

COMMERCIAL DISTRICT HOUSING OPPORTUNITIES (CDHO) PROGRAM



A. PROGRAM DESCRIPTION

The Commercial District Housing Opportunities Program (the Program) is intended to provide financial assistance in the form of a low-interest Loan and Grant to promote the improvement or development of dwelling units that will create new/improved housing opportunities support robust local commercial district populations that add vibrancy and support demand for local commercial businesses/services. Activities supported by this program include:

- Converting existing non-residential spaces into dwelling units where permitted in accordance with the applicable City zoning by-law;
- *Undertaking renovations to existing dwelling units;
- Creation of new dwelling units, including accessory Dwelling Units, via building additions or new detached accessory buildings, including laneway housing; and/or
- Creation of new dwelling units through development of vacant land, surface parking lots or redevelopment of existing buildings.

*Any portion of a project involving renovations to rental residential units shall only be eligible under this Program in accordance with Section B, paragraph eight herein.

Approval under this Program may also qualify the Applicant for additional incentives with respect to rental units that meet housing affordability needs, subject to availability. Additional incentives may include any combination of Development Charge and parkland dedication exemptions, capital funding contributions and any other incentive as may be available from time to time for the purposes of encouraging the development of new affordable rental housing. In order to be eligible for additional affordable housing incentives, rental units must meet the definition and criteria established in the City of Hamilton By-law 03-148 to Adopt a Municipal Housing Facility By-law. When affordable housing is developed in conjunction with this Program, this Program constitutes a City affordable housing program for the purposes of the City of Hamilton's Development Charges By-law 19-142.

This Program will apply within the Ancaster, Barton Village, Binbrook, Concession Street, Downtown Hamilton, Dundas, Locke Street, Ottawa Street, Stoney Creek, Waterdown and Westdale Commercial District CIPAs, the Strategic Commercial Corridor CIPAs and those properties within the municipal boundary designated under Part IV or Part V of the *Ontario*

Heritage Act as collectively defined through the Revitalizing Hamilton's Commercial Districts Community Improvement Project Area (RHCD CIPA) By-law.

Loans and Grants provided under this Program shall be provided to the Applicant who is the Owner registered on title and who will be undertaking the improvement/development that is the subject of the Program application.

The Economic Development Division will periodically review the terms and availability of this Program and undertake updates from time to time subject to City Council approval and/or direction.

All costs associated with the improvement/development and the requirements of this Program are to be borne by the Applicant including construction, design, development charges, application fees, appraisals, inspections, legal, discharge and registration fees (plus applicable taxes), where applicable.

The City retains the right to assess the reasonableness of costs and which costs are eligible for funding under the terms of the Program.

B. PROGRAM ELIGIBILITY AND LOAN CRITERIA

1. Applications to this Program must meet the goals of the Revitalizing Hamilton's Commercial Districts Community Improvement Plan (RHCD CIP).
2. This Program will apply within the Ancaster, Barton Village, Binbrook, Concession Street, Downtown Hamilton, Dundas, Locke Street, Ottawa Street, Stoney Creek, Waterdown and Westdale Commercial District CIPAs, the Strategic Commercial Corridor CIPAs and those properties within the municipal boundary designated under Part IV or Part V of the *Ontario Heritage Act* as collectively defined through the RHCD CIPA By-law
3. Notwithstanding paragraph two, this program shall not apply to a currently operating or proposed adult entertainment parlour, body rub establishment correctional facility, corrections residence, emergency shelter, lodging house or residential care facility as defined in the applicable Zoning By-law or to a property where a designated heritage building has been demolished.
4. The maximum Loan amount is \$20,000 per dwelling unit to a maximum of \$600,000 per property.
5. Only residential units comprising the necessary facilities to meet the definition of a 'Dwelling Unit' or 'Dwelling Unit in Conjunction with a Commercial Use' as contained within Zoning By-law No. 05-200 as amended shall be eligible under this Program and may

include units in the form of a secondary residential unit such as a basement or detached laneway unit.

6. Notwithstanding paragraph five herein, the creation or improvement of a 'Single Detached Dwelling' or individual 'Street Townhouse Dwelling', as defined under Zoning By-law No. 05-200 as amended, with the exception of a secondary residential unit, shall not be eligible under this Program.
7. A minimum of 50% of the Loan per unit must be spent on developing / renovating the unit. The remaining 50% may cover the cost of common elements of the property e.g. roofing, HVAC, central air conditioning, fire escapes, foundations, furnaces, entranceways or other improvements deemed eligible by the General Manager of Planning and Economic Development (GM). Improvement of common elements shall not be funded in the absence of the creation or improvement to individual dwelling units.
8. Any portion of a project consisting of renovations to residential rental units shall not be permitted under this Program except where at least one of the following exceptions are met to the satisfaction of the City:
 - a. There has been no residential rental tenant displacement. Applicants shall be required to submit supporting documentation that demonstrates residential rental tenants have not been displaced. Documentation required to be submitted, and the acceptance of such documentation in terms of satisfying this condition, shall be at the discretion of the City;
 - b. The project has been approved for financial assistance under a Canada Mortgage and Housing Corporation (CMHC), Federal, Provincial or City program for the purposes of creating residential rental housing to address housing affordability in the city;
 - c. The existing building has been entirely vacant for at least two years prior to a program pre-application being submitted to the City (not including periods of vacancy due to renovations);
 - d. The property owner and program applicant are a registered not-for-profit organization;
 - e. The interior renovations primarily support improvements to a commercial space or will improve/replace shared building services utilized by both a commercial space and the rental residential units within the same building (such as plumbing, electrical or Heating, Ventilation and Air Conditioning (HVAC) systems) but shall not include renovations within individual residential rental units; or
 - f. The planned renovations are solely in response to the landlord/property owner being ordered to make repairs under any act or law or where the renovations are

intended to support the legalization and/or recognition of an existing residential rental unit, without which, the unit would no longer be permitted to be occupied.

9. In addition to the Loan, this Program has a Grant portion of \$5,000 per application allocated to professional fees and City of Hamilton fees only. The Grant portion is paid upon presentation of paid receipts to the City's satisfaction. Professional fees will include: architects; BCIN designers; lawyers; engineers; surveyors' fees, title insurance, etc. City of Hamilton fees will include: building permit, site plan application, road occupancy permit, street occupancy permit and encroachment agreement fees. Eligible fees will be determined at the absolute discretion of the GM. Applicants must have achieved the 60% completion stage and must have submitted the request for loan advance for the 60% completion stage of the renovation project to be eligible for the Grant.
10. Prior to any Loan or Grant being provided:
 - a. Any outstanding building code, fire code or property standards orders or any other order applicable to the property(s) or the project by any governmental authority shall be rectified; and
 - b. Any tax arrears on the subject property(s) as well as tax arrears on other properties owned by the Applicant within the City of Hamilton shall be paid.
11. Approval and the receiving of financial assistance under this Program shall not preclude eligibility, approval and the receiving of financial assistance for the same subject property(s) under any other available municipal program with the exception of the Downtown and Barton/Kenilworth Housing Opportunities Program which shall not be permitted to be combined with assistance under this Program.
12. The maximum Loan term is five years and six months (subject to prior termination on default) commencing from the date of the final advance exclusive of holdback. No extension or renewal shall be granted.
13. Financial assistance under this Program will be provided to an approved Applicant if all terms and conditions of this Program have been satisfied including payment of all property taxes and all eligible works have been completed at the discretion of the GM.
14. The Loan interest rate will be at 0% interest for the first five years. For the last six months of the Loan, interest shall be payable on the principal outstanding at the then prevailing rate established by Council for interest on tax arrears, such interest to be calculated and payable monthly, not in advance.
15. The Loan will be secured through a mortgage registered on title upon the lands to be developed (the "Property") in a position no less than second in priority prior to the first

advance of funds. In addition, the Applicant will enter into a Loan Agreement which includes (but is not limited to) the terms and conditions of this program description. The City's insurance requirements as well as all other security required shall be in place prior to advancing funds (i.e. personal / corporate guarantees).

16. The City will request security required to secure a commercial loan, which may include the following: Loan agreement; and / or promissory note; and / or personal property security; and / or personal guarantees; and / or corporate guarantees; and / or lien on the property to be improved; and / or collateral mortgage charge registered on the property to be improved; and / or letter of credit in lieu of a second mortgage charge on the property (subject to City's minimum equity requirements); and / or such other security which may be appropriate or available in the circumstance. The City will request net worth statements or variations thereof as the City may determine.
17. Interest on arrears will be charged per annum at the then prevailing rate established by Council.
18. Applicants shall have no less than 25% equity based upon the appraised value of the property upon completion of the project that is the subject of the Program application including cost of improvements being financed. All mortgages registered on title, including collateral mortgages and non-registered debt, as determined by the City will be included in the equity calculation. The City at its discretion will determine whether an appraisal is required or whether it will accept a drive-by appraisal, tax assessment or other proof of value, depending on the amount of the Loan and the extent of construction or renovation.
19. Unless waived at the sole, absolute and unfettered discretion of the City, the Applicant must provide supervision of the Project by a Project Monitor acceptable to the City. The Project Monitor will, at the cost of the Applicant and prior to each advance, provide proof that is satisfactory to the City that the structural, mechanical and electrical work complies with the approved plans and specifications and all Applicable Law.
20. Advances are made by the City, upon proof that is satisfactory to the City is provided confirming the value of the work completed, the equity requirement has been satisfied, there are no tax arrears on the subject property and on other properties owned by the Applicant within the City of Hamilton and such other conditions as may be required by the City Solicitor.
21. The City may retain from any advance, including the final advance, such holdbacks including but not limited to the basic holdback, finishing holdback, and notice holdbacks as provided for under the *Construction Act* as the City deems prudent. Notwithstanding the foregoing the City will hold back a minimum of 10% of an advance.

22. The City's funding will be advanced in three stages, upon completion of 60%, 80% and substantial completion of the project. Upon proof satisfactory to the City that the proposed development is 60% complete based upon the value of the construction and that equity and / or financing required to that stage of completion has been injected into the development, then the approved City funds will be made available and released proportionately based upon the approved source of funds (equity / financing / City funds). The calculation of the proportion to be advanced will reflect that the first 60% of funding is from non-City sources. Advances will be made in conjunction with financing advances or after proof, satisfactory to the City, of equity injections. At the 60% completion stage of the project, 60% of the loan commitment will be advanced less the Holdback and the per unit administration fee. At the 80% completion stage of the project, 20% of the loan commitment will be advanced less the Holdback. At substantial completion of the project, another 20% of the loan commitment will be advanced less the Holdback.
23. Unless waived at the sole, absolute and unfettered discretion of the City, confirmation of publication of the Certificate of Substantial Performance will be required. Where the requirement for confirmation of publication of the Certificate of Substantial Performance has been waived by the City, the Contractors must supply a Declaration of Last Supply. The Holdback will be released 60 days following the date of publication of substantial completion or, where the City has waived the requirement for the publication of the Certificate of Substantial Performance, the Holdback will be released 60 days following the Declaration of Last Supply from the Contractors and following receipt of a written report to the City satisfactory to the GM that will include but not be limited to an updated statement of project costs, confirmation that all of the Units in the Project can be occupied, receipt of statutory declaration(s) in a form satisfactory to the GM and sworn to by the Contractor(s) that states: "All accounts for labour, contracts, subcontracts, products, services, machinery and equipment which have been incurred in the Project, have been paid in full" and there are no notices of liens and lien rights have expired
24. Repayment of the Loan shall occur as follows:
 - a. If the development is not a condominium, principal is repayable in annual amounts of ten percent (10%), in 12 equal monthly payments, of the principal Loan amount. Payments will commence one year following the substantial completion advance, exclusive of any required holdback. The balance outstanding will be paid by a balloon payment at the end of the Five Year and Six-Month Term. Monthly principal payments will continue during the last six months of the repayment term with interest calculated and payable monthly, not in advance, if not paid earlier and including applicable discharge and registration fees (plus applicable taxes). Any tax arrears on the subject property(s) as well as tax arrears on other properties owned by the Applicant within the City of Hamilton shall be paid; or

- b. If the development is a condominium, the repayment regime is as follows:
upon sale of individual condominium units, the City will be repaid \$25,000 per unit, until the Loan is paid in full. In addition to repayment upon sale of individual condominium units, commencing in the second year following the substantial completion advance, ten percent of the principal Loan amount is repayable annually in the second, third, fourth and fifth years following substantial completion, unless repayments made upon sale of the individual condominium units are equal to or greater than ten percent of the principal Loan amount in each of the second, third, fourth and fifth years. On the last day of the fifth year following the date of the substantial completion advance, a single payment of the balance outstanding, as well as applicable discharge and registration fees (plus applicable taxes) will be required. This single payment as well as applicable discharge and registration fees (plus applicable taxes) can be made up to six months from the last day of the fifth year following the date of the substantial completion advance. Interest shall be charged and payable on the single payment if made after the last day of the fifth year following the date of the substantial completion advance. Interest shall be calculated monthly, not in advance.
25. The Loan may be prepaid at any time without notice, bonus or penalty. Discharge and registration fees (plus applicable taxes) will be required to be paid at such time as the prepayment occurs.
26. Improvements/developments shall commence no longer than one year following the date the Loan is approved by the GM or City Council or the Loan/Grant will be cancelled. The one-year period may be extended by the GM at their absolute discretion.
27. The deadline for 60% completion of the proposed redevelopment / development will be subject to a date as applicable discharge and registration fees (plus applicable taxes).
28. A per unit administration fee is to be charged to the Applicant. The administration fees will be paid out of the first advance of funds provided by the City. All fees will be authorized through a user-fee by-law passed by City Council. The rate of the fees may be changed from time to time as approved by City Council.
29. All property taxes as billed must be paid current and in good standing throughout the development stage as well as during the term of the Loan for any portion of the development retained by the Applicant upon project completion, including condominium units.
30. The City will require, at its sole discretion, specific insurance terms to be met to protect the City's interest.

31. Where a Program 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 to be transferred to a new property owner, the City may permit the transfer or assignment of the application to the new owner at the sole, absolute and unfettered discretion of the GM. The future owner who has been requested to become the Program Applicant and receive financial assistance under this Program shall be subject to appropriate due diligence for the purposes of paragraph 35, 36, 37 and 38 herein. 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 GM in their sole, absolute and unfettered discretion.
32. In the event of the sale, conveyance, transfer or entering into of any agreement of sale or transfer of the title of the Property all monies secured by the mortgage to the City shall forthwith become due and payable.
33. In the event of a Change of Corporate Control where the Owner is a corporation, the Owner covenants and agrees that in the event that:
 - a. the Owner 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 Owner 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 Owner which result in the transfer of the legal or beneficial interest of any of the shares of the Owner; or
 - iii. the Owner 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 Owner, or the requested information is not provided, then all monies secured by the mortgage together with accrued interest thereon shall forthwith become due and payable at the option of the City and the City's powers of sale hereby given and all other remedies for enforcement shall be exercisable.

34. Approval of an application under this Program is at the absolute discretion of the GM for a Loan and Grant to a maximum of \$200,000 and, City Council for a Loans and Grant above \$200,000 and subject to the availability of funds.
35. Without limiting the discretion as set out in paragraph 34 herein, City Council or its delegate, whether or not an Applicant satisfies the requirements of the Program, may in its sole discretion, 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 or any officer or director of the corporation as determined by the City in its sole, absolute and unfettered discretion.

36. Without limiting the discretion as set out in paragraph 34 herein, City Council or its delegate, whether or not an Applicant satisfies the requirements of the Program, may in its sole discretion, reject any application without further consideration where due diligence undertaken by the City identifies property tax arrears owed on the subject property(s) or other properties owned by the Applicant within the City of Hamilton, non-compliance with respect to Zoning By-law regulations or there exist outstanding property standards, building code or fire code orders on the subject property(s).
37. Without limiting the discretion as set out in paragraph 34 herein, City Council or its delegate, whether or not an Applicant satisfies the requirements of the Program, may in its sole discretion, reject any application where the City determines in its sole discretion that there is a financial risk to the City in terms of the financial capabilities of the Applicant to complete the improvement/development subject to the Program application.
38. Without limiting the discretion as set out in paragraph 34, herein, City Council or its delegate, whether or not an Applicant satisfies the requirements of the Program, may in its sole discretion, reject any application received from an Applicant where there is credible information that the Applicant has been involved recently or repeatedly in illegal activity supporting the conclusion that they will not conduct themselves with honesty and integrity in undertaking the activity, operation or business for which a Loan and Grant under this Program is being sought. For corporate Applicants, the Applicant, for the purposes of this paragraph 38, will be considered to be the corporation, the officers and directors of the corporation and the shareholders and this paragraph 38 shall apply jointly and severally to each of them.
39. Improvements/developments commenced prior to submitting an application are ineligible for funding under this Program. Work commenced after submitting an application but prior to approval may be eligible for funding under the Program with eligibility determined by the GM in their sole, absolute and unfettered discretion. An Applicant shall assume the risk of any costs incurred after an application has been submitted but prior to approval under this Program having been received.
40. Buildings uses and improvements/developments shall conform to the City's Official Plan(s), applicable Secondary Plan(s), Zoning By-Laws(s), Site Plan approval and any other applicable and approved municipal policies, by-laws or guidelines (e.g. urban design guidelines) and any other laws applicable to the improvement/development.

41. 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.
42. 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.

43. A Program application may be denied by City Council if the improvement/development is not supported by Council notwithstanding any approval of *Planning Act* applications by any other authority including but not limited to the Local Planning Appeal Tribunal or the

Minister of Municipal Affairs and Housing, and that City Council's decision on the Program application will not fetter its discretion on *Planning Act* applications.

44. City Council's approval of a Program application can provide for a reduced Loan/Grant amount so that no Loan/Grant is provided in respect of any portion of the improvement/development which Council does not support notwithstanding any approval of *Planning Act* applications by any other authority including but not limited to the Local Planning Appeal Tribunal or the Minister of Municipal Affairs and Housing, and that Council's decision on the application will not fetter its discretion on *Planning Act* applications. In such cases, the Applicant shall be required to provide additional supporting documentation, at the Applicant's own expense, to support the providing of financial assistance in accordance with City Council's approval/direction.

C. PROGRAM APPLICATION CRITERIA

A Pre-Application Form must be completed and forwarded to the Economic Development Division prior to completing a Final Application Form. The Pre-Application Form is required so that staff can review property details and determine appropriate next steps.

Applicants to the Program will then submit a complete final Program application to the Economic Development Division prior to the issuance of an above-grade Building Permit for construction. Exceptions may be made at the discretion of the GM.

An application fee is payable upon submission of application. The fee will be authorized through a user-fee by-law passed by City Council. The rate of the fee may be changed from time to time as approved by City Council and will be identified on the Program's application form.

Approval of an application under this Program is at the absolute discretion of the GM for a Loan and Grant to a maximum of \$200,000 and, City Council for a Loan and Grant above \$200,000 and, subject to the availability of funds.

Applications shall include plans, estimates, contracts and other details as may be required to satisfy the City as to the cost of the improvement/development and conformity with the objectives of the Revitalizing Hamilton's Commercial Districts Community Improvement Plan.

Applicants shall be required to submit information to assist with determining the financial capabilities of the Applicant to complete the improvement/development subject to the Program application and to identify any potential financial risks to the City. Information required to be submitted is at the discretion of the City and may include but may not be limited to, a financial risk assessment, personal/corporate net worth statements and/or business plan.

D. PROGRAM ADMINISTRATION

Economic Development Division staff will review applications for eligibility in collaboration with other City departments as required with approval of applications subject to a decision by the GM or City Council in their sole and unfettered discretion.

Applicants and properties will be the subject of due diligence undertaken by the City prior to any approval being provided or payment of a Loan/Grant under this Program. This will include, but may not be limited to, confirmation of the following: all property taxes are paid and current on the subject property(s) or other properties owned by the Applicant within the City of Hamilton, the property is in compliance with Zoning By-law regulations, that there are no outstanding property standards, building code or fire code orders on the subject property(s) and that the Applicant is not in litigation with the City. Failure to comply with any of the above will result in an application not being approved or, if the application is approved, non-payment of a Loan/Grant under this Program.

Approved Applicants shall be required to enter into a Loan Agreement with the City containing (but not limited to) the terms and conditions set out in this program description.

The City reserves the right to require the submission of any additional documentation or enter into any additional agreements as deemed necessary by the City to ensure the goals and purpose of this Program and the Revitalizing Hamilton's Commercial Districts Community Improvement Plan are met.

Applications to this Program not yet approved by City Council (or its delegate) shall be subject to any changes to the terms of this Program which are approved by Council prior to the application being approved.

Applicants seeking eligibility of renovations to residential rental units in accordance with Section B, paragraph eight, shall be required to provide necessary documentation to the City in support of this determination prior to a Loan/Grant being provided under this Program (examples of supporting documentation may include, but is not limited to, a signed declaration of a financial commitment issued for the subject improvement/development from the CMHC, Province of Ontario or associated agency and/or City of Hamilton, utility bills or other means of proof with respect to determining building vacancy and duration etc.). Such renovations shall be deemed to be ineligible where supporting documentation has not been provided to the City's satisfaction.