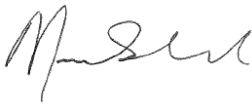




CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Economic Development Division

TO:	Mayor and Members General Issues Committee
COMMITTEE DATE:	September 8, 2021
SUBJECT/REPORT NO:	Financial Incentive Program Amendments Respecting Mitigation of Potential Tenant Displacement (PED21159) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Phil Caldwell (905) 546-2424 Ext. 2359
SUBMITTED BY:	Norm Schleeahn Director, Economic Development Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

- (a) That staff be directed to incorporate the necessary amendments to effect the following Financial Incentive Program changes as part of staff's preparation of an updated Downtown and Community Renewal Community Improvement Plan (DCR CIP) By-law and associated Program descriptions to be brought forward in conjunction with changes arising from staff's previously completed DCR CIP comprehensive review, as approved by Council on March 31, 2021 via Report PED21035, and that these updates be brought to the Planning Committee for a statutory public meeting, in accordance with requirements under Section 17(15)(d) of the *Planning Act*.
- (i) That the Hamilton Tax Increment Grant and Barton Kenilworth Tax Increment Grant programs exclude from Program eligibility any portion of a development/improvement Project consisting of renovations to existing residential rental units except where one or more of the following conditions are met:
- (1) the Project does not result in tenant displacement; or,

- (2) the Project has been approved for financial assistance under a Canada Mortgage and Housing Corporation (CMHC), Federal, Provincial or City Program for the purposes of creating residential housing to address housing affordability in the City; or,
 - (3) the existing building has been entirely vacant for at least two years prior to a program application or pre-application being submitted to the City; or,
 - (4) the property owner and program applicant are a registered, not-for-profit organization;
- (ii) That the Barton/Kenilworth Commercial Corridor Building Improvement Grant and Commercial Corridor Housing Loan and Grant Programs no longer permit as eligible costs interior renovations to existing residential rental units except where one or more of the following conditions are met:
- (1) the same conditions identified in Recommendation (a)(i); or,
 - (2) the interior renovations directly support improvements to a commercial space or will improve/replace shared building services utilized by a commercial space and another use within the same building (such as plumbing, electrical or Heating, Ventilation and Air Conditioning (HVAC) systems); or,
 - (3) the planned renovations are solely in response to the landlord being ordered to make repairs under any act or law or where the renovations are intended to support the legalization and/or recognition of an existing residential rental unit, without which, the unit would no longer be permitted to be occupied.

EXECUTIVE SUMMARY

On July 9, 2021 City Council approved a direction to staff in relation to a Hamilton Tax Increment Grant recommendation report for 540 King Street East, Hamilton that, among other matters, directed staff to provide "...policy revisions to address any potential loopholes of this program, which may result in displacement of tenants and report back to the General Issues Committee".

In response to Council's direction, staff undertook a review of the Hamilton Tax Increment Grant Program along with other City Financial Incentive Programs in which eligible development/improvement Project could include renovations to existing residential rental units. This necessitated the inclusion of the Barton/Kenilworth Tax

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Increment Grant, the Barton/Kenilworth Commercial Corridor Building Improvement Grant and the Commercial Corridor Housing Loan and Grant Programs as part of the review.

As a result, staff have developed recommended program amendments that, while not seeking to assess/evaluate the historical use of N11 and N13 notices or claims of tenant displacement, will reduce the potential for the City's incentive programs to contribute to tenant displacement by excluding renovations to existing residential rental units from eligibility under applicable City Programs except where certain conditions are met.

Staff's recommended Program amendments are intended to minimize the potential use of City Incentive Programs in circumstances where tenant displacement could take place while still retaining the availability of key programs to support the renovation of existing residential units where housing affordability will be part of the broader Project and/or where private-sector investment leveraged will maintain/increase the supply of safe, healthy and legal housing, contribute to the stock of new or improved commercial spaces, and generally support revitalization efforts in areas with the greatest need.

Given the scope of recommended program amendments, a statutory public meeting under the *Planning Act* for changes to the authorizing DCR CIP will be required. As such, staff are recommending that Program amendments be incorporated into draft updates to the DCR CIP By-law already being prepared by staff in connection with staff's completion of a comprehensive review of the DCR CIP previously presented via Report PED21035 and approved by Council on March 31, 2021. The updated DCR CIP By-law is planned to be brought forward for a statutory public meeting and Planning Committee consideration at its September 21, 2021 meeting.

Alternatives for Consideration – See Page 13

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: There are no financial implications arising from the recommendations of this Report.

Staffing: There are no staffing implications arising from the recommendations of this Report.

Legal: In accordance with the *Planning Act*, amendments to a Community Improvement Plan (CIP) requiring a statutory public meeting will result in a required 20-day appeal period from the date notice has been provided of Council's approval of an updated CIP by-law. As noted in the "Policy Implications and Legislated Requirements" section of this Report, a statutory public meeting and resulting appeal period will be required to implement the

recommendations of this Report. This will likely result in an effective date of recommended amendments, occurring no earlier than October 19, 2021, subject to Council approval and any appeals to the Ontario Land Tribunal. At present, staff have multiple applications under either the Hamilton Tax Increment Grant, the Barton/Kenilworth Tax Increment Grant, Barton/Kenilworth Building Improvement Grant or Commercial Corridor Housing Loan and Grant programs involving the renovation of existing residential rental units.

Until such time as the recommended program amendments could come into effect, any existing program applications which meet the current purpose and intent of an applicable program, as well as complies with the existing program terms and eligibility criteria, may be subject to a recommendation report being brought forward by staff for Council consideration or the consideration of the General Manager of Planning and Economic Development (GM) in instances where approval has been delegated to the GM.

HISTORICAL BACKGROUND

On July 9, 2021 City Council approved the following direction to staff respecting a recommendation report for a Hamilton Tax Increment Grant Program Application for 540 King Street East, Hamilton submitted by Malleum Real Estate Partners IV, by its General Partner Malleum General Partner IV Limited (the Applicant):

“Report PED21140, respecting the Hamilton Tax Increment Grant - 540 King Street East, Hamilton, was referred back to staff to meet with ACORN Hamilton and the applicant, as well as to provide a legal analysis, and policy revisions to address any potential loopholes of this program, which may result in displacement of tenants and report back to the General Issues Committee”

Although Council’s direction to staff was with respect to the Hamilton Tax Increment Grant Program, staff recognize that there are other existing City Financial Incentive Programs which also currently support renovations to existing residential rental units. In recognition of this, staff’s review and recommendations as contained in this Report have been expanded to also include the Barton/Kenilworth Tax Increment Grant, the Barton/Kenilworth Commercial Corridor Building Improvement Grant and the Commercial Corridor Housing Loan and Grant Programs.

Since 2002, the City has provided various Financial Incentive Programs intended to support the development/improvement of under-utilized and/or derelict properties within key commercial districts and corridors including Downtown Hamilton, the community downtowns of Ancaster, Binbrook, Dundas, Stoney Creek and Waterdown, Business

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Improvement Areas (BIAs), strategic commercial corridors within the urban area as well as designated historic properties throughout the City.

The private sector investment leveraged to-date with these Programs have increased the supply of safe, healthy 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 162 residential units and the creation of 1041 new units, of which 676 units were planned as rental.

The availability of each incentive program subject to this Report varies across the different Community Improvement Project Areas (CIPAs). The chart below provides a summary of the current geographic availability of each program:

		Community Improvement Project Areas (CIPA)						
		Downtown Hamilton	Community Downtowns (Ancaster, Binbrook, Dundas, Stoney Creek, Waterdown)	Business Improvement Areas (BIA)	Barton/Kenilworth Commercial Corridors (including Barton Village BIA)	Commercial Corridors	Mount Hope/Airport Gateway	Buildings Designated under Part IV or V of the Ontario Heritage Act
Programs	Commercial Corridor Housing Loan and Grant	✓	✓	✓	✓	✓	✓	✓
	Hamilton Tax Increment Grant	✓	✓	✓			✓	✓
	Barton/Kenilworth Tax Increment Grant				✓			
	Barton/Kenilworth Commercial Corridor Building Improvement Grant				✓			

In October 2019, City Council approved amendments to the terms of the Hamilton Tax Increment Grant, the Barton/Kenilworth Tax Increment Grant, the Barton/Kenilworth Commercial Corridor Building Improvement Grant and the Commercial Corridor Housing Loan and Grant Programs via Report PED19178/HSC19052.

These amendments were in response to a July 2019 Motion of Council and intended to mitigate the potential use of City Incentive Programs in a manner that could result in potential tenant displacement. Program amendments approved by Council at this time, and which came into effect on January 1, 2020, included:

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- 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 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;
- 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 with information respecting the estimated value of the incentive to be provided by the City, and the improvements the incentive is intended to facilitate, which may be used by the tenant as needed, including potentially as evidence at the LTB.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Recommendations contained in this Report require amendments to the purpose and intent of the Hamilton Tax Increment Grant, the Barton/Kenilworth Tax Increment Grant, the Barton/Kenilworth Building Improvement Grant and Commercial Corridor Housing Loan and Grant Programs. These changes will require amendments to the authorizing DCR CIP which, in accordance with Section 17(15)(d) of the *Planning Act*, must be the subject of a statutory public meeting.

RELEVANT CONSULTATION

Staff from the Economic Development Division of the Planning and Economic Development Department, Housing Services Division of the Healthy and Safe Communities Department and the Legal Services Division of the Corporate Services Department have been consulted as part of the review and development of the recommendations contained in this Report.

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In concert with staff's review, meetings with representatives of ACORN's Hamilton chapters and the Applicant with respect to the Hamilton Tax Increment Grant Program Application at 540 King Street East, Hamilton were undertaken by staff and have informed this Report. A fulsome response and details regarding these meetings will be presented to Council as part of a separate staff report specifically with respect to the Hamilton Tax Increment Grant application for 540 King Street East, Hamilton

ANALYSIS AND RATIONALE FOR RECOMMENDATION(S)

Through staff's previous Report PED19178/HSC19052, Program amendments intended to mitigate potential tenant displacement concentrated on implementing protections for tenants that continued to reside at the property at the time a program application or pre-application was submitted to the City. Staff did not include considerations respecting potential historical tenant displacement at a property as part of Program eligibility due to a number of limitations and constraints staff identified at that time which included:

- Anticipated difficulties with correlating renovations as being the sole factor in the past displacement of a tenant;
- Anticipated issues with retroactively seeking to contact former tenants to confirm the circumstances under which their tenancy at the property ended;
- Staff's inability to independently verify potentially competing claims as to the circumstances that led to a tenant's tenancy ending; matters generally addressed in Tribunal settings such as the LTB; and,
- Concern that issues of historical tenant displacement may be the result of broader issues beyond the scope of what current Incentive Programs could address including the need for tenant education/resources concerning the existing rights provided under the *Residential Tenancies Act* required before an application for a City Financial Incentive Program has been submitted (note that Council's recent approval of Report HSC19011(a) on April 28, 2021 respecting the Tenant Defence Fund may assist with some aspects of this concern).

In accordance with Council's direction respecting the Hamilton Tax Increment Grant Application for 540 King Street East, Hamilton, staff have undertaken a further review of the existing purpose and intent of the Hamilton Tax Increment Grant, Barton Kenilworth Tax Increment Grant, the Barton/Kenilworth Commercial Corridor Building Improvement Grant and Commercial Corridor Housing Loan and Grant Programs, including those amendments intended to mitigate potential tenant displacement which came into effect on January 1, 2020 via Report PED19178/HSC19052.

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As a further response to Council's direction, staff also reviewed regulations and practices regarding two specific tenant notices commonly used in conjunction with Projects involving renovations to existing residential rental units and about which concerns were raised by delegations at the July 5, 2021 General Issues Committee. These notices include an N11 notice (being a mutual agreement between a tenant and landlord to end a tenancy) and an N13 notice (being a notice to end tenancy because the landlord is seeking to demolish a rental unit, repair it or convert it to another use).

Issuance of N11/N13 notices by landlords to existing tenants are permitted through the Province's *Residential Tenancies Act* subject to certain requirements. With respect to the N13 notice, *the Act* further provides specific rights to tenants issued this notice including (but not limited to):

- The right of first refusal so the tenant may return to the same unit once renovations are complete;
- The right to return to the unit at a similar rent as prior to the renovations; and,
- The right to compensation for the period that the tenant cannot occupy the unit while renovations are being undertaken or be offered another rental unit acceptable to the tenant (except where the owner/landlord was ordered to demolish or repair the rental unit under any act or law).

Staff are aware of community concern that events may transpire in association with the issuance of an N11/N13 notice that may result in a tenant not exercising rights provided to them under *the Act*. Examples of concerns brought to staff's attention include:

- Landlords/property owners not being able to contact tenants to resume their tenancy after a renovation has been completed where an N13 notice was issued;
- Tenants being offered inducements or "buy-outs" to enter into N11 agreements to end a tenancy or, in the case of an N13 notice, to not exercise a right of first refusal to return to a unit; or,
- Difficulties tenants may face in finding short term accommodations during the period their unit is being renovated and the resulting need to relocate to another part of the City or move to another municipality permanently as a result.

It is noted by staff that the above matters are not in contravention of *the Act* but are rather matters that may arise in conjunction with, or as a result of, a landlord issuing a notice to a tenant. As such, any amendment to City programs that would attempt to assess the appropriateness of historical N11/N13 notices at a property as a condition of

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program eligibility would require staff and/or Council to make determinations about highly subjective, or easily disputed, matters such as:

- Whether a tenant was aware of rights provided to them under *the Act* when an inducement was accepted to end a tenancy;
- Whether a tenant was aware of Hamilton rental market conditions and potential increased rental costs that may be incurred from ending a tenancy; and/or,
- Whether any actions taken by the landlord as part of the providing of a notice under *the Act* were, while not in contravention of *the Act*, considered to be “acceptable” and by what standard if not related to compliance with Provincial legislation.

It is staff’s assessment that these subjective matters require the exploration of claims and facts, and ultimately determinations of right or wrong, that should occur under the Province’s jurisdiction in a formal tribunal setting via the LTB.

Notwithstanding the above, staff are cognizant of continued community and Council concerns respecting potential tenant displacement which may occur at properties which subsequently become the subject of an application under a City Financial Incentive Program.

For the reasons stated in this section, staff have not explored Program amendments that would require Staff/Council to make evaluation/determinations about historical use of N11 and N13 notices or evaluate claims of tenant displacement at a property. Instead, staff have focused on Program amendments that would attempt to minimize the potential use of City Incentive Programs for renovation Projects where tenant displacement is most likely to occur while still retaining the availability of key programs to support developments/improvements in specific circumstances where programs can continue to leverage private-sector investment that will increase the supply of safe, healthy and legal housing, contribute to the stock of new or improved commercial spaces, and generally support revitalization efforts in areas with the greatest need.

As such, staff are recommending the following Program amendments:

- Hamilton Tax Increment Grant and Barton/Kenilworth Tax Increment Grant Programs

Staff are recommending that the purpose and intent of these Programs be modified to exclude from eligibility those portions of a development/improvement Project which consist of renovations to existing residential rental units, except where certain conditions are met.

Through staff's review, it was identified that due to Municipal Property Assessment Corporation's (MPAC) methodology for determining the assessment value of the vast majority of residential rental Projects, Projects consisting of only renovations to existing residential rental units will primarily generate the increased assessment (and resulting municipal property tax uplift) required to be generated for eligibility under a tax increment-based program only if there are increased market rents and rental income that can be generated from the renovated units.

Although staff believe these Programs have made positive contributions to the revitalization of key commercial districts and corridors through the renovation of existing residential rental units, and that the Programs have the potential to continue leveraging positive private-sector investments that would benefit the revitalization of Hamilton's commercial districts and corridors, staff recognize that the inherent need for renovated units to generate increased market rents in order to generate the municipal tax uplift needed to be eligible under these Programs, may compete with other community/Council priorities and have thus led to staff's recommendation to remove such residential rental unit renovation Projects from Program eligibility.

Development/improvement Projects which would continue to be eligible for participation under these Programs going forward would include:

- New or renovated non-residential spaces (such as commercial buildings or the commercial portion of a mixed-use building otherwise containing existing residential rental units);
- New or renovated residential condominium units;
- New residential rental units; and,
- Renovations to spaces that were residential units but are subject to a change of use to another non-residential rental use, such as commercial.

Notwithstanding the above, staff recognize there may be instances where the renovation of existing residential rental units may result in a municipal tax increment but nonetheless will form part of a boarder Project that will continue to meet affordability or revitalization objectives with limited, or no potential tenant displacement. As such, staff are recommending exceptions to permit as eligible all new or renovated residential rental units which will generate a municipal tax increase where:

- The Project does not result in tenant displacement.

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- The broader improvement/development has been approved for financial assistance under a CMHC, Federal, Provincial or City program for the purposes of creating residential rental housing to address housing affordability in the City.

This exception will allow mixed income Projects to continue benefiting from these programs when being supported by government programs where a portion of residential rental units will be subject to a maximum affordability threshold.

- An existing building has been entirely vacant for at least two years prior to a program application or pre-application being submitted to the City.

A key focus of all DCR CIP Programs is to support the revitalization of commercial districts and corridors by reducing the number of long-standing vacant and derelict properties. Properties which have been vacant for an extended period of time are generally vacant due to challenges not related to the presence of existing tenants at low market rents. The presence of vacant buildings hinders the broader revitalization of these areas and represent lost opportunities to increase the supply of safe, healthy and legal housing in, or in close proximity to, key commercial districts and corridors. Staff are comfortable that the recommended two-year vacancy requirement will capture longer-term vacant buildings in need of support but will be a long-enough vacancy period to make it financially untenable for a property owner to intentionally leave a building vacant to meet program eligibility requirements. However, staff will monitor any use of this exception to ensure it is meeting its intended purpose and make recommendations for changes, as needed.

- The property owner and program applicant are a registered, not-for-profit organization.

This exception will allow not-for-profit housing provider to benefit from these programs to support improved residential rental unit conditions with a limited risk that any renovations would occur in connection with tenant displacement. Staff note that with respect to tax increment-based programs, this condition will only apply where the not-for-profit is subject to municipal property taxes.

- The Barton/Kenilworth Building Improvement Grant and Commercial Corridor Housing Loan and Grant Programs.

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Unlike tax increment-based programs, the Barton/Kenilworth Commercial Corridor Building Improvement Grant and Commercial Corridor Housing Loan and Grant programs do not require development/improvement Projects to generate an increase in assessment/municipal taxes in order to be eligible. This creates an opportunity for these Programs to continue supporting renovations to existing residential rental units without the inherent need for an increase in potential market rents for renovated rental units.

However, in order to further mitigate the potential for these Programs to be used for properties which may have had potential historical tenant displacement, staff are recommending amendments that are intended to reduce this possibility and will further refine the focus of development/improvement Projects which could be eligible under the Program going forward. As such, staff are recommending that, in addition to the four exceptions provided for under the tax increment-based programs, two additional exceptions be provided that are possible due to the non-tax increment nature of these programs:

- The interior renovations directly support improvements to a commercial space or will improve/replace shared building services utilized by a commercial space and another use within the same building (such as plumbing, electrical or HVAC systems).

Staff believe maintaining the ability to provide incentives for the improvement of existing commercial spaces is vital to achieving the City's revitalization goals in the CIPAs subject to these Programs. Common within these areas are older, low-rise buildings with mixed uses (typically consisting of commercial spaces at grade and residential uses above grade). In staff's experience, these mixed-use buildings will contain common building services that serve both the commercial space and another use in the building. To facilitate improvements to commercial spaces, these common services (such as plumbing, electrical or HVAC services) may need to be replaced/repaired resulting in indirect improvements to other uses in the building. Staff are recommending that these types of improvements continue to be permitted as eligible provided they are primarily intended to support a commercial space, will only result in indirect improvements to existing residential units and do not involve any upgrades/improvements within individual residential rental units.

- The planned renovations are solely in response to the landlord being ordered to make repairs under any act or law or where the renovations are intended to support the legalization and/or recognition of an existing residential rental unit, without which, the unit would no longer be permitted to be occupied.

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These Programs apply in areas of the City where staff have noted a higher concentration of existing residential rental units where the age and condition of the units may lead to increased instances of landlords being subject to orders to make repairs or where the legal status/ability for the unit to be recognized by Building staff is in question. In these instances, renovations may be required to existing units to comply with the current Provincial Building and Fire Codes or the City's Property Standards By-law. These Programs provide a potential avenue to provide financial support to landlords to enable their undertaking of necessary repairs which, if not undertaken, could result in a loss of existing housing.

Correlation to Staff's Completed Comprehensive Review of the Downtown and Community Renewal Community Improvement Plan

At the time of Council's direction, staff were in the process of finalizing updates to the DCR CIP Implementing By-law and associated Program descriptions, including those Programs subject to the recommendations of this Report, which had resulted from staff's completion of a comprehensive review of the DCR CIP previously presented via Report PED21035 at the March 24, 2021 General Issues Committee and subsequently approved by Council at its March 31, 2021 meeting.

Should Council approve the recommendation of this Report, staff will incorporate the recommended amendments as part of the broader update to the DCR CIP and its programs and bring this update forward to the Planning Committee for a statutory public meeting as required under the *Planning Act*.

ALTERNATIVES FOR CONSIDERATION

Alternative to the recommendations of this Report, the existing purpose and intent of City Financial Incentive Programs and associated program terms could remain unchanged with respect to the eligibility of development/improvement Projects consisting of renovations to existing residential rental units.

This alternative would continue to support existing revitalization efforts in key commercial districts and corridors with the acknowledgement that historical tenant displacement issues are beyond the ability of staff to consider in the recommendation of program applications due to the issues/constraints identified in this Report and that applications recommended for approval by staff may involve properties which have been the subject of historical tenant displacement.

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

Not applicable.