




Hamilton

**CITY OF HAMILTON**
**CITY MANAGER'S OFFICE**  
**Legal Services**

<b>TO:</b> Chair and Members of the General Issues Committee	<b>WARD(S) AFFECTED:</b> CITY WIDE
<b>COMMITTEE DATE:</b> August 12, 2013	
<b>SUBJECT/REPORT NO:</b> Criminal Conviction Record Checks for Applicants under Certain City Loan/Grant Programs (City Wide) LS13028	
<b>SUBMITTED BY:</b> Janice Atwood-Petkovski City Solicitor, Legal Services	<b>PREPARED BY:</b> Janice Atwood-Petkovski x 4636
<b>SIGNATURE:</b> 	

**RECOMMENDATION**

- (a) That the following proposed policy amendment to the City of Hamilton's Downtown and Community Renewal Loan/Grant Programs be approved:

"Without limiting the discretion as set out in paragraph XX herein, the City Council, whether or not an Applicant satisfies the requirements of the Program, may reject any application received from an applicant where the applicant's criminal conviction record raises concerns that the applicant, in undertaking the activity, operation or business for which the loan/grant is sought, will not conduct himself with honesty and integrity. For corporate applicants, it is the individuals behind the corporation (Officers/Directors/Shareholders) whose criminal conviction record will be considered.";

- (b) That staff be directed to submit the proposed amendment to the Information and Privacy Commissioner for comment prior to implementation.

**EXECUTIVE SUMMARY**

*Alternatives for Consideration –Not Applicable*

**FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)**

**Financial: N/A**

**Staffing: N/A**

**Legal: N/A**

**HISTORICAL BACKGROUND (Chronology of events)**

On August 16, 2012 Council directed staff to report back to General Issues Committee with various policy options that would give the discretion to reject loan and grant applications as a result of convictions listed in a recent criminal record.

The City offers financial incentive programs in the form of loans and grants to assist with various costs associated with development/redevelopment in Downtown Hamilton, Community Downtowns, Business Improvement Areas (BIAs), other commercial corridors and certain designated heritage properties identified in the Downtown and Community Renewal Community Improvement Project Area By-law.

Applications for these loans and grants are subject to an extensive review, administered by the Planning and Economic Development Department, and governed by the terms of each program. Criminal conviction records checks are not part of the current process, although both Personal and Commercial Credit reports, Corporate Profile Report and extensive internet based media reference research are part of the process.

The City's Business Licensing By-law requires criminal conviction record checks for various business licence applications and renewals. The requirement is imposed on applicants and licence holders who will have close contact with vulnerable portions of the population and/or whose business is particularly susceptible to criminal activity. Licences may be refused as a result of criminal convictions which raise concerns that the applicant or licence holder may not operate their business, for example an adult entertainment establishment, residential care facility or taxicab, in the public interest.

**Criteria for including criminal conviction records checks in the loan/grant application process**

Criminal conviction record checks could be included in the application process by amending the terms of the programs, only if the following criteria are met.

**Valid municipal purpose**

The municipality must exercise its authority for a valid municipal purpose and not only because a matter is generally of concern to council and/or constituents. The exercise of discretion by the municipality must be reasonable and proper in the circumstances and not for an indirect or improper purpose.

The City makes available, through a variety of loan/grant programs administered by Planning and Economic Development, significant financial assistance for a wide range of development and redevelopment undertakings for community renewal and community improvement. It is understood that these programs are intended to result in long-lasting improvements to the physical, commercial, economic and cultural heritage quality of life in the City. Ensuring this result is a valid municipal purpose supporting a requirement that the City be satisfied, applicants who are provided with loans and grants will undertake the funded activity with honesty and integrity.

**Nexus between the requirement that there be a criminal conviction record check and the risk being mitigated**

There must be a nexus between the requirement and the risk being mitigated. A criminal conviction record check showing for example, convictions related to fraud or theft raises concern about whether the applicant will undertake the matter for which the loan/grant is sought with honesty and integrity. Determination of whether or not there is a nexus involves consideration of the nature, seriousness and number of convictions and how recent they are.

**Balance between City's business needs and privacy rights of applicants**

A policy amendment must be compliant with the Municipal Freedom of Information and Protection of Personal Privacy Act (MFIPPA). There must be a balance between the City's business needs and the privacy rights of applicants. The requirement for criminal conviction record checks must be necessary to mitigate potential risks under the loan/grant program, and be the least intrusive means of accomplishing that mitigation.

The extent to which MFIPPA limits a municipality's discretion to collect and use a criminal record has been examined in the employment, volunteering and business licensing contexts. The test would be whether the City, in collecting this information, has achieved a balance between its own business needs and the privacy rights of applicants.

**Proposed policy amendment is modeled on existing policy provision**

The following is proposed as a possible policy amendment, which would allow the City to require applicants to submit criminal conviction records in order to be considered under the respective loan/grant programs.

“Without limiting the discretion as set out in paragraph XX herein, the City Council, whether or not an Applicant satisfies the requirements of the Program, may reject any application received from an applicant where the applicant's criminal conviction record raises concerns that the applicant, in undertaking the activity, operation or business for which the loan/grant is sought, will not conduct himself with honesty and integrity. For corporate applicants, it is the individuals behind the corporation (Officers/Directors/Shareholders) whose criminal conviction record will be considered.”

The language of the proposed policy amendment is modelled on the existing policy provision relating to past litigation. In cases where the applicant is a corporate entity, the application criteria for the various loan/grant programs provide that the City may exercise its discretion in rejecting the application on the basis of the past conduct of any of the officers, directors and shareholders, for example, the application criteria for various loan/grant programs provide that the City may exercise its discretion in rejecting the application where the commercial relationship between the City and applicant, or the applicant's officers, directors or shareholders in the case of a corporate applicant, has been impaired by past litigation.

**City should seek comment from the Information and Privacy Commissioner**

Before further consideration of implementing this policy amendment, the City may wish to submit it to the Information and Privacy Commissioner of Ontario for comment. Subsection 46(a) of MFIPPA provides that “*the Commissioner may offer comment on the privacy protection implications of proposed programs of institutions*”. This process was followed about a year ago when the policy for disclosing the names, addresses and charge information of dog owners whose dogs have attacked was being considered by Council. This resulted in helpful, positive comments from the IPC which helped shape the policy as it was adopted by Council.

**POLICY IMPLICATIONS/LEGISLATED REQUIREMENTS**

N/A

**RELEVANT CONSULTATION**

Consultation with Glen Norton, Manager, Planning and Economic Development, Ext. 5780

**ANALYSIS / RATIONALE FOR RECOMMENDATION**

(include Performance Measurement/Benchmarking Data, if applicable)

N/A

**ALTERNATIVES FOR CONSIDERATION**

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

N/A

**ALIGNMENT TO THE 2012 – 2015 STRATEGIC PLAN:**

**Strategic Priority #1**

A Prosperous & Healthy Community

*WE enhance our image, economy and well-being by demonstrating that Hamilton is a great place to live, work, play and learn.*

**Strategic Objective**

1.6 Enhance Overall Sustainability (financial, economic, social and environmental).

**Strategic Priority #2**

Valued & Sustainable Services

*WE deliver high quality services that meet citizen needs and expectations, in a cost effective and responsible manner.*

**Strategic Objective**

2.1 Implement processes to improve services, leverage technology and validate cost effectiveness and efficiencies across the Corporation.

**APPENDICES / SCHEDULES**

N/A