

ERASE AFFORDABLE HOUSING GRANT (EAHG) PROGRAM



A. PROGRAM DESCRIPTION

The ERASE Affordable Housing Grant (EAHG) Program (the Program) is intended to provide Grants towards costs required to remediate historical environmental contamination on brownfield sites in support of their redevelopment/reuse for affordable housing by not-for-profit housing providers not otherwise able to participate in the ERASE Redevelopment Grant (ERG) program. By providing Grants to mitigate these financial impediments, the Program better enables brownfield sites to be viable candidates for the creation of new affordable housing.

This Program will apply within the Historically Developed Area as defined through the Environmental Remediation and Site Enhancement Community Improvement Project Area (ERASE CIPA) By-law.

Applications under this Program are subject to approval at the sole, absolute and unfettered discretion by the General Manager of Planning and Economic Development (GM) and subject to the availability of funds.

Grants under this Program shall be provided to the Applicant who is the registered owner and who has incurred eligible Program costs for the purposes of a not-for-profit housing development, as defined herein, except where provided for in Section B, paragraph 18.

The City retains the right to assess the reasonableness of costs via audit as well as the determination of cost eligibility under the terms of this Program.

All costs associated with the development and the requirements of this Program are to be borne by the Applicant including construction, design, community benefit charges, development charges, administration fees, appraisals, inspections, legal and registration fees where applicable.

For the purposes of this Program:

- A 'site' shall mean all properties forming part of the development;
- A 'Qualified Person' shall have the same meaning as defined under Ontario Regulation 153/04, as amended; and

- A 'not-for-profit housing development' shall mean the development of a building or structure intended for use as a residential rental premise or a residential premise for the homeless to be owned and developed by:
 - a corporation to which the *Not-for-Profit Corporations Act*, 2010 applies, that is in good standing under that *Act* and whose primary object is to provide housing;
 - a corporation without share capital to which the *Canada Not-for-profit Corporations Act* applies, that is in good standing under that *Act* and whose primary object is to provide housing;
 - a non-profit housing co-operative that is in good standing under the *Co-operative Corporations Act*, 2022, c. 21, Sched. 3, s. 4; or
 - CityHousing Hamilton Corporation.

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.

B. PROGRAM ELIGIBILITY AND GRANT CRITERIA

1. Applications to this Program must meet the goals of the Environmental Remediation and Site Enhancement Community Improvement Plan (ERASE CIP).
2. This Program will apply within the Historically Developed Area as defined through the ERASE CIPA By-law.
3. Notwithstanding paragraph two (2), this Program shall not apply to a site where a designated heritage building has been demolished or on agricultural lands which have been the subject of normal farm practices.
4. The maximum Grant provided under this Program per site shall be the actual eligible costs incurred as identified in Section C herein to a maximum of \$200,000.
5. A maximum of one (1) Grant may be provided per site under this Program.
6. An Applicant to this Program must be the registered owner of the site with grants only payable to the successful Program Applicant and cannot be assigned or directed to any other payee unless otherwise provided for in the Program Administration section herein.
7. Approvals under this Program shall be provided on a first come first serve basis, subject to the availability of funding, with priority given to not-for-profit housing developments which have the greatest potential to be developed in the short-term and taking into consideration development achievements including, but not limited to, obtaining

necessary planning approvals or securing funding commitments from the City or other levels of government or agencies.

8. Prior to any application approval and/or Grant payment being provided:
 - a. Any outstanding Building Code, Fire Code or property standards orders or any other order applicable to the site by any judicial, governmental or regulatory authority shall be rectified; and
 - b. Any tax arrears on the subject site shall be paid.
9. With respect to remediation of contaminated soil/groundwater, as a condition of Grant payment, the Applicant shall be required to:
 - a. Successfully file a Record of Site Condition (RSC) to the Ministry of Environment, Conservation and Parks (MECP), prepared by a Qualified Person, that conforms to Ontario Regulation 153/04 and applicable Site Condition Standards (SCS) required for the development/use and submit to the City an Acknowledgement of receipt of the RSC by the MECP; or
 - b. Where the filing of an RSC is not required under the *Environmental Protection Act* to permit the development/use notwithstanding the confirmed presence of contamination that would not otherwise meet the applicable SCS for the planned development/use, and provided the Applicant undertakes a Risk Assessment and remediates the site to a standard that would have otherwise enabled the Applicant to submit a RSC, the Applicant may instead provide the City with a Risk Assessment prepared by a Qualified Person which shall be subject to a peer-review by a Qualified Person for Risk Assessment, chosen by the City and at the Applicant's expense (permitted as an eligible cost). This peer-review must certify that the site has been remediated to the applicable SCS for the planned development/use in accordance with the Risk Assessment and Ontario Regulation 153/04, to the satisfaction of the City.

The City reserves the right to require that the submission of the RSC, MECP Acknowledgement, Risk Assessment and supporting environmental reports and documentation be submitted to the City's satisfaction.

10. The Applicant will be required to enter into a Grant Payment Agreement with the City that sets out the conditions of the Grant. Before any Grant is provided, the Applicant and site shall be in compliance with the Program's requirements and conditions and all additional requirements as set out in the Grant Payment Agreement as determined by the GM.
11. For the purposes of this Program, site remediation shall be deemed to be complete where:
 - a. Required environmental remediation site works and/or mitigation measures have been completed; and

- b. A RSC has been successfully filed with MECP or where a Risk Assessment has been successfully peer-reviewed and accepted by the City in accordance with paragraph nine (9.) b. herein.
12. No Grant shall be paid until site remediation is deemed complete by the City in accordance with paragraph 11 herein.
13. Site remediation and/or abatement/removal of Designated Substances and Hazardous Materials (DSHM) shall commence within one (1) year and be completed no longer than two (2) years from the date of GM approval of the application.

Extensions may be granted for phased/comprehensive developments or due to development specific extenuating circumstances outlined in a formal request submitted by the Applicant to the City prior to the lapsing of the above time periods and considered at the discretion of the GM.
14. Approval and the receiving of Grants under this Program shall not preclude eligibility, approval and the receiving of financial assistance for the same site under any other available municipal program with the exception of any other tax increment-based tax cancellation program which shall not be permitted to be combined with assistance under this Program.
15. The total Grant provided shall not exceed the actual eligible costs incurred or the maximum Grant which may be provided under this Program in accordance with paragraph four (4) herein, whichever is less.
16. The City reserves the right to audit the invoices/costs submitted for consistency with the Remedial Action Plan, contractor quote or other work plan submitted in support of the application and for compliance under the Program terms contained herein.
17. A Grant under this Program will be provided to an approved Applicant if all terms and conditions of this Program have been satisfied including payment of any applicable municipal property taxes.
18. A Grant under this Program shall not be permitted to be assigned except where an Applicant has been approved for a loan under the ERASE Commercial District Remediation Loan (ECDRL) Program in which case the Applicant shall be required to assign the Grant under this Program to the City of Hamilton as payment towards their loan under the ECDRL. Any Grant amount under this Program in excess of the total loan outstanding under the ECDRL shall be provided to the Applicant in accordance with the criteria of this Program.
19. In the event of a change in the status of an Applicant in respect of the following:

- a. a corporation to which the *Not-for-Profit Corporations Act*, 2010 applies, that is in good standing under that *Act* and whose primary object is to provide housing;
- b. a corporation without share capital to which the *Canada Not-for-profit Corporations Act* applies, that is in good standing under that *Act* and whose primary object is to provide housing;
- c. a non-profit housing co-operative that is in good standing under the *Co-operative Corporations Act*, 2022, c. 21, Sched. 3, s. 4;

The result being that an approval under this Program may, at the City's discretion, be cancelled such that no Grant will be provided or, where a Grant has already been provided, seek the return of such funds.

- 20. Applications under this Program are subject to approval at the sole, absolute and unfettered discretion by the GM and subject to the availability of funds.
- 21. Without limiting the discretion as set out in paragraph 20 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 City Council, or its delegate, 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.
- 22. Without limiting the discretion as set out in paragraph 20 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 municipal property tax arrears owed on the subject site, non-compliance with respect to Zoning By-law regulations or there exist outstanding property standards, Building Code or Fire Code orders in respect of the subject site or any other judicial, regulatory or governmental order in respect of the subject site.
- 23. Without limiting the discretion as set out in paragraph 20, 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 Grant under this Program is being sought. For corporate Applicants, the Applicant, for the purposes of this paragraph 23, will be considered to be the corporation, the officers and directors of the

corporation and the shareholders and this paragraph 23 shall apply jointly and severally to each of them.

24. Buildings, uses and 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 development.
25. A Program application may be denied by City Council, or its delegate, if the development is not supported by City Council notwithstanding any approval of *Planning Act* applications by any other authority including but not limited to, the Ontario Land Tribunal or the Minister of Municipal Affairs and Housing, and that a decision on the Program application will not fetter City Council's discretion on *Planning Act* applications.
26. Approval of a Program application by City Council, or its delegate, may provide for a reduced Grant amount such that no Grant is payable in respect of any portion of the development that is the subject of the Grant application which City Council does not support notwithstanding any approval of *Planning Act* applications by any other authority including, but not limited to, the Ontario Land 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. 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. ELIGIBLE/INELIGIBLE COSTS

Eligible costs under this Program for sites located within the Historically Developed Area consist of the following (excluding HST) but shall exclude in all cases any cost which would have been required for the development regardless of the need to remediate contaminated soil/groundwater and/or abate/remove Designated Substance and Hazardous Materials (DSHM), where applicable:

1. Physical environmental remediation of soil and/or groundwater which includes the cost of any action taken to reduce the concentration of contaminants on, in or under the eligible site required to meet the applicable SCS needed to facilitate the planned development/use and to permit the filing of a RSC by a Qualified Person, including costs of preparing and filing the RSC and Certificate of Property Use (CPU);
2. Clean back fill, grading and compaction to replace contaminated soils, where required;
3. Phase II ESAs, Remedial Action Plans and/or Risk Assessments not reimbursed, or planned to be reimbursed, under the ERASE Study Grant (ESG) Program;

4. Peer-reviews with respect to Risk Assessments where an RSC is not required by the MECP;
5. Installation of environmental and/or engineering controls/works, related to environmental remediation, as specified in the Remedial Action Plan, Risk Assessment and/or CPU;
6. Testing of on-site excess soils for potential reuse but shall not include the excavation, management, transportation or disposal of such soil except where the soil originates from the site and is found to be contaminated;
7. DSHM Survey and/or abatement/removal in accordance with the *Occupational Health and Safety Act* and Ontario Regulation 278/05 (where applicable);
8. In addition, the following costs may also be considered eligible when incurred on a site requiring remediation of contaminated soil/groundwater and/or abatement/removal of DSHM and located in Historically Developed Area:

- a. 50% of incremental construction costs required to achieve one of the following environmental sustainability certifications: Canadian Home Builders Association (CHBA) Net Zero Home Labelling where Net Zero or Net Zero Ready levels of efficiency are achieved; Passive House Canada; Natural Resources Canada (NRCAN) R2000; Built Green to a Gold or higher standard in the Energy and Envelope category; or Leadership in Energy and Environmental Design (LEED) to a Gold or higher standard.

In addition, 50% of the following associated soft costs supporting such certification may be eligible:

- i. consultation fees;
 - ii. energy modeling; and
 - iii. certification fees; and
- b. 50% of incremental construction costs required to incorporate the following District Energy Readiness building components where a current or future connection is deemed feasible, as determined by the City:
 - i. providing space for the sole purpose of future equipment and thermal piping;
 - ii. securing an easement between the mechanical room and the property line to allow for thermal piping; and
 - iii. including two-way pipes in the building to carry the thermal energy from the district energy network to the section in the building where the future energy transfer station will be located.

The inclusion of such building components shall be subject to confirmation by a Building Inspector or other means at the discretion, and to the satisfaction of, the GM.

Ineligible costs shall be any cost not identified in this Section or any cost identified above which has been incurred prior to the date an application was submitted under this Program and accepted by the City with the exception of studies which were the subject of a previously approved ESG Program application. An Applicant shall assume the risk, and bear the sole responsibility, for any cost incurred after an application has been submitted but prior to approval under this Program being received should the application not be approved for any reason.

The City reserves the right to reject any application under this Program that proposes a remediation practice/method which is deemed by City Council, or its delegate, in their sole and unfettered discretion, to have the potential to cause a negative overall environmental impact to a site, area or person. In addition, the City reserves the right to approve an application that excludes costs otherwise eligible that are associated with a remediation practice/method which is deemed by City Council, or its delegate, in their sole and unfettered discretion, to have the potential to cause a negative overall environmental impact to a site, area or person. Furthermore, if after application approval, a remediation practice/method utilized is deemed by City Council, or its delegate, in their sole and unfettered discretion, to be causing, or have caused, a negative overall environmental impact to a site, area or person, the City may reduce or cancel all or a portion of previously eligible program costs prior to grant payment.

D. PROGRAM APPLICATION CRITERIA

Potential Applicants shall 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.

A complete Program application shall be submitted to the Economic Development Division prior to the commencement of eligible works that are the subject of a Program application. Required documents and information forming a complete application shall be identified within the Program's application form. The application date for the purposes of the Program will be the date on which City staff have deemed the application complete in their sole discretion.

Applications shall include all available environmental studies for the site (Phase I and II ESAs, Risk Assessment, DSHM Survey), a Remedial Action Plan completed by a Qualified Person, contractor cost estimates for environmental remediation and any other potentially eligible works and any other details as may be required to satisfy the City as to the cost of the environmental remediation and any other potentially eligible works and the development's conformity with the objectives of this Program and the ERASE CIP. The City may also require the submission of a Business Plan for the proposed development.

E. PROGRAM ADMINISTRATION

Economic Development Division staff will review applications for eligibility and completeness in accordance with the ERASE CIPA, ERASE CIP, the Program terms contained herein and in collaboration with other City departments as required. Acceptance of the application by the Economic Development Division in no way implies Grant approval.

The site and Applicant will be the subject of due diligence undertaken by the City prior to any recommendation being brought to City Council, or its delegate, for consideration and prior to any Grant being provided. This will include, but may not be limited to, confirmation of the following: all municipal property taxes are paid and current on the subject site, the site is in compliance with Zoning By-law regulations, that there are no outstanding property standards violations or orders, Building Code violations or orders or Fire Code violation or orders, any violations of law or any orders by any other judicial, governmental or regulatory authority, regarding the subject site or the development on the subject site 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 Grant under this Program.

Where the development requires approval of a Site Plan, a conditional Site Plan approval shall have been obtained from the City prior to consideration of an application under this Program by City Council, or its delegate. Where a conditional Site Plan approval contains conditions which, until satisfied, may impact a post-development assessment of the development including but not limited, requirements to obtain Minor Variances through the Committee of Adjustment, the City may require these conditions to be satisfied prior to consideration of the application by City Council, or its delegate. Where no Site Plan is required for the development, consideration of an application by City Council, or its delegate, will occur after such time as the Economic Development Division is satisfied that all necessary information has been provided to inform an estimate of the resulting post-development assessment and municipal property taxes.

Where an application has been submitted but not yet approved by City Council, or its delegate, and the subject site is sold/transferred to a new 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 GM. 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. The new owner shall be subject to all applicable due diligence required under this Program, including, but not limited to, applicable corporate title and litigation searches, to the satisfaction of the City prior to the assignment being considered by the GM and shall continue to meet the definition of a not-for-profit housing development as contained herein.

Applications under this Program are subject to approval at the absolute discretion by the GM and subject to the availability of funds.

Approved Applicants shall be required to enter into a Grant Payment 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 ERASE CIP are met.

Notwithstanding any other term or condition of this Program, where an application has been approved by City Council, or its delegate, the application and the associated approval, including the assignment of any eligible costs incurred by the approved Applicant since the date of application submission, may be assigned to a future intended owner of the subject site only in such instance where the registered owner of the site at the time of approval by City Council, or its delegate, was the City of Hamilton, CityHousing Hamilton Corporation or any other entity wholly owned by the City of Hamilton and where the assignment will further facilitate the remediation and redevelopment of a site and/or support the achievement of strategic City priorities/objectives. It is understood that one effect of such an assignment shall be that the future intended owner will assume all requirements and obligations required under this Program and become the recipient of any future Grant payment which may be eligible under the Program at such time as they become the registered owner. In such an instance, a request to assign the application shall be submitted in writing to the City by the existing owner and the City Council, or its delegate, approved Applicant with accompanying rationale and be subject to approval by City Council, or its delegate in its sole discretion. The future intended site owner shall be subject to all applicable due diligence required under this Program, including, but not limited to, applicable corporate title and litigation searches, to the satisfaction of the City prior to the assignment being considered by City Council, or its delegate. An assignment or transfer may require that the assignee or transferee submit an application, assignment or transfer agreement and/or such other documents as determined by the GM in their sole, absolute and unfettered discretion.

With respect to remediation of contaminated soil/groundwater, as a condition of Grant payment, the Applicant shall be required to:

- Successfully file a RSC to the MECP, prepared by a Qualified Person, that conforms to Ontario Regulation 153/04 and applicable SCS required for the development/use and submit to the City an Acknowledgement of receipt of the RSC by the MECP; or
- Where the filing of an RSC is not required under the *Environmental Protection Act* to permit the development/use notwithstanding the confirmed presence of contamination that would not otherwise meet the applicable SCS for the planned development/use, and provided the Applicant undertakes a Risk Assessment and remediates the site to a standard that would have otherwise enabled the Applicant to submit a RSC, the Applicant may instead provide the City with a Risk Assessment prepared by a Qualified Person which shall be subject to a peer-review by a Qualified Person for Risk Assessment,

chosen by the City and at the Applicant's expense (permitted as an eligible cost). This peer-review must certify that the site has been remediated to the applicable SCS for the planned development/use in accordance with the Risk Assessment and Ontario Regulation 153/04, to the satisfaction of the City.

The City reserves the right to require that the submission of the RSC, MECP Acknowledgement, Risk Assessment and environmental reports and supporting documentation be submitted to the City's satisfaction.

Paid Invoices for all eligible costs incurred will be supplied to the City and the Grant will be based on the City's review, satisfaction and acceptance of these invoices and all supporting reports and documentation submitted outlining the full scope and cost of the work completed. Any and all of these costs may be subject to audit, at the expense of the Applicant, at the City's discretion. The Grant may be reduced or cancelled if the eligible works are not completed, not completed as approved and/or where documentation/invoicing of said costs is not provided to the City's satisfaction. In addition, invoices must be billed to the Applicant approved by the GM.

A Grant will not be made unless a written request for the Grant payment has been made by the Applicant in the year in which the Grant becomes payable. If a written request has not be made but all other conditions for its payment have been satisfied, the Grant payment shall be held until such time as a written request has been made. If a request for the Grant payment is not made within three (3) years of completion of site remediation in accordance with Section B, paragraph 11, the agreement shall terminate and without limiting the generality of the foregoing the City shall not be obligated to make any Grant payment.

The City is not responsible for any costs incurred by the Applicant in any way relating to the Program, including without limitation, costs incurred in anticipation of an application approval or Grant being provided.

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

City Council may discontinue this Program at any time. However, Applicants with approved applications will still continue to receive the Grant subject to meeting the Program terms contained herein.