

APPENDIX C

8.3 ERASE Tax Assistance Program (TAP)

8.3.1 Purpose

The purpose of the ERASE Tax Assistance Program (TAP) is similar to the ERG, i.e., to remove a serious financial impediment to brownfield redevelopment efforts, namely the large tax increase that can result when a brownfield property is redeveloped. Specifically, the TAP applies only to the costs of environmental remediation.

The legislative authority for the TAP is established under Sections 365.1(2) and (3) of the *Municipal Act* which allow municipalities to pass a by-law providing tax assistance to an eligible property in the form of a freeze or cancellation of part or all of the taxes levied on that property for municipal and school purposes during the rehabilitation period (maximum 18 months from the date that tax assistance begins) and the development period of the property. Matching assistance from the education property tax is subject to approval by the Ministry of Finance.

8.3.2 Program Description

The Tax Assistance Program consists of two stages. In the first stage, taxes may be frozen. In the second stage, the developer will initially pay for the entire cost of the remediation and redevelopment project. When the municipality receives the incremental property taxes that result from the project, the municipality may cancel a portion of the increase in City taxes that result from redevelopment. The tax assistance will continue for a period of up to three years, at which point, if the City so chooses, continued assistance may be offered either through TAP or through the ERASE Redevelopment Grant (ERG) Program.

Under the TAP, 80% of the increase in the City and education portion of taxes that results from remediation and rehabilitation of the property will be cancelled. Cancellation of the education portion of taxes will only be undertaken if the City of Hamilton receives the approval of the Minister of Finance. Approval for the education portion of the property tax under the TAP may be provided by the Minister of Finance on a case-by-case basis by means of individual applications. The remaining 20% of the increase in the City portion of property taxes will be dedicated to the ERASE Municipal Acquisition and Partnership Program (MAPP) (see Section 8.4). The remaining 20% of the increase in the education portion of property taxes will be remitted to the Province of Ontario.

Assignment of tax assistance under this program is not permitted.

All tax assistance provided under the TAP to a property will cease:

- a) When the total tax assistance provided equals the total cost of environmental remediation, i.e., the costs of any action taken to reduce the concentration of contaminants on, in or under the property to permit a record of site condition (RSC) to be filed in the Environmental Site Registry under Section 168.4 of the *Environmental Protection Act*; or,
- b) After 10 years for the municipal portion of taxes, and after such time period as is approved by the Minister of Finance (if applicable) for the education portion of the taxes; whichever comes first.

If tax assistance is approved by the Minister of Finance, the timing and conditions associated with matching tax assistance relating to the education portion of taxes may be different from those of the municipality. Education Tax Assistance will be to a maximum of a three (3) year period unless otherwise approved by the Minister of Finance.

The TAP is an application-based program. As early as possible in the development approvals process, a property owner will register their intent to participate in the grant program by filing an ERASE TAP Application with the Economic Development Division. Before accepting this application, the Economic Development Division will screen the application to ensure that it is for a property within the designated Community Improvement Project Area and the application meets all of the eligibility requirements. Applications that are not within the Project Area or applications that clearly do not meet the eligibility requirements will not be accepted.

Acceptance of the application by the Economic Development Division in no way implies grant approval.

Applications will be processed and approved on a first come, first serve basis. Review and evaluation of applications and supporting materials against program eligibility requirements will be done by City staff. The applicant participating in the TAP must enter into an agreement with the City. This Agreement will specify the terms and conditions of the tax assistance. All TAP applications and agreements will be subject to approval by City Council or Council's designate.

The amount of City taxes ("city base rate") and the amount of education taxes ("education base rate") will be determined before commencement of the project and before the record of site condition is filed in the Environmental Site Registry. For stage 1 of the TAP, taxes may be frozen at this city base rate and, if approval granted by the Minister of Finance, education base rate. For stage 1 of the TAP, taxes may be frozen. For stage 2 of the TAP, the increase in the City portion of real property taxes (or "municipal tax increment") will be calculated as the difference between the city base rate and the amount of City taxes levied as a result of reassessed by Municipal Property Assessment Corporation (MPAC) following project completion. The increase in the education portion of real property taxes (or "education tax increment") will be calculated as the difference between the education base rate and the amount of education taxes levied as a result of reassessed by MPAC following project completion. This program does not exempt property owners from an increase/decrease in municipal or education taxes due to a general tax rate increase/decrease, or a change in assessment for any other reason.

The applicant shall obtain and submit to the City a Phase II ESA and/or Risk Assessment and a Remedial Action Plan undertaken by a Qualified Person that:

- a) Identifies the extent and provides a cost estimate environmental remediation of the eligible property; and,
- b) Contains a detailed work plan and budget for said environmental remediation.

To qualify for education tax assistance, the subject property, as of the date of the phase two environmental site assessment was completed, did not meet the standards that must be met under subparagraph 4 i) of subsection 168.4 (1) of the *Environmental Protection Act* to permit a Record of Site Condition to be filed under that subsection in the Environmental Site Registry. The actual component costs of the environmental remediation work done will be supplied to the City upon completion of the project. Provision of the tax assistance will be based on the City's review and satisfaction with all reports and documentation submitted outlining the full scope and cost of the work completed.

Any and all of these costs may be subject to an independent audit, at the expense of the property owner.

If during the course of the work, the scope of the work changes, or actual costs are greater or less than estimated costs, the municipality reserves the right to increase or decrease the total amount of the tax assistance, subject to any conditions or restrictions with respect to taxes for school purposes as required by the Minister of Finance. The actual amount of the tax assistance will be based on the actual increase in property taxes as calculated based on the actual reassessment by the MPAC, following project completion.

The City may discontinue the TAP at any time. However, participants in the TAP with applications and agreements that were approved prior the closing of the program will continue to receive tax assistance as determined through their TAP Agreement with the City. No right to any tax assistance until it has been duly authorized by the City. The City is not responsible for any costs incurred by the owner/applicant in any way relating to the program, including without limitation, costs incurred in anticipation of tax assistance in stage two of the TAP (e.g., after project completion).

Regardless of whether or not an Applicant otherwise satisfies the requirements of the Program, the City may 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 are individuals; corporate entities and individuals behind the corporation (Officers/Directors/Shareholders).

8.3.3 Eligibility Requirements

All owners of property within the ERASE Community Improvement Project Area are eligible to apply for funding under this tax assistance program, subject to meeting the general program requirements in Section 8.0, the following eligibility requirements, and subject to availability of funding as approved by Council:

- a) An application for the TAP must be submitted to the Economic Development Division prior to the filing of a Record of Site Condition in the Environmental Site Registry under section 168.4 of the *Environmental Protection Act*, and prior to the commencement of any works and prior to application for Building Permit;
- b) Such application shall include reports, plans, estimates, contracts and other details as may be required to satisfy the City with respect to the eligible costs of the project and conformity of the project with the ERASE CIP;
- c) As soon as possible the applicant shall obtain and submit to the City a Phase II ESA and/or Risk Assessment and Remedial Action Plan undertaken by a Qualified Person that:
 - i) identifies the extent and provides a cost estimate for the environmental remediation of the eligible property; and,
 - ii) contains a detailed work plan and budget for said environmental remediation;
- d) As a condition of the tax assistance application, the City may require the applicant to submit a Business Plan, with said Plan to the City's satisfaction;
- e) The property shall be redeveloped such that the amount of work undertaken is sufficient

- to at a minimum result in an increase in the assessed value of the property;
- f) The total value of the tax assistance provided under this program shall not exceed the total value of work done under eligible program costs;
- g) Eligible program costs include the following:
- i) environmental remediation, i.e., the cost of any action taken to reduce the concentration of contaminants on, in or under the eligible property to permit a Record of Site Condition (RSC) to be filed for the proposed use by a Qualified Person, including costs of preparing and filing an RSC and Certificate of Property Use (CPU), cost of clean fill, grading and compaction to replace contaminated soils;
- Eligible environmental remediation costs do not include construction/development costs that would be required regardless of the presence of contamination.**
- ii) Phase II ESAs, Risk Assessments and Remedial Action Plans not covered by the ERASE Study Grant program;
 - iii) installing environmental and/or engineering controls/works, as specified in the Remedial Work Plan and/or Risk Assessment and/or CPU;
 - iv) monitoring, maintaining and operating environmental and/or engineering controls/works related to environmental remediation, as specified in the Remedial Action Plan and/or Risk Assessment and/or CPU; and
 - v) Environmental Insurance Premiums;
- h) Notwithstanding 8.3.3 g), costs shall not be considered to be eligible if incurred prior to the date an application has been submitted under this program and accepted by the City with the exception of studies which were the subject of an approved ERASE Study Grant (ESG) Program (8.1) application. The total of the tax assistance provided under this Program in combination with the ERG Program (8.2), shall not exceed the total approved costs. Previous grant payments provided under the ESG Program for a study(s) which are also to be accepted as eligible costs under this Program will be deducted from the approved eligible costs;
- i) To be eligible under this program, costs must be incurred by the property owner as identified on the submitted program application accepted by the City;
- j) Actual costs for any or all items in eligible program costs above may be subject to audit by the City, at the expense of the property owner;
- k) The applicant participating in the TAP program must enter into an agreement with the City. This Agreement will specify the terms and conditions of the tax assistance to be provided and will include terms and conditions in addition to those contained in this Appendix "C" as determined by the City Solicitor and General Manager of Planning and Economic Development.
- l) All TAP applications and agreements must be approved by City Council or City Council's designate;

- m) The property owner shall be required to submit one of the following prior to being provided tax assistance:
- i) a Record of Site Condition (“RSC”) conforming to the latest Ontario Regulation 153/04 standards and prepared by a Qualified Person to the Environmental Site Registry under Section 168.4 of the *Environmental Protection Act* and the property owner shall submit to the City an acknowledgement of receipt of the RSC by the Ministry of Environment, Conservation and Parks (MOECP); or
 - ii) where the submission of a signed RSC is not required under the *Environmental Protection Act* to permit the brownfield redevelopment and provided that the owner of the property within the ERASE Community Improvement Project Area undertakes a Risk Assessment and remediates the property to a standard that would enable the owner to submit a RSC, the owner may instead provide the City with a Risk Assessment prepared by a Qualified Person for Risk Assessments (as defined in the *Environmental Protection Act* and Ontario Regulation 153/04, as amended), subject to a peer-review by a Qualified Person for Risk assessment, who is acceptable to the City. This peer-review must certify that the property has been remediated to the appropriate levels for the proposed use in accordance with the Risk Assessment, to the satisfaction of the City. The cost of the peer-review will be an eligible cost;
- n) The City reserves the right to require the submission to the City’s satisfaction, of environmental reports and documentation showing the subject property has been remediated to the appropriate levels for the proposed use;
- o) If a building(s) erected on a property participating in this program is demolished before the tax assistance period expires, the remainder of the tax assistance shall be forfeited;
- p) The improvements made to buildings and/or land shall be made pursuant to a Building Permit, constructed in accordance with the Ontario Building Code and in compliance with all applicable Official Plan, Zoning By-Law and Site Plan Control requirements and approvals;
- q) Outstanding work orders and/or orders or requests to comply from the City must be satisfactorily addressed prior to tax assistance approval;
- r) Work on the portion of the Project that is at or above grade shall commence no longer than five (5) years from the date an application under this program was approved by City Council (or City Council’s designate) and the Project and all eligible works shall be completed and the project capable of being fully occupied within 10 years from the date an application under this program was approved by City Council (or City Council’s designate) . Where a project consists of multiple phases, consideration may be provided for an extended project completion and occupancy period at the sole discretion of the City.
- s) For all applications for the TAP that meet the eligibility requirements for matching tax assistance under the provisions of section 365.1 of the *Municipal Act, 2001*, the City will forward a separate application to the Minister of Finance in order that the Minister may consider providing matching education property tax assistance.

8.3.4 Administration

The Economic Development Division will be responsible for administering the TAP, in consultation with other division/departments as necessary. Applications shall be submitted to the Economic Development Division and shall be accompanied by a Phase II ESA and/or Risk Assessment and Remedial Action Plan undertaken by a Qualified Person (as defined under Ontario Regulation 153/04). The work plan and cost estimate shall be in the form of a Remedial Action Plan prepared by a Qualified Person. Said work plan and cost estimate will be supported by a Phase II ESA and/or Risk Assessment undertaken by a Qualified Person. Studies/Plans submitted shall:

- a) Identify the extent of the environmental remediation and any installation, monitoring, maintaining and operating environmental and/or engineering controls/works required for the eligible property; and,
- b) Provide a detailed work plan and cost estimate for said environmental remediation which includes the installation, monitoring, maintaining and operating environmental and/or engineering controls/works.

The City may also require the submission of a Business Plan for the proposed development.

Applicants will be required to have a pre-application consultation meeting with City staff in order to determine program eligibility, proposed scope of work, project timing, etc.

Before accepting an application, City staff will screen the application. If the application is not within the community improvement project area or the application clearly does not meet the program eligibility requirements, the application will not be accepted.

Acceptance of the application by the City in no way implies grant approval.

Program eligibility will be determined by the Economic Development Division, in consultation with other divisions/departments as necessary. Applications will be recommended for approval only if they meet the criteria specified in this Plan and any other requirements of the City including that the property and property owner are in good standing with the City in terms of all City By-laws that apply to the property and project, all laws that govern the construction and development of the project and the payment of all taxes which are not the subject of assistance under this program.

Where a TAP application has been submitted by a property owner and accepted by the City but not yet approved by City Council (or City Council's designate), and the subject property(s) are transferred to a new property owner, the City may permit the transfer or assignment of the application, and any eligible costs incurred from the original date of application, to the new owner at the sole, absolute and unfettered discretion of the General Manager of Planning and Economic Development. An assignment or transfer may require the assignee or transferee to submit an application, assignment or transfer agreement and/or such other documents as determined by the General Manager of Planning and Economic Development in their sole, absolute and unfettered discretion.

A recommendation on the TAP Application and a TAP Agreement will be prepared by City staff. Staff will also prepare a Draft by-law under Section 365.1 of the *Municipal Act* to effect tax assistance equal to 80% of the increase in taxes levied for City, and taxes levied for school purposes. This Draft by-law will be forwarded to the Minister of Finance for approval of the tax assistance equal to the increase in taxes levied for school purposes. Once written approval of the by-law is received from the Minister of Finance, any conditions or restrictions specified by the

Minister will be included in the by-law.

The recommendation on the TAP Application and the TAP Agreement will be forwarded to City Council (or Council's designate) for consideration. Once City Council (or City Council's designate) approves the TAP Application and the TAP Agreement, the TAP Agreement will be forwarded to the applicant for signature. Once the applicant has signed the agreement, the agreement will then be executed by City officials and a copy will be provided to the applicant. The implementing by-law will then be forwarded to Council for adoption.

The by-law requesting matching education tax assistance will be forwarded to the Minister of Finance for approval within 30 days of Council's adoption.

The agreement with the City will be forwarded to the applicant for signature once City Council (or Council's designate) approves the TAP Application. Once the applicant has signed the agreement, the agreement will then be executed by City officials and a copy will be provided to the applicant. The City may require the applicant to register the agreement on title immediately upon execution of the agreement. This agreement will identify events of default whereby upon its occurrence, and for so long as the default continues, the City shall be entitled to remedies including but not limited to ceasing or delaying tax assistance without notice to the owner and any obligation of the City to provide tax assistance or provide accommodation under the TAP Agreement shall cease. In addition, the City may declare, by notice to the owner, that any tax assistance already provided to be forthwith due and payable as determined by the General Manager of Planning and Economic Development in their sole, absolute and unfettered discretion.

The property owner shall submit to the MOECP a signed RSC prepared by a Qualified Person, and the property owner shall submit to the City an acknowledgement of receipt of the RSC by the MOECP. The City reserves the right to require the submission to the City's satisfaction, of environmental reports and documentation showing the subject property has been remediated to the appropriate levels for the proposed use. The RSC filed with the MOECP must conform to the latest Ontario Regulation 153/04 standards.

Where the submission of a signed RSC is not required under the *Environmental Protection Act* to permit the brownfield redevelopment, provided that and the owner of the property within the ERASE Community Improvement Project Area undertakes a Risk Assessment and remediates the property to a standard that would enable the owner to submit a RSC, the owner may instead provide the City with a Risk Assessment prepared by a Qualified Person for Risk Assessment (as defined in the *Environmental Protection Act* and Ontario Regulation 153/04, as amended), subject to a peer-review by a Qualified Person for Risk Assessment, who is acceptable to the City. This peer-review must certify that the property has been remediated to the appropriate levels for the proposed use in accordance with the Risk Assessment, to the satisfaction of the City. The cost of the peer-review will be an eligible cost.

Once the redevelopment project is complete and the property has been reassessed by the MPAC, the property owner will be sent a new tax bill from which 80% of the City tax increment and the portion of the education tax increment that will be cancelled. The remaining 20% of the increase in the City portion of property taxes will be dedicated to the ERASE Municipal Acquisition and Partnership Program (MAPP) (see Section 8.4). The remaining portion (if any) of the increase in the education portion of property taxes will be remitted to the Province of Ontario. If the property is severed into multiple parcels or lots or if there is a conveyance of part of the property (all referred to as "severed parcels") prior to the first full year of reassessment resulting from the completion of the project. the property taxes used to calculate the assistance shall be the sum of the amount which is the lesser of the post-project municipal property taxes or the municipal property taxes

payable for the year for which tax assistance is being provided, for all the severed parcels means the amount which equals the sum of the post-project municipal property taxes for the severed parcels.

Tax assistance will not be provided unless a written request for the assistance has been made prior to the year in which tax assistance is to commence. If a written request has not be made for assistance prior to the year in which tax assistance is to commence but all other conditions for the assistance have been satisfied, the assistance shall accrue and be provided together with any other tax assistance for which a written request has not been made until such time as a written request has been made and upon such written request the assistance shall equal the sum of the accrued and previously unrequested assistance. If a request for tax assistance is not made within three (3) years of the year in which the first-years' tax assistance may commence, the agreement shall terminate and without limiting the generality of the foregoing the City shall not be obligated to provide any tax assistance.

In the event of the sale, conveyance, transfer or entering into of any agreement of sale or transfer of the title of the Property, any future tax assistance will be terminated.