

START-UP & OFFICE TENANT ATTRACTION (SOTA) PROGRAM



A. PROGRAM DESCRIPTION

The Start-up and Office Tenant Attraction (SOTA) Program (the Program) is intended to provide low-interest Loans or Forgivable Loans that will facilitate the undertaking of eligible leasehold improvements to office space by property owners or authorized tenants in order to support the creation of new office space and improve the marketability and attractiveness of existing office space. This Program will serve as a tool to reduce office vacancy rates in Downtown Hamilton and other eligible commercial districts and serve as a means of attracting new and expanding office uses and businesses to Hamilton.

In addition to supporting general office tenancy, this Program will also serve as a means of attracting both start-up/business incubators and individual start-up businesses who are emerging from regional, national and international start-up/business incubators seeking to establish their first permanent office location.

This Program will apply within the Downtown Hamilton Community Improvement Project Area (CIPA), the Community Downtown/Village Core CIPAs, Business Improvement Area (BIA) CIPAs, the Mount Hope / Airport Gateway CIPA and the Barton Street and Kenilworth Avenue North Commercial Corridor CIPAs as collectively defined through the Revitalizing Hamilton's Commercial Districts Community Improvement Project Area By-law.

Loans provided under this Program shall be provided to the Applicant who is the Owner registered on title of the property that is the subject of the Program application or an authorized commercial tenant of said property and who will be undertaking the improvement/development.

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, legal, discharge and registration fees (plus applicable taxes), where applicable.

The City retains the right to assess the reasonableness of costs and which costs are eligible for funding under the terms of the Program.

B. PROGRAM ELIGIBILITY AND LOAN CRITERIA

1. Applications to this Program must meet the goals of the Revitalizing Hamilton's Commercial Districts Community Improvement Plan (RHCD CIP).
2. This Program is to apply within the Downtown Hamilton CIPA, the Community Downtown/Village Core CIPAs, BIA CIPAs, the Mount Hope / Airport Gateway CIPA and the Barton Street and Kenilworth Avenue North Commercial Corridor CIPAs 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. The maximum Loan amount is \$450,000 per application.
5. The Loan amount will be the lesser of:
 - a. 90% of estimated eligible leasehold improvement costs; or
 - b. As follows:
 - i. in the case of applications by an owner or tenant involving a lease, the square foot area multiplied by the appropriate \$ amount based on the term of the lease, as indicated in the table below;

Term of Lease	\$ Amount
12 to 35 months	\$10
36 to 47 months	\$15
48 to 59 months	\$20
60 months or longer	\$25

The lease must be for a minimum of one year.

- ii. in the case of applications by an owner not involving a lease (i.e. owner-occupied spaces), the square foot area multiplied by \$25.

Notwithstanding the foregoing, if the amounts in a. or b. above exceed \$450,000.00 the maximum Loan amount shall be \$450,000.00.

6. For the purposes of this Program, the following use definitions shall apply:
 - a. A Start-up shall mean a business who is a current tenant of a start-up/business incubator, where support services/resources for new or growing businesses are provided as a component of one’s tenancy. For the purposes of this Program a Start-up shall also include a start-up/business incubator that provides space and services to new businesses and entrepreneurs as determined by the General Manager of Planning and Economic Development (GM).
 - b. An Educational Establishment shall mean a non-for-profit university or college (established pursuant to the *Ontario Colleges of Applied Arts and Technology Act, 2002*, and its regulations) for academic instruction receiving funds from the Province of Ontario and shall include a hospital or institution, including the associated offices of such uses.
7. Only leasehold improvements for a minimum of 1,000 square feet of gross leasable office space or 500 square feet for a Start-up shall be eligible for a Loan under this Program. The minimum square foot requirement may be subdivided within a larger building.
8. Leasehold improvements for a tenant expanding/relocating tenant already located within the City of Hamilton, with the exception of a Start-up, must be increasing their current leasehold area by a minimum of 1,000 square feet of gross leasable office space to be eligible for the Program. For the purpose of calculating the Loan amount, only the total leasehold improvement costs that apply to the expansion area will be applied.
9. Notwithstanding paragraph four herein, City Council, in its sole and absolute discretion may, at the time of initially approving a Loan commitment may:
 - a. Provide that the maximum Loan amount can be greater than \$450,000.00; and/or
 - b. Provide all or portion of the Loan in the form of a Forgivable Loan to a maximum of \$25,000.00, or such other amount at the discretion of City Council, where:
 - i. the Applicant is an Educational Establishment establishing a presence within the Downtown Hamilton CIPA; or
 - ii. the Applicant is a Start-up.

Approval of a Forgivable Loan is contingent on an appropriate funding source being identified as part of the approval process and provided in accordance with paragraph 10 herein.
10. A Forgivable Loan will be provided on the same terms and conditions as the Loan except for the following:

- a. Uses must meet the definition of an Educational Establishment or Start-up as contained in paragraph six herein to the satisfaction of the GM prior to being forwarded to City Council for consideration;
 - b. If the Applicant is not otherwise in default of the Loan Agreement, Loan forgiveness will occur at the end of the term of the Loan;
 - c. Forgiveness shall not be pro-rated if the Applicant vacates the space to which the Loan was used for leasehold improvements prior to the end of the Loan term;
 - d. In order to earn the forgiveness, the Applicant must occupy the space to which the Loan was used for leasehold improvements for the entire term of the Loan. Subletting of the space shall not be permitted; and
 - e. The maximum term of the Loan shall be as set out in paragraph 11 herein. However, if the applicable lease provides for early termination the minimum term of the Loan shall be one year.
 11. The maximum Loan term is the term of the lease and shall not exceed five years (subject to prior termination on default) from the date of the final Loan advance exclusive of holdbacks.
 12. The Loan interest will be at 0% for the repayment term.
 13. A maximum of one Loan per deeded property will be permitted under this Program.
 14. Eligible leasehold improvements shall be limited to spaces which are deemed, at the City's discretion, to meet the following use definitions:
 - a. Under Hamilton Zoning By-law 05-200:
 - i. Office, Commercial School or Communications Establishment; or
 - ii. Production Studio only where digital media uses such as animation studio and associated software development and processing occur; or
 - b. a Start-up or Educational Establishment in accordance with paragraph six herein.
- Notwithstanding the above, City Council, at its sole discretion, may deem other uses eligible for the program that are not listed above.
15. Notwithstanding paragraph 14 herein, leasehold improvements to space within eligible buildings that are used for non-office or more commercially-oriented activities such as, but not limited to retail, restaurant, personal services, commercial entertainment, commercial recreation, hotel, financial establishments or conference or convention centre uses as well as medical clinics are ineligible under this Program.
 16. Prior to any Loan 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.
17. Approval and the receiving of financial assistance under this Program shall not preclude eligibility, approval and the receiving of financial assistance for the same subject property(s) under any other available municipal program.
18. All Applicants receiving approval for a Loan under this Program shall be required to enter into a Loan Agreement with the City, prior to the first advance of funds, with provisions including but not limited to the terms and conditions set out herein and such additional conditions as determined by the City Solicitor in their sole discretion, and if deemed a requirement by the GM, execute a General Security Agreement, a Site Specific General Security Agreement or such security that may be required to secure a commercial loan such as a mortgage registered on title upon the lands to be development (the “Property”), personal guarantees and/or corporate guarantees.
19. Interest on arrears will be charged per annum at the then prevailing rate established by Council.
20. The Loan may be prepaid at any time without notice, bonus or penalty. Discharge and registration fees (plus applicable taxes) will be required to be paid at such time as the prepayment occurs.
21. Leasehold improvements shall commence within one year following Council’s approval of the Loan. The one-year period can be extended at the sole discretion of the GM.
22. Loans are conditional upon the City being provided with a copy of the executed lease, in a format acceptable to the City in its absolute discretion. This Program term does not apply in the case of applications for owner-occupied spaces.
23. Unless waived at the sole, absolute and unfettered discretion of the City, the applicant must provide supervision of the Project by a Project Monitor acceptable to the City. The Project Monitor will at the cost of the Applicant, and prior to each advance provide proof that is satisfactory to the City that the structural, mechanical and electrical work complies with the approved plans and specifications and all Applicable Law.
24. Advances are made by the City, upon proof that is satisfactory to the City is provided confirming the value of the work completed, there are no tax arrears on the subject property and on other properties owned by the applicant within the City of Hamilton and such other conditions as may be required by the City Solicitor.

25. The City may retain from any advance, including the final advance, such holdbacks including but not limited to the basic holdback, finishing holdback, and notice holdbacks as provided for under the Construction Act as the City deems prudent. Notwithstanding the foregoing the City will hold back a minimum of 10% of an advance.
26. Advancements will be provided as follows:
 - a. For Loans in an amount less than 90% of the estimated costs of the eligible improvements, advances will be provided in three stages, upon completion of 50%, 75% and 100% of the leasehold improvements eligible to be funded by the program. Copies of paid invoices will be required to be provided to the City for advances to be made. In addition to invoices the City may require, in the sole determination of the GM additional information in order that advances can be made. Advances will be made based on work completed. If the amount of the Loan is less than the cost of the eligible leasehold improvements advances will be made as follows subject to compliance with applicable conditions:
 - i. at the 50% completion stage the amount advanced shall equal the amounts invoiced for eligible improvements less 10% up to a maximum amount of 50% of the Loan amount and less a Holdback
 - ii. at the 75% completion stage the amount advanced shall equal the amounts invoiced for eligible improvements less 10% up to a maximum of 25% of the Loan amount and less a Holdback; and
 - iii. at the 100% completion stage the amount advanced shall equal the amounts invoiced for eligible improvements less 10% up to a maximum of 25% of the Loan amount and less a Holdback; or
 - b. For Loans in an amount equal to or greater than 90% of the estimated costs of the eligible improvements, advances will be made as follows subject to compliance with all applicable conditions:
 - i. at the 50% completion stage the amount advanced shall equal 90% of the invoiced amounts for eligible improvements less a Holdback;
 - ii. at the 75% completion stage the amount advanced shall equal 90% of the amounts invoiced for eligible improvements less any amounts previously advanced and less a Holdback; and
 - iii. at the 100% completion stage the amount advanced shall equal 90% of the amounts invoiced for eligible improvements less any amounts previously advanced and less a Holdback.
27. Unless waived at the sole, absolute and unfettered discretion of the City, confirmation of publication of the Certificate of Substantial Performance will be required. Where the requirement for confirmation of publication of the Certificate of Substantial Performance

has been waived by the City, the Contractors must supply a Declaration of Last Supply. The Holdback will be released 60 days following the date of publication of substantial completion or, where the City has waived the requirement for the publication of the Certificate of Substantial Performance, the Holdback will be released 60 days following the Declaration of Last Supply from the Contractors and following receipt of a written report to the City, satisfactory to the GM, that will include but not be limited to an updated statement of project costs, confirmation that all of the Units in the Project can be occupied, receipt of statutory declaration(s) in a form satisfactory to the GM and sworn to by the Contractor(s) that states: “All accounts for labour, contracts, subcontracts, products, services, machinery and equipment which have been incurred in the Project, have been paid in full” and there are no notices of liens and lien rights have expired.

28. If the total of the invoiced cost of eligible improvements exceeds the estimated cost, the total of all advances cannot exceed the approved amount of the Loan and the final advance shall be reduced in order to conform to this requirement.
29. All taxes as billed must be paid current and in good standing throughout the development process and term of the Loan or to the final advance.
30. The City will require, at its sole discretion, any specific insurance terms required to be met to protect the City’s interest.
31. Final inspection will be completed for all building permits required in relation to the leasehold improvements.
32. Loan repayments will commence at the beginning of the second full month following the date of the final advance. Principal payments will be made in equal monthly installments on the first of each subsequent month over the term of the loan such that at the end of the term, the principal amount will have been paid in full. Monthly repayments would not be required for the portion of the Loan that is being provided as a Forgivable Loan.
33. Leasehold improvements shall be completed within four months from the First Advance. The four-month period can be extended at the sole discretion of the GM.
34. If the Applicant is the owner, in the event of the sale, conveyance, transfer or entering into of any agreement of sale or transfer of the title of the Property all monies secured by the mortgage to the City shall forthwith become due and payable unless otherwise determined by the GM in their sole discretion.
35. In cases where the Applicant is a corporation, the Applicant covenants and agrees that in the event that there is a change in the effective control of the majority of the voting shares of the corporation, the City shall have absolute discretion to request the full repayment of any outstanding Loan under this Program together with the interest accrued to date.

36. If the Applicant is a tenant, in the event that the tenant vacates the space prior to the end of the Loan term (i.e. the end term of the lease or five years from the date of the final Loan advance, whichever is less), or if the tenant’s lease is terminated, all monies secured by the mortgage to the City shall forthwith become due and payable unless otherwise determined by the GM in their sole discretion..
37. Approval of an application under this Program is at the absolute discretion of City Council and subject to the availability of funds.
38. Without limiting the discretion as set out in paragraph 37 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.
39. Without limiting the discretion as set out in paragraph 37 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).
40. Without limiting the discretion as set out in paragraph 37 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 where the City determines in its sole discretion that there is a financial risk to the City in terms of the financial capabilities of the Applicant to complete the improvement/development subject to the Program application.
41. Without limiting the discretion as set out in paragraph 37, 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 under this Program is being sought. For corporate Applicants, the Applicant, for the purposes of this paragraph 41, will be considered to be the corporation, the officers and directors of the

corporation and the shareholders and this paragraph 41 shall apply jointly and severally to each of them.

42. Improvements/developments commenced prior to submitting an application are ineligible for funding under this Program. Work commenced after submitting an application but prior to approval may be eligible for funding under the Program with eligibility determined by the GM in their sole, absolute and unfettered discretion. 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.
43. 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.
44. 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.
45. City Council's approval of a Program application can provide for a reduced Loan amount so that no Loan is provided in respect of any portion of the improvement/development which 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 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.

C. ELIGIBLE/INELIGIBLE IMPROVEMENTS

Eligible leasehold improvements include only the following:

- Improvements required by the tenant in order to lease the space but that will become the property of the landlord upon termination of the lease. This would include alterations or improvements to the building that cannot be removed upon termination of the lease because they are attached to or form part of the leased premises and may include:
 - alterations to a building such as interior walls, ceilings and doors;
 - paint, wallpaper, window coverings and flooring;

- phone and data cabling;
- fixed lighting, HVAC, electrical or plumbing upgrades; and
- other permanent leasehold improvements deemed eligible at the sole discretion of the GM.

Ineligible leasehold improvements include:

- Items that can be moved or taken out of the building, such as mobile partitions, furniture and equipment, appliances, pictures and carpeting / rugs that are not attached to the floor;
- Capital improvements to a property e.g. additions, roofing; and
- Any other improvement deemed not to meet the intent of this Program at the sole discretion of the GM.

D. PROGRAM APPLICATION CRITERIA

A complete Program application shall be submitted to the Economic Development Division prior to the commencement of works that are the subject of a Program application. 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.

Approval of an application under this Program is at the absolute discretion of City Council and subject to the availability of funds.

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

Applicants shall be required to submit information to assist with determining the financial capabilities of the Applicant to complete the improvement/development subject to the Program application and to identify any potential financial risks to the City. Information required to be submitted is at the discretion of the City and may include but may not be limited to, a financial risk assessment, personal/corporate net worth statements and/or business plan.

E. 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 the 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 provision of a Loan/Forgivable Loan 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 Loan/Forgivable Loan under this Program.

Approved Applicants shall be required to enter into a Loan 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.