

OFFICE TENANCY ASSISTANCE PROGRAM

PROGRAM DESCRIPTION

The Office Tenancy Assistance Program (the Program) provides financial assistance to either building owners or tenants for eligible leasehold improvements to office buildings located within Downtown Hamilton, Community Downtowns, the Mount Hope / Airport Gateway, Business Improvement Areas (BIAs) and the commercial corridors along Barton Street, east of the Barton Village BIA and along Kenilworth Avenue North as identified in the Downtown and Community Renewal Community Improvement Project Area By-law. The intent of the Program is to facilitate the increased attractiveness and marketability of the office stock and reduce the office vacancy rate by attracting new office tenants and owner-occupied office uses from outside the City, and to assist existing businesses to expand.

Acting as a lender, the City provides financial support for the Program in the form of a zero interest loan. Development arising from the Program must be consistent with the Downtown and Community Renewal Community Improvement Plan and other policies and regulations as may be applicable, such as the Downtown Hamilton Secondary Plan, Zoning By-laws, Urban Design Guidelines, and building permit requirements.

ELIGIBILITY REQUIREMENTS

1. Buildings must be located within Downtown Hamilton, Community Downtowns, the Mount Hope / Airport Gateway, Business Improvement Areas (BIAs) or, the commercial corridors along Barton Street, east of the Barton Village BIA and along Kenilworth Avenue North as identified in the Downtown and Community Renewal Community Improvement Project Area By-law.
2. Either owners of eligible buildings, or authorized tenants within eligible buildings, may apply to the Program.
3. Leasehold improvements made for a tenant establishing a new office location in the City of Hamilton are eligible for the Program. Each application must involve leasehold improvements by a minimum of 1,000 square feet of gross leasable office space. The minimum square foot requirement may be subdivided within a larger building.
4. Leasehold improvements made for a tenant expanding / relocating from a location already within the City of Hamilton 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, the total eligible leasehold improvement costs will account for the expansion area only.

5. Eligible leasehold improvements include leasehold 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. They 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. They may include:
 - alterations to a building such as interior walls, ceilings and doors;
 - paint, wallpaper, window coverings and flooring;
 - phone and data cabling; and,
 - fixed lighting, HVAC, electrical or plumbing upgrades.

Ineligible leasehold improvements would 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 are not eligible e.g. additions, roofing.

6. For the purpose of this Program, eligible leasehold improvements are to be made to space within eligible buildings that is devoted to office uses, commercial schools, communications establishments, financial establishments, medical offices, and medical clinics (excluding methadone clinics), educational establishments and call centres, where permitted by the zoning by-law. City Council at its sole discretion may deem other uses eligible for the program that are not listed above. In addition to the foregoing Eligible Leasehold Improvements can only be made to space within buildings in which management, clerical, administrative, consulting, advisory, training or teaching services are offered or performed.

Leasehold improvements to space within eligible buildings that are devoted to non-office or more commercially-oriented uses are ineligible, such as but not limited to retail, restaurant, personal services, commercial entertainment, commercial recreation, hotel, conference or convention centre uses.

7. The improvements made to buildings shall be in accordance with the Ontario Building Code and in compliance with all applicable City by-laws, official plans, zoning regulations, design guidelines and site plan approvals.
8. Improvements commenced prior to submitting an application are ineligible. Improvements commenced after submitting an application but prior to application approval do so at the applicant's risk of the application not being approved.
9. Prior to a loan being approved and during the term of the loan, property taxes are required to be paid in full as billed.

10. Approval of the loan application is at the absolute discretion of the City and subject to the availability of funds.
11. Without limiting the discretion as set out in paragraph ten, herein, the City Council, whether or not an applicant satisfies the requirements of the Program, may reject any application received from an applicant where, in the opinion of Council, the commercial relationship between 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 as determined by the City in its sole, absolute and unfettered discretion.
12. Without limiting the discretion as set out in paragraph ten, herein, City Council, whether or not an Applicant satisfies the requirements of the Program, may reject any application received from an applicant where there are property tax arrears owed on the subject property or on other properties owned by the Applicant within the City of Hamilton.
13. Without limiting the discretion as set out in paragraph ten, herein, the City Council or its delegate, whether or not an Applicant satisfies the requirements of the Program, may reject any application received from an applicant where there is credible information that an applicant has been involved recently or repeatedly in illegal activity supporting the conclusion that he or she will not conduct himself or herself with honesty and integrity in undertaking the activity, operation or business for which the loan/grant is sought. For corporate applicants, it will be the corporation and the principals of the corporation whose illegal activity will be considered.
14. Works commenced prior to submitting an application are ineligible for funding under the Program. Works commenced after submitting an application but prior to approval of an application may be eligible for funding under the Program and eligibility will be determined by the General Manager of Planning and Economic Development, in his sole, absolute and unfettered discretion. An applicant shall assume the risk of paying for work commenced after an application has been submitted but prior to approval.

TERMS OF THE PROGRAM

15. The maximum loan amount will not exceed \$450 K per application. City Council at its sole discretion has the option, at the time of initially approving a loan commitment, of increasing the maximum loan amount.
16. The loan amount will be based on the lesser of either a) or b):
 - a) 90% of estimated eligible leasehold improvement costs;
 - b) 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;

<i>Term of Lease</i>	<i>\$ amount</i>
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 office space), the square foot area multiplied by \$25.

17. City Council at its sole discretion has the option, at the time of initially approving a loan commitment, of providing a grant or forgivable loan versus a loan when an applicant is a not-for-profit publicly-funded educational establishment establishing its presence in the Downtown Hamilton. Approval of a grant would be contingent on an appropriate funding source being identified as part of the approval process. If the applicant is not otherwise in default of the Loan Agreement a Forgivable Loan will be forgiven at the end of the term of the Loan. Forgiveness shall not be prorated if the applicant vacates the space to which the Loan was used for leasehold improvements prior to the end of the Loan term. 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. The maximum term of the Loan shall be as set out in paragraph 17 below. However, if the applicable lease provides for early termination the minimum term of the Loan shall be one year.

Applications being processed under Section 16 must meet the definition of an *educational establishment* to the satisfaction of the General Manager of Planning and Economic Development prior to being forwarded to City Council for approval. An application processed under Section 16 must meet the definition of an *educational establishment*, for the purposes of this program, the definition is as follows:

“shall mean a publicly funded university or college for academic instruction and shall include a hospital or institution, including the associated offices of such uses”.

18. 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. In the case of applications for owner-occupied office space, the maximum loan term shall not exceed five years (subject to prior termination on default) from the date of the final loan advance.

19. The loan interest will be at 0% for the repayment term.
20. All applicants will submit a completed Program application form, financial statements, a business plan in a format acceptable to the City in its absolute discretion, and any other documentation or evidence the City may require to evaluate the loan application.
21. All applicants receiving approval for a City loan under this Program shall be required to enter into a Loan Agreement with the City with provisions including but not limited to the terms and conditions set out herein, and if deemed a requirement by the General Manager of Planning and Economic Development, execute a General Security Agreement, a Site Specific General Security Agreement or such security that may be required to secure a commercial loan.
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 office space.
23. The loan under this Program, once approved, may be advanced in up to 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 General Manager of Planning and Economic Development 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:
 - (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;
 - (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
 - (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.

If the amount of the Loan equals 90% of the estimated costs of the eligible improvements advances will be made as follows:

- (i) at the 50% completion stage the amount advanced shall equal 90% of the invoiced amounts for eligible improvements;
- (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,

- (iii) at the 100% completion stage the amount advanced shall equal 90% of the amounts invoiced for eligible improvements less any amounts previously advanced.

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.

- 24. Prior to each loan advance, realty taxes are required to be paid in full as billed.
- 25. Prior to the final advance, final inspection will be completed for all building permits required in relation to the leasehold improvements.
- 26. Loan repayments will commence one month following the final advance.
- 27. Leasehold improvements to be completed within four months from the First Advance. The four-month period can be extended at the sole discretion of the General Manager of Planning and Economic Development.
- 28. Interest on arrears will be such tax arrears interest rate as may be established by Council from time to time.
- 29. 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 by the owner, 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.
- 30. 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.
- 31. If the applicant is a tenant, in the event that the tenant vacates the office 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, the City shall have absolute discretion to request the full repayment of any outstanding loan under this Program.
- 32. An Office Tenancy Assistance Program loan may be received by an applicant in conjunction with other available City incentive programs in support of the redevelopment / development of the property.
- 33. Approval of the loan application is at the absolute discretion of the City and subject to the availability of funds.

34. An application fee of \$570.65 must accompany the application. All fees will be authorized through a user-fee by-law passed by City Council, and may be changed from time to time as approved by City Council.
35. Leasehold improvements to commence one year following Council's approval of the loan. The one-year period can be extended at the sole discretion of the General Manager of the Planning and Economic Development Department.