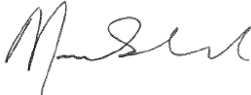





CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Economic Development Division
and
CORPORATE SERVICES DEPARTMENT
Legal and Risk Management Services Division

TO:	Mayor and Members General Issues Committee
COMMITTEE DATE:	September 8, 2021
SUBJECT/REPORT NO:	Hamilton Tax Increment Grant - 540 King Street East, Hamilton (PED21140(a)/LS21033) (Ward 3)
WARD(S) AFFECTED:	Ward 3
PREPARED BY:	Carlo Gorni (905) 546-2424 Ext. 2755 Phil Caldwell (905) 546-2424 Ext. 2359 Michael Kovacevic (Appendix D) (905) 546-2424 Ext. 4641
SUBMITTED BY:	Norm Schleeahn Director, Economic Development Division Planning and Economic Development Department
SIGNATURE:	
SUBMITTED BY:	Stephen Spracklin City Solicitor, Legal and Risk Management Services Division Corporate Services Department
SIGNATURE:	

Discussion of Appendix "D" to Report PED21140(a)/LS21033 in Closed Session is subject to the following requirement(s) of the City of Hamilton's Procedural By-law and the Ontario Municipal Act, 2001:

- Advice that is subject to solicitor-client privilege, including communications necessary for that purpose.

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

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

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

RECOMMENDATION

- (a) That submissions provided by ACORN Hamilton representatives and the Hamilton Tax Increment Grant Program Applicant for 540 King Street East, Hamilton, contained in Appendix “B” and “C” respectively to Report PED21140(a)/LS21033, be received;
- (b) That a Hamilton Tax Increment Grant Program Application submitted by Malleum Real Estate Partners IV, by its General Partner Malleum General Partner IV Limited (Tyler Pearson and Greg Clewer), for the property at 540 King Street East, Hamilton, estimated at \$169,801.83 over a maximum of a five (5) year period, and based upon the incremental tax increase attributable to the renovation of 540 King Street East, Hamilton, be authorized and approved in accordance with the terms and conditions of the Hamilton Tax Increment Grant Program;
- (c) That the Mayor and City Clerk be authorized and directed to execute a Grant Agreement together with any ancillary documentation required, to give effect to the Hamilton Tax Increment Grant for Malleum Real Estate Partners IV, by its General Partner Malleum General Partner IV Limited (Tyler Pearson and Greg Clewer) for the property known as 540 King Street East, Hamilton, in a form satisfactory to the City Solicitor;
- (d) That the General Manager of the Planning and Economic Development Department be authorized and directed to administer the Grant and Grant Agreement including but not limited to: deciding on actions to take in respect of events of default and executing any Grant Amending Agreements, together with any ancillary amending documentation, if required, provided that the terms and conditions of the Hamilton Tax Increment Grant Program, as approved by City Council, are maintained.

EXECUTIVE SUMMARY

On July 9, 2021 Council approved the following direction to staff originating from the July 5, 2021 General Issues Committee in respect to staff’s original recommendation Report PED21140 regarding an Application for a Hamilton Tax Increment Grant (HTIG) at 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.”

As part of staff’s meetings with representatives of ACORN Canada’s three Hamilton Chapters: Mountain; Downtown and East End (hereon referred to as “ACORN”) and the HTIG Program Applicant, staff requested ACORN submit a letter outlining their specific concerns regarding potential historical tenant displacement at 540 King Street East, Hamilton, and which is contained in Appendix “B” to this Report (City staff have redacted from the ACORN submission any identifying personal information such as individual’s phone numbers). Staff subsequently provided ACORN’s submission to the Applicant and requested that they provide a response to the matters raised in the letter. The Applicant’s response letter is contained in Appendix “C” to this Report.

Staff present the responses from ACORN and the Applicant, as contained in Appendix “B” and “C” to this Report respectively, impartially and without opinion or comment as to the validity or accuracy of the content submitted to staff by each party. Both parties were informed that their respective submissions would be presented in their entirety to Council as part of this Report.

Staff are not in a position to independently verify any of the disputing claims made as this would require the exploration of historical claims and facts, and ultimately require determinations of right or wrong, that should be made under the Province’s jurisdiction in a formal tribunal setting via the Landlord and Tenant Board (LTB).

As such, staff are recommending that the Hamilton Tax Increment Grant Application in respect of renovations undertaken at the property located at 540 King Street East, Hamilton be approved as the Application has met all applicable HTIG Program terms.

Improvements undertaken at the property are estimated to increase the assessed value of the property from its current value of \$2,542,000 to approximately \$4,643,000. Upon the completion of all renovations, the eligibility of costs will be subject to compliance with the HTIG Program terms and an audit of invoices by staff.

As a result, total annual property taxes generated by the property will increase with the municipal share of this property tax increase (municipal tax increment) estimated to be approximately \$56,600.61, of which 100% would be granted to the owner during year one, 80% or approximately \$45,280.49 in year two, 60% or approximately \$33,960.37 in year three, 40% or approximately \$22,640.24 in year four and 20% or approximately \$11,320.12 in year five. The estimated total value of the Grant is approximately \$169,801.83. Note that every year the tax increment is based on actual taxes for that year.

Notwithstanding staff's recommendation, and in further response to Council's direction, staff have developed, and are recommending via separate Report PED21159, changes to the purpose/intent and terms of various City financial incentive Program that would exclude renovations to existing residential rental units for future Program Applications except where certain conditions are met.

Alternatives for Consideration – See Page 9

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: The City will collect full property taxes on the property and, in turn, provide a Grant for five years, declining each year after the first year by 20%, based on the increase in the municipal portion of the taxes, post-renovation completion of 540 King Street East, Hamilton. Following year one of the Grant Payment, the City will start to realize the positive results of the Program from a financial perspective. Based on the projected figures, the estimated tax increment over five years totals \$283,003.05, of which the Applicant would receive a Grant totalling approximately \$169,801.83 and the City retaining taxes totalling approximately \$113,201.22.

Staffing: Applicants and subsequent Grant Payments under the HTIGP are processed by the Commercial Districts and Small Business Section and Taxation Section, Corporate Services Department. There are no additional staffing requirements.

Legal: Confidential legal advice prepared by staff are provided in Appendix "D" to this Report for Council consideration.

Section 28 of the *Planning Act* permits a municipality, in accordance with a Community Improvement Plan, to make loans and grants which would otherwise be prohibited under Section 106(2) of the *Municipal Act*, to registered / assessed owners and tenants of lands and buildings. A Community Improvement Plan can only be adopted and come into effect within a designated Community Improvement Project Area. Changes to a Community Improvement Plan or Community Improvement Project Area require formal amendments as dictated by the *Planning Act*.

Should Council approve the Application, the Applicant will be required to execute a Grant Agreement prior to the Grant being advanced. The Grant Agreement will be developed in consultation with the Legal and Risk Management Services Division.

As construction projects move forward, it is sometimes necessary to amend previously approved Grant Agreements and any ancillary documentation.

Therefore, staff recommends that the General Manager of Planning and Economic Development be authorized to amend Grant Agreements and any ancillary documentation, provided that the terms and conditions of the HTIG Program are maintained.

HISTORICAL BACKGROUND

On July 9, 2021 Council approved the following direction to staff originating from the July 5, 2021 General Issues Committee in respect to staff's original recommendation Report PED21140 regarding an HTIG Program Application at 540 King Street East, Hamilton submitted by 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.”

Report PED21140 had recommended approval of the Applicant's HTIG in respect of improvements made to 36 residential rental units at the subject site as well as exterior building including, not limited to, new windows, doors and other façade improvements.

This Report responds to the following aspects of the direction to staff:

- An overview of staff's meetings with ACORN's Hamilton Chapters and the Applicant, further discussed in the “Relevant Consultation” section of this Report and including letters submitted by ACORN representatives and the Applicant contained in Appendix “B” and Appendix “C” to this Report respectively; and,
- Providing a legal analysis regarding the Program Application at 540 King Street East, Hamilton for Council consideration. This analysis is discussed in the “Legal Implications” Section of this Report and in the associated Confidential Memorandum contained in Appendix “D” to this Report.

Not contained within this Report are recommendations for broader Program policy revisions which are provided via separate recommendation Report PED21159.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Urban Hamilton Official Plan

The site is municipally known as 540 King Street East, Hamilton and is located within a Primary Urban Corridor on Schedule E – Urban Structure and designated “Mixed Use –

Medium Density” on Map E-1 – Urban Land Use Designations which is intended to permit a full range of retail, service commercial, entertainment and residential uses at a moderate scale.

The existing use of the site conforms to the above designation.

Zoning By-law No. 05-200

Under the City of Hamilton Zoning By-Law No. 05-200, the site is zoned “Transit Oriented Corridor Mixed Use Medium Density (TOC1) Zone” which provides for a mixture of uses in stand-alone or mixed-use buildings along higher order transit corridors in a built form that creates complete streets and are transit supportive. The existing use of the site is permitted.

RELEVANT CONSULTATION

In response to Council’s direction, staff met with representatives of ACORN on July 13, 2021. At this meeting staff listened to concerns raised by ACORN that included claims of historical tenant displacement at 540 King Street East as well as at other properties owned by the Applicant in Hamilton.

To further staff’s report back to Council, staff requested that ACORN articulate in writing the grounds on which they believed the HTIG Program Application for 540 King Street East, Hamilton should be refused. ACORN’s response is contained in Appendix “B” to this Report. City staff have redacted from the ACORN submission any identifying personal information such as individual’s phone numbers.

On July 7, 2021 staff met with the representatives of the Applicant. Subsequent to this meeting, on July 27, 2021, staff provided the Applicant with a copy of ACORN’s submission (as contained in Appendix “B” to this Report) and requested that the Applicant provide a written response. The Applicant’s response is contained in Appendix “C” to this Report.

Staff from the Taxation Section and the Finance and Administration Section, Corporate Services Department and the Legal and Risk Management Services Division, Corporate Services Department were consulted, and the advice received is incorporated into this Report

ANALYSIS AND RATIONALE FOR RECOMMENDATION(S)

Staff present the responses from ACORN and the Applicant, as contained in Appendix “B” and “C” to this Report respectively, impartially and without opinion or comment as to the validity or accuracy of the content submitted to staff by each party. Both parties

SUBJECT: Hamilton Tax Increment Grant - 540 King Street East, Hamilton (PED21140(a)/LS21033) (Ward 3) - Page 7 of 9

were informed that their respective submissions would be presented in their entirety to Council as part of this Report.

Staff are not in a position to independently verify any of the disputing claims made as this would require the exploration of historical claims and facts, and ultimately require determinations of right or wrong, that should be made under the Province's jurisdiction in a formal tribunal setting via the Landlord and Tenant Board (LTB).

As such, staff are recommending that the HTIG Program Application in respect of renovations undertaken at the property located at 540 King Street East, Hamilton be approved as the Application has met all applicable HTIG Program terms.

Should Council approve the Application, the Applicant will qualify for the grant upon completion of the development project. Renovation costs are estimated at \$2,775,000 with the eligibility of costs subject to compliance with the HTIG Program terms and an audit of invoices by staff. The total estimated Grant over the five year period is estimated at approximately \$169,801.83.

Commercial Districts and Small Business staff, in co-operation with staff from the Taxation Section and Legal and Risk Management Services Division, developed an estimated Schedule of Grant Payments under the terms of the Program. The final Schedule of Grant Payments will be contingent upon a new assessment by MPAC following completion of the project. The Applicant will be required to sign a Grant Agreement. The Grant Agreement contains provisions for varying the Grant payment in each, and every year based on MPAC's assessed value. By signing, the Applicant will accept the terms and conditions outlined therein prior to any Grant Payments being made. The Agreement outlines the terms and conditions of the Grant Payments over the five year period.

The estimated Grant shall be calculated according to the following formulas:

Grant Level:	100%	
Total Eligible Costs (Maximum):	\$ 2,775,000	
Total Pre-project CVA: MT (Multi Residential)	\$ 2,542,000	Year: 2019
Pre-Project Property Taxes		
Municipal Levy:	\$ 63,011.72	
Education Levy:	\$ 3,725.14	
Pre-project Property Taxes	\$ 66,736.86	

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(PED21140(a)/LS21033) (Ward 3) - Page 8 of 9**

*Post-project CVA:

MT (Multi Residential)	\$ 4,643,000	Year: TBD
Estimated Post-project CVA	\$ 4,643,000	

Post-Project Property Taxes

****Estimated** Municipal Levy: \$ 119,612.33

****Estimated** Education Levy: \$ 7,103.79

****Estimated** Post-Project Property Taxes: \$ 126,716.12

*The actual roll number(s) assessed value(s), tax classification(s) and value partitioning (where applicable) are to be determined by the Municipal Property Assessment Corporation (MPAC).

**2020 tax rates have been used for calculation of the estimated post-development property taxes.

Pre-project Municipal Taxes = Municipal Levy = \$63,011.72

Municipal Tax Increment = \$119,612.33 - \$63,011.72 = \$56,600.61

Payment in Year One = \$56,600.61 x 1.0 = \$56,600.61

ESTIMATED GRANT PAYMENT SCHEDULE for renovation of two multi-residential buildings containing a total of thirty-six (36) residential units

Year	Grant Factor	Tax Increment*	Grant
1	100%	\$56,600.61	\$56,600.61
2	80%	\$56,600.61	\$45,280.49
3	60%	\$56,600.61	\$33,960.37
4	40%	\$56,600.61	\$22,640.24
5	20%	\$56,600.61	\$11,320.12
Total		\$283,003.05	\$169,801.83

*Note that the tax increment is based every year on actual taxes for that year. The figures above are estimates. In other words, for each year a Grant Payment is paid, the actual taxes for the year of the Grant Payment will be used in the calculation of the Grant Payment.

Details of the proposed renovation and its estimated assessment and municipal tax increments are based on the project as approved, or conditionally approved, at the time of writing this Report. Any minor changes to the planned renovation that occur prior to the final MPAC reassessment of the property may result in an increase/decrease in the actual municipal tax increment generated and will be reflected in the final Grant amount.

ALTERNATIVES FOR CONSIDERATION

Declining a Grant and/or approving a reduced amount would undermine the principles of the HTIG Program and regeneration efforts in general. This alternative is not recommended.

Financial: Grants totalling an estimated \$169,801.83 over a five year period would not be issued.

Staffing: N/A

Legal: See Appendix “D” to this Report for Council consideration.

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.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Report PED21140(a)/LS21033 – Location Map

Appendix “B” to Report PED21140(a)/LS21033 – Letter submitted by ACORN respecting 540 King Street East, Hamilton

Appendix “C” to Report PED21140(a)/LS21033 – Response Letter submitted by HTIG Program Applicant for 540 King Street East, Hamilton

Appendix “D” to Report PED21140(a)/LS21033 – Confidential Legal Advice