

BARTON / KENILWORTH TAX INCREMENT GRANT PROGRAM

PROGRAM DESCRIPTION

The intent of the Barton / Kenilworth Tax Increment Grant Program (the Program) is to provide an economic catalyst for developing, redeveloping or renovating residential / commercial lands and buildings located within the boundaries of the Barton Village Business Improvement Area (BIA), the Barton and Kenilworth commercial corridors and the properties that front on Barton Street between James Street North and Victoria Avenue North as identified in the Downtown and Community Renewal Community Improvement Project Area By-law.

This Program authorizes for each approved grant application, a nine-year grant, the amount of which is subject to Council approval, in an amount not exceeding the increase in municipal realty taxes. The increase in municipal realty taxes (City portion only) will be based on either the year in which the building permit that initiated the development / redevelopment was issued or, for properties where the proposed development / redevelopment does not require a building permit, the year in which City Council approved the grant amount, and, the first full year in which the property is reassessed. The grant shall be an amount which does not exceed 100% of the municipal realty tax increase during the first, second, third, fourth and fifth year, 80% in year six, 60% in year seven, 40% in year eight, and 20% in year nine. For purposes of determining the eligible amount of the increase in municipal realty taxes, special charges including BIA levies shall be excluded from the calculation. The grant would reduce the effect of an increase in municipal realty taxes attributable to the differential between the pre-renovation assessment and the post-renovation assessment.

1. Before any grant is provided to the Applicant for a property for which a satisfactory grant application has been received and approved, realty taxes are required to have been paid as billed each year and, the property shall be in compliance with the Program's requirements and conditions as set out in the Grant Payment Agreement the Applicant will be required to enter into with the City. Conditions in the Agreement include but are not limited to:
 - a) The total value of the eligible grant provided under the Program will be reduced by: (i) the amount by which property taxes have been cancelled or reduced for the subject property pursuant to any other City programs (i.e. vacancy rebates) or tax appeals under Sections 357 and 358 of the *Municipal Act*; (ii) the amount by which property taxes have been cancelled

or reduced for the subject property pursuant to a Request for Reconsideration, and (iii) the amount by which property taxes have been reduced or cancelled for the property pursuant to any relief or reduction permitted under any legislation or order of any court or the Assessment Review Board; and

- b) If the Applicant, third party or the municipality has appealed the change in the property assessment, the grant will not be advanced until the appeal has been finally determined through the Assessment Review Board or Courts and revised property taxes have been calculated and adjusted.
2. The first year of the grant is payable at the end of the calendar year in the first full year of reassessment, post completion, of the redevelopment / development (subject to taxes being paid in full and no pending appeal or confirmation that the assessment will not be appealed). An Applicant has the option of receiving the grant at the end of the first year of reassessment, however they will forfeit the grant for the months of the year the reassessment does not apply i.e. if reassessment occurs on the 1st of March of a year, the first year of the grant will be based on March-December (ten months) of the year only. (Calculation is based on **actual** taxes, therefore the post development taxes in year one would include the first part of the year at a lower assessment and the remaining part of the year at the higher assessment – which would result in minimal to no grant for the period January 1 to the reassessment date.)
 3. For commercial projects, the first year of the grant is payable at the end of the first full year of reassessment, post completion, of the redevelopment / development regardless of the number of commercial units occupied.
 4. For residential condominium projects, the first year of the grant is payable by the end of the calendar year in which 75% of the residential condominium units within the project are fully assessed and is calculated on a ratable per unit basis. In years previous to 75% of the residential condominium units being fully assessed within the project, taxes are to be paid as billed and no grants will be payable.
 5. For mixed-use projects (commercial and residential), the first year of the grant is payable by the end of the calendar year in which 75% of the residential condominium units within the project are fully assessed and is calculated on a ratable per unit basis. In years previous to 75% of the residential condominium units being fully assessed within the project, taxes are to be paid as billed and no grants will be payable.

Exception for residential condominium projects that are fully or partially assigned – the grant will be paid by the end of the first quarter of the following year (i.e. the

grant for 2016 will be paid by March 31, 2017). This will allow the City time to verify ownership and appeal status for each condominium unit, prior to issuing the grant. For year one of the grant only, the grant may be paid after the first quarter of the following year, if one-year following the date of registration on title of condominium status for the project expires after December 31 of the year in which 75% of the residential condominium units within the project are fully assessed.

For residential condominium projects, the units must be assessed as residential condominiums. If the development is assessed as multi-residential or new-multi-residential, no grant will be payable.

6. The grants may be received by an Applicant in conjunction with any other available municipal program (with the exception of the Hamilton Tax Increment Grant Program, the ERASE Redevelopment Grant and the LEED Grant) in support of redevelopment / development, including the municipality's loan and heritage programs. The approved grants are not assignable by the Applicant to anyone except to the initial purchaser of a residential condominium in a residential project, the initial purchaser of a residential or commercial condominium unit within a mixed-use project, or to the City of Hamilton. The total of each property's nine years of approved grants shall not exceed the costs of the property's development / redevelopment.
7. A limited assignment of the grant under the terms of the Program may be made from an Applicant to the initial purchaser of each new residential condominium unit within a residential project or to the initial purchaser of each new residential or commercial condominium unit within a mixed-use project. The assignment of the grant shall not apply to any subsequent re-sale of any such unit. The first year of the grant is the year in which at least 75% of the residential condominium units within the project are fully assessed.

The Applicant must confirm if they are proposing to assign the grant to the first purchasers of residential condominiums within a residential project or the first purchasers of residential or commercial condominium units within a mixed-use project, at the time of application otherwise the grant will not be assignable. Also, the Applicant has one-year following the date of registration on title of condominium status for the project to assign the individual grants to the first purchasers of each unit. The grant for units not assigned within the one-year period will be advanced to the Applicant and will not be assignable in the future.

For grants that are for a project that is fully / partially assigned, the pre-project municipal taxes are apportioned amongst each condominium unit based on, or with reference to, the MPAC's "Condominium Plan Information Form" (CPIF) and in adherence to section 19.1(3) of the *Assessment Act*. The CPIF apportions the pre-development assessment amongst the newly created assessment roll numbers for the units. This allows the annual grant to be calculated on a per unit

basis (difference between the post-project municipal taxes of each unit and the pre-project municipal taxes for each respective unit). The grant is further pro-rated based on the closing date of the sale to the first condominium purchaser of each of the fully assessed units (less the administration fee). For partially assigned projects, the grant for the units not assigned by the Applicant is calculated in the same manner, whereby the Applicant's grant will be pro-rated based on the date each unassigned unit was reassessed (less the administration fee).

For residential condominium projects and mixed-use projects that are not assigned, the grant will not be calculated on a per unit basis. The annual grant will be calculated by taking the difference between the sum of the post-project municipal taxes (for each year the grant is payable) and the pre-project municipal taxes.

If one-year following the date of registration on title of condominium status for the project expires after December 31 of the year in which 75% of the residential condominium units within the project are fully assessed, and the Applicant:

- a) has elected to assign the grant to the first purchaser, the unit must be sold to the first purchaser within one-year following the date of registration on title of condominium status. If the unit is sold to the first purchaser after December 31 of the year in which 75% of the residential condominium units within the project are fully assessed, yet still within one-year following the date of registration on title of condominium status, the first year of the grant is forfeited. The first purchaser will be entitled to the remaining years of the annual grant. If the unit is not sold within one-year following the date of registration on title of condominium status, the Applicant can no longer assign the grant and the grant will be deemed not assigned and shall be payable to the Applicant.
- b) has elected not to assign the grant to the first purchaser, the grant will be payable to the Applicant by the end of the first quarter of the year following the year in which 75% of the residential condominium units within the project are fully assessed.

The grant will cease if the first condominium purchaser subsequently sells the condominium unit within the term of the grant (if the grant was assigned) or if the Applicant subsequently sells the condominium unit within the term of the grant (if the grant was not assigned either because the Applicant did not meet the deadline to assign the grant or because the Applicant continues to own the unit). The grant in the year of the sale will be pro-rated based on the date of closing, whereby the first condominium purchaser (if the grant was assigned) or the Applicant (if the grant was not assigned either because the Applicant did not meet the deadline to assign the grant or because the Applicant continues to own the unit) will receive a reduced grant based on the number of days the first

condominium purchaser (if the grant was assigned) or the Applicant (if the grant was not assigned either because the Applicant did not meet the deadline to assign the grant or because the Applicant continues to own the unit) was the owner in the year of the sale. No grant will be provided to the second or subsequent condominium purchasers. There is a one-time \$950.00 application fee for grants greater than \$12.5 K or \$275.00 for grants \$12.5 K or less. When Applicants choose to assign grants to the first purchasers of residential condominium units in a residential project, or residential and commercial condominium units in a mixed-use project, there is also a one-time administration fee of \$490.00 per unit and the fee shall be deducted from the initial grant payment. Fees will be authorized through a by-law passed by City Council. The rate of the fees may be changed from time to time as approved by City Council. The administration fee charged will be the fee in affect in the first year of the grant, regardless of when the grant is actually paid. Applicants that choose to assign the grant to the first purchasers of each residential or commercial condominium unit will receive the grant for units they continue to own (units that have not been assigned either because the Applicant did not meet the deadline to assign the grant or because the Applicant continues to own the unit) and are subject to the aforementioned one-time application fee being deducted from the initial grant payment.

8. For Applicants who choose not to assign the grant to the initial purchasers of each condominium unit, the grant will be earned by the Applicant if they have met all terms and conditions of the Program including payment of taxes and all building permits having been signed-off by Building Services.

The annual grant to the Applicant will be reduced by 25% if an appeal has been filed with MPAC by any of the condominium unit owners, whether such owner is the initial purchaser or a subsequent purchaser. The 25% hold-back will not be released until the appeals are finally determined through the Assessment Review Board or Courts, and the revised property taxes have been calculated. The first year of the grant is payable during the calendar year in which 75% of the residential condominium units within the project are fully assessed. The grant is calculated by taking the difference between the post and pre-project municipal taxes. The post-project municipal taxes are calculated by taking the sum of the municipal taxes of each of the condo units within the project. The grant is calculated as a whole, and not calculated on a per condominium unit basis (as is the case if it were assigned or partially assigned).

9. An Applicant and any assignees, can assign the grant to the City of Hamilton as payment of their loan under the Hamilton Downtown / West Harbourfront Remediation Loan Program.
10. The Applicant will be required to enter into a Grant Payment Agreement with the City of Hamilton that sets out the conditions of the annual grant. When assigning the grant to the first-purchasers of residential condominium units in a residential

project or residential and commercial condominium units in a mixed-use project, the Applicant and the assignee have to enter into an Agreement that would assign the payment of the grant to the assignee and also obligate the Applicant to the terms and conditions contained in the Grant Payment Agreement and, if the Applicant is in default of the Grant Payment Agreement, the grant payment to the assignee ceases.

11. Redevelopment / development will commence no longer than two years following City Council's approval of the grant or the grant will be cancelled. The two-year period may be extended by City Council at its absolute discretion.

12. In the event of the sale, conveyance, transfer or entering into of any agreement of sale or transfer of the title of the Property (for projects other than residential condominium projects or mixed-use projects), any future grants will be terminated.

13. Change of Corporate Control:

Where the Applicant is a corporation the Applicant covenants and agrees that in the event that:

a) the Applicant fails to supply the City, in a form satisfactory to the City such information relating to the ownership of its shares as the City may from time to time require or;

b) without the written consent of the City first had and obtained:

i) the Applicant issues or redeems any of its shares or transfers any of its shares;

ii) there is a sale or sales of the shares of the Applicant which result in the transfer of the legal or beneficial interest of any of the shares of the Applicant; or,

iii) the Applicant amalgamates, merges or consolidates with any other Corporation;

and, the result of any of the foregoing is a change in the effective control of the majority of the voting shares of the Applicant, or the requested information is not provided, then future grant payments under the Program shall cease at the absolute discretion of the City.

14. Approval of the grant application is at the absolute discretion of the City and subject to the availability of funds.

15. Without limiting the discretion as set out in paragraph 14 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 the 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.
16. Without limiting the discretion as set out in paragraph 14 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 other properties owned by the Applicant within the City of Hamilton.
17. Without limiting the discretion as set out in paragraph 14, 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.
18. 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 Department 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.
19. If an applicant is redeveloping a portion of their property only, the grant will be based on that portion of the property. The Applicant will be required to provide a copy of the annual property assessment valuation from the MPAC for grant calculation purposes.
20. Applicants shall disclose if any residential units are occupied at the time an application has been submitted to the City and, if so, identify the specific units occupied. For additional clarity, the City is not requesting or requiring the disclosure of tenant names or any other personal contact information.

21. Where this program will provide a financial incentive to facilitate the undertaking of external and/or internal property improvements which are not for the sole benefit of a non-residential use, and where the subject property contains occupied unit(s) at the time of application to the City, the occupied unit(s) shall not be the subject of an approved Above Guideline Increase (AGI) request (also referred to as an L5 request) to the Landlord and Tenant Board (LTB) 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. This condition will continue to apply whether or not the tenancy of the unit(s) changes during this period. Exceptions to this condition may be provided where it can be demonstrated, to the City's satisfaction, that:
- a) the affected tenant(s) have consented to the proposed AGI. Where there is more than one occupied unit in the building at the time of application to the City, this exception only applies where all affected tenants have consented to the proposed AGI request;
 - b) that the requested AGI is a result of improvements or other matters not related to those improvements facilitated by the City's financial incentive; and,
 - c) notwithstanding the provision of a financial incentive by the City, an AGI request would be required to facilitate the property improvements due to site or building specific circumstances.

In the event an AGI request is approved by the LTB and determined to be in contravention of the City's condition, and this approval occurs after the City's approval under this incentive program but prior to the entering into any agreement required by this program, the application approval will be deemed to be rescinded, no incentive will be provided, and no agreement will be entered into by the City. Where the AGI approval occurs after the City's approval and after the execution of any agreement required by this program, any remaining incentive yet to be provided over the remaining term of the program will be cancelled and enforcement action will be initiated to recoup financial incentives provided to-date.

This condition shall not apply to units registered as a condominium.

GRANT CRITERIA

Projects that include developing, redeveloping or renovating residential/ commercial lands and buildings within the boundaries of the Barton Village Business Improvement Area (BIA), the Barton and Kenilworth commercial corridors and the properties that front

on Barton Street between James Street North and Victoria Avenue North as identified in the Downtown and Community Renewal Community Improvement Project Area By-law.

Approval of the application and estimated grant amount is subject to City Council approval. Such application shall be submitted and only received if it is prior to the Applicant's commencement of improvements / rehabilitation to their property and shall include plans, estimates, contracts and other details as may be required to satisfy the City as to the cost of the project and as to the conformity of the project with the objectives of the Downtown and Community Renewal Community Improvement Plan.

Such project is also required to be in compliance with the City's Official Plan policies, other by-laws and policies, including but not limited to zoning, site plan approval, design guidelines, heritage matters including preservation of historical buildings. The compliance of each application with the criteria of this Program and the estimated amount of the Property's grants (within the permitted terms of this Program) is at the discretion of and subject to Council approval.

All parking lots and vacant sites are eligible. Properties upon which commercial, residential or industrial buildings are cleared and demolished are eligible, with the exception of designated heritage buildings.

This program shall not apply to an existing or proposed Adult Entertainment Parlour, Body Rub Establishment, Correction Facility, Corrections Residence, Emergency Shelter, Lodging House or Residential Care Facility as defined in the Zoning By-law.