to Zoning By-law regulations or there exist outstanding property standards, building code or fire code orders on the subject property(s).
- 26. Without limiting the discretion as set out in paragraph 23, herein, City Council or its delegate, whether or not an Applicant satisfies the requirements of the Program, may in its sole discretion, reject any application received from an Applicant where there is credible information that the Applicant has been involved recently or repeatedly in illegal activity supporting the conclusion that they will not conduct themselves with honesty and integrity in undertaking the activity, operation or business for which a Loan and Grant under this Program is being sought. For corporate Applicants, the Applicant, for the purposes of this paragraph 26, will be considered to be the corporation, the officers and

directors of the corporation and the shareholders and this paragraph 26 shall apply jointly and severally to each of them.

27. Above grade improvements/developments commenced prior to submitting an application are ineligible under this Program. An Applicant shall assume the risk of any costs incurred after an application has been submitted but prior to approval under this Program having been received.
28. If an Applicant is redeveloping a portion of their property only, the Grant will be based on that portion of the property. The Applicant will be required to provide an estimate of the annual property assessment valuation for the portion of the property subject to the Program application from the MPAC for each year in which a Grant payment is to be provided for calculation purposes.
29. Buildings uses and improvements/developments shall conform to the City’s Official Plan(s), applicable Secondary Plan(s), Zoning By-Laws(s), Site Plan approval and any other applicable and approved municipal policies, by-laws or guidelines (e.g. urban design guidelines) and any other laws applicable to the improvement/development.
30. Applicants shall disclose if any residential units are occupied at the time an application has been submitted to the City and, if so, identify the specific units occupied. For additional clarity, the City is not requesting or requiring the disclosure of tenant names or any other personal contact information.
31. Where this Program will provide a financial incentive to facilitate the undertaking of external and/or internal property improvements which are not for the sole benefit of a non-residential use, and where the subject property contains occupied unit(s) at the time of application to the City, the occupied unit(s) shall not be the subject of an approved Above Guideline Increase (AGI) request (also referred to as an L5 request) to the Landlord and Tenant Board (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 will continue to apply whether or not the tenancy of the unit(s) changes during this period. Exceptions to this condition may be provided where it can be demonstrated, to the City’s satisfaction, that:
 - a. The affected tenant(s) have consented to the proposed AGI. Where there is more than one occupied unit in the building at the time of application to the City, this exception only applies where all affected tenants have consented to the proposed AGI request;
 - b. That the requested AGI is a result of improvements or other matters not related to those improvements facilitated by the City’s financial incentive; and

- c. 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.

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 this incentive program but prior to the entering into any agreement required by this program, the application approval will be deemed to be rescinded, no incentive will be provided, and no agreement will 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 this program, any remaining incentive yet to be provided over the remaining term of the program will be cancelled and enforcement action will be initiated to recoup financial incentives provided to-date.

This condition shall not apply to units registered as a condominium.

- 32. A Program application may be denied by City Council if the improvement/development is not supported by Council notwithstanding any approval of *Planning Act* applications by any other authority including but not limited to the Local Planning Appeal Tribunal or the Minister of Municipal Affairs and Housing, and that City Council’s decision on the Program application will not fetter its discretion on *Planning Act* applications.
- 33. City Council’s approval of a Program application can provide for a reduced grant amount so that no grant is payable in respect of any portion of the improvement/development that is the subject of the grant application which City Council does not support notwithstanding any approval of *Planning Act* applications by any other authority including, but not limited to, the Local Planning Appeal Tribunal or the Minister of Municipal Affairs and Housing, and that City Council’s decision on the Program application will not fetter its discretion on *Planning Act* applications. In such cases, the Applicant shall be required to provide additional supporting documentation, at the Applicant’s own expense, to support the providing of financial assistance in accordance with City Council’s approval/direction, including but not limited to, all MPAC post development assessment estimates required by the City.

C. PROGRAM APPLICATION CRITERIA

A complete Program application shall be submitted to the Economic Development Division prior to the issuance of a Building Permit for above grade construction. Required documents and information forming a complete application shall be identified within the Program’s application form.

An application fee is payable upon submission of application. The fee will be authorized through a user-fee by-law passed by City Council. The rate of the fee may be changed from time to time as approved by City Council and will be identified on the Program’s application form.

Applications to this program are subject to the approval of City Council in their sole discretion and subject to the availability of funds.

Applications will not be accepted if there is an outstanding Request for Reconsideration through the MPAC, outstanding Assessment Review Board appeal, outstanding divisional court appeal or an outstanding *Municipal Act* appeal, relating to the assessment of the Property or in respect of taxes related to the Property. The Grant application will only be accepted once the above has been settled and the revised (if applicable) property taxes have been calculated.

Applications shall include plans, estimates, contracts and other details as may be required to satisfy the City as to the cost of the project and as to the conformity of the project with the objectives of the Revitalizing Hamilton’s Commercial Districts Community Improvement Plan.

Applicants may be required to obtain a post-development assessment estimate from the MPAC as part of submitting a Program application. Developments which are the subject of this requirement will be identified in the Program’s application form.

D. PROGRAM ADMINISTRATION

Economic Development Division staff will review applications for eligibility in collaboration with other City departments as required with approval of applications subject to a decision by City Council in their sole and unfettered discretion.

Applicants and properties will be the subject of due diligence undertaken by the City prior to any approval being provided or payment of a Grant under this Program. This will include, but may not be limited to, confirmation of the following: all property taxes are paid and current on the subject property(s) or other properties owned by the Applicant within the City of Hamilton, the property is in compliance with Zoning By-law regulations, that there are no outstanding property standards, building code or fire code orders on the subject property(s) and that the Applicant is not in litigation with the City. Failure to comply with any of the above will result in an application not being approved or, if the application is approved, non-payment of a Grant under this Program.

Where the improvements/development requires approval of a Site Plan, a conditional Site Plan approval shall have been obtained from the City prior to City Council consideration of an application under this Program. Where a conditional Site Plan approval contains conditions which, until satisfied, may impact a post-development assessment of the project including but not limited, requirements to obtain Minor Variances through the Committee of Adjustment, the City may require these conditions to be satisfied prior to City Council consideration of the

application. Where no Site Plan is required for the improvement/development, City Council’s consideration of an application will occur after such time as the Economic Development Division is satisfied that all necessary information has been provided to inform an estimate of the resulting post-development assessment and municipal property taxes.

Approved Applicants shall be required to enter into a Grant Payment Agreement with the City.

The City reserves the right to require the submission of any additional documentation or enter into any additional agreements as deemed necessary by the City to ensure the goals and purpose of this Program and the Revitalizing Hamilton’s Commercial Districts Community Improvement Plan are met.

Applications to this Program not yet approved by City Council (or its delegate) shall be subject to any changes to the terms of this Program which are approved by Council prior to the application being approved.