



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Economic Development Division

TO:	Mayor and Members General Issues Committee
COMMITTEE DATE:	May 20, 2015
SUBJECT/REPORT NO:	Office Tenancy Assistance Program, McMaster University's Downtown Accelerator Program – 109 James Street North, Hamilton (PED15063) (Ward 2)
WARD(S) AFFECTED:	Ward 2
PREPARED BY:	Hazel Milsome (905) 546-2424 Ext. 2755
SUBMITTED BY:	Jason Thorne General Manager Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

- (a) That a conditional forgivable loan commitment totalling \$25,000 for McMaster University, the tenant leasing office space at 109 James Street North, Hamilton, be authorized and approved under the Office Tenancy Assistance Program in accordance with the Program's terms and conditions;
- (b) That in order to earn forgiveness of the loan recommended in (a) above, McMaster University must occupy the space to which the loan was used for leasehold improvements for a 12 month period and, the forgiveness will not be prorated if McMaster University vacates the space prior to the 12 month period;
- (c) That the Mayor and City Clerk be authorized and directed to execute the Loan Agreement together with any ancillary documentation required, to effect recommendation (a) and (b) of Report PED15063, in a form satisfactory to the City Solicitor;
- (d) That the General Manager of the Planning and Economic Development Department be authorized to approve and execute any loan amending agreements, together with any ancillary amending documentation, if required, provided that the terms and conditions of the Office Tenancy Assistance Program, as approved by City Council, are maintained;

- (e) That Appendix “E” to the Downtown and Community Renewal Community Improvement Plan, being the Program Description and Terms of the Office Tenancy Assistance Program, be deleted and replaced with the Program Description and Terms attached as Appendix “A” to Report PED15063.

EXECUTIVE SUMMARY

The Office Tenancy Assistance Program (OTAP) application for office tenant improvements at 109 James Street North, Hamilton was submitted by McMaster University. McMaster is proposing to lease space for its Downtown Accelerator Program at 109 James Street North, Hamilton and have leasehold improvements undertaken on 2,500 square feet of office space. The property is currently vacant.

The Downtown Accelerator Program is an incubator for young cultural and social innovators and will assist in launching and growing businesses based in Hamilton in the following sectors; digital media and information communication technology (ICT), tourism and culture, education and life sciences and advanced health.

The incubator will have ongoing activities that engage and educate aspiring young entrepreneurs and will host a formal accelerator program intended to grow companies. There will be three to five employees working at the location, along with 10 - 20 incubated companies per year. Community events will also be hosted at the incubator.

The Office Tenancy Assistance Program allows for a forgivable loan versus a loan when an applicant is a not-for-profit publicly-funded educational establishment that is establishing its presence in Downtown Hamilton. McMaster's Downtown Accelerator Program meets those terms.

As a result of discussions with Legal Services staff, it became evident that minor amendments were required to the terms of the Program in order to clarify the repayment terms of the loan; clearly define how the amount of the loan is defined; add provisions dealing with grants and forgivable loans and incorporate other changes to strengthen the Program. The amendments are highlighted on Appendix “A” to Report PED15063.

Alternatives for Consideration – See Page 9

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: Forgivable loans provided through the Office Tenancy Assistance Program are funded through the Urban Renewal Section's Capital Project # 8201203201. Funds are currently available in this project account.

Staffing: Administration of the Office Tenancy Assistance Program can be accommodated within the Urban Renewal Section of the Planning and

Economic Development Department as well as the Finance and Administration Section of the Corporate Services Department.

Legal: Section 28 of the *Planning Act* permits a municipality, in accordance with a Community Improvement Plan, to make loans and grants which would otherwise be prohibited under Section 106(2) of the *Municipal Act*, to registered / assessed owners and tenants of lands and buildings. A Community Improvement Plan can only be adopted and come into effect within a designated Community Improvement Project Area. Changes to a Community Improvement Plan or Community Improvement Project Area require formal amendments, as dictated by the *Planning Act*. The Downtown and Community Renewal Community Improvement Plan and Project Area, provides the authorization for the City to offer loans under the Office Tenancy Assistance Program.

The revised program descriptions and terms for the Office Tenancy Assistance Program provided in Appendix "A" to Report PED15063 are adopted by Council resolution and appended to the Plan.

Council has adopted by resolution, detailed implementation measures to allow for the efficient administration of each financial incentive program. These administration procedures are contained in the various program descriptions and terms provided in the appendices to the Downtown and Community Renewal Community Improvement Plan. Changes to the appendices not requiring a formal amendment will be adopted by City Council by resolution. The program description and terms of the Office Tenancy Assistance Program are appended to the Community Improvement Plan as Appendix "E".

Formal amendments to the Community Improvement Plan are required in the following instances:

- to introduce any new financial incentive programs;
- to increase the amount of financial assistance that may be provided to registered owners, assessed owners, and tenants, and to any person to whom such an owner or tenant has assigned the right to receive a grant or loan, as described in Section 8 of the Plan;
- a change to the Community Improvement Project Area as it is described in Section 6 of the Plan.

The proposed amendments to the Office Tenancy Assistance Program terms do not require a formal amendment.

Prior to the first advance of funding from the City, the Applicant will be required to execute a Loan Agreement and General Security Agreement. All documents and required searches will be developed and undertaken in consultation with Legal Services.

As projects move forward, it is sometimes necessary to amend previously approved loan agreements and any ancillary documentation. Therefore, staff recommends that the General Manager of Planning and Economic Development be authorized to amend loan agreements and any ancillary documentation, provided that the terms and conditions of the OTAP are maintained.

HISTORICAL BACKGROUND

City Council, at its meeting held March 10, 2010, approved an amendment to the Downtown and Community Renewal Community Improvement Plan which introduced the Office Tenancy Assistance Program (formerly titled the Hamilton Downtown Office Tenancy Assistance Program), a program that provides a low-interest loan to either building owners or tenants for eligible leasehold improvements to office buildings. Initially the Program was offered to office buildings located within the Downtown Hamilton Community Improvement Project Area only. Since that time, a number of Program refinements have been approved by City Council, the most recent amendment being the expansion of the Program to Community Downtowns, the Mount Hope / Airport Gateway, Business Improvement Areas and the corridors of Barton Street and Kenilworth Avenue, as identified in the Downtown and Community Renewal Community Improvement Project Area.

The intent of the Program is to facilitate the increased attractiveness and marketability of the office stock, reduce the office vacancy rate by attracting new office tenants and owner-occupied office uses from outside the City, and assist existing businesses to expand. An additional objective of the program is to encourage educational establishments to establish a presence in Downtown Hamilton.

The proposed project at 109 James Street North, Hamilton, is an eligible project under the terms of the OTAP.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Urban Hamilton Official Plan

The subject lands are municipally known as 109 James Street North, Hamilton, and are designated as "Downtown Urban Growth Centre" in Schedule "E" – Urban Structure and as "Downtown Mixed Use Area" in Schedule "E-1" – Urban Land Use Designation.

The function of the “Downtown Urban Growth Centre” is a significant node as a result of scale, density, range of uses, function and identity by residents. It is to be planned for a range of uses appropriate to its role as the City’s pre-eminent node. The Growth Centre is anticipated to accommodate 20% of the City’s residential intensification over the span of the Plan as well as 100,000 square metres of retail floor space.

This designation permits residential uses and some commercial uses. This designation provides policy with respect to encouraging higher density housing forms to be integrated with business uses which include retail and service commercial establishments on the ground floor. The primary goal is to ensure that development or redevelopment is well designed to accommodate the pedestrian environment through good urban design principles.

Downtown Hamilton Secondary Plan

The subject lands are designated as “Prime Retail Streets” in the Downtown Hamilton Secondary Plan Land Use Plan Map B.6.1-1 and Map B.6.1-2.

Policy 6.1.8.7 provides policy for “Prime Retail Streets” which are the historical core of the Downtown shopping district. The policy also identifies that the ground floor shall be predominantly occupied by street oriented commercial uses with upper floors dedicated for live / work or residential uses. Development proposals within the “Prime Retail Streets” designation shall have ground floor façades that are designed with doors or windows open to the street.

This is a comprehensive Secondary Plan with other applicable policies including but not limited to urban design initiatives and guidelines not only for building design but also for the proposed building’s interface with James Street North. These policies are further outlined in Policy 6.1.10 “Enhancing Streets and Public Spaces”.

Cultural Heritage policies identified under Policies 6.1.7.2 to 6.1.7.8 would also apply to the proposed development. In this regard, the proposed design would need to respect the existing built heritage of the area through built form. The subject lands are listed in the City’s Inventory of Architecturally / Historically Significant Buildings.

The proposed development is consistent with these policies.

Hamilton Zoning By-law No. 05-200

The subject lands are zoned as Downtown Prime Retail Streets (D2) Zone. The Zone permits a commercial school, educational establishment, medical clinic, medical office and office uses. The proposed redevelopment to allow a McMaster University Incubator would be permitted.

RELEVANT CONSULTATION

Staff from the Finance and Administration Division, Corporate Services Department and the Legal Services Division, City Manager's Office, were consulted and concur with the recommendations included in Report PED15063.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

Supporting documentation to the application included annual financial reports of the Applicant to support the Applicant's capacity for loan repayment. Upon review of the documentation, staff is satisfied that the Applicant has the financial capacity to repay the loan if required.

Staff also undertook due diligence with respect to whether property taxes are paid current, and whether there are any Building Code, Fire Code or Property Standard violations outstanding on the property. There were no violations under the Fire Code or Property Standards, however, there was a Building Code violation for construction without a building permit. Building Department has confirmed that an application for a building permit has been submitted.

The forgivable loan is based on the lesser of 90% of leasehold improvement costs (total leasehold improvement costs are estimated at \$61,500) or, the square foot (in this case 2,500 square feet) multiplied by \$10 (the term of the lease is three years, however McMaster has the option after the 13th month to be released from the lease obligation with no penalty if the funding for the project is not renewed). The lesser amount of the above two formulae is the square foot (2,500) multiplied by \$10 or, \$25,000. The forgivable loan will be based on earning 100% of the forgivable loan at the end of the 12th month of occupancy by McMaster of 109 James Street North. Forgiveness of the loan will not be prorated if McMaster vacates the property prior to a 12 month occupancy. Should McMaster vacate the property prior to the end of the 12th month, the loan will be considered in default and interest will be such tax arrears interest rate as may be established by Council from time to time.

The loan may be advanced in up to three stages, upon 50%, 75% and 100% completion of improvements. Advances will be based on copies of paid invoices.

Appendix "B" to Report PED15063 identifies the location of the property within the Downtown Hamilton Community Improvement Project Area.

Amendments to the Terms of the Office Tenancy Assistance Program

In order to strengthen and clarify the terms of the Program, amendments as highlighted in Appendix "A" to Report PED15063 are recommended. These amendments are as follows:

1. **Section 6:** Remove the wording “For the purpose of this Program, eligible leasehold improvements are to be made to space within eligible buildings that is devoted to office uses, where permitted by the zoning by-law, in which management, clerical, administrative, consulting, advisory, training or teaching services are offered or performed, including call centres and educational establishments. Other uses may include commercial school, communications establishment, financial establishment, medical office, and medical clinic (excluding methadone clinics), where permitted by the zoning by-law. City Council, at its sole discretion, may deem other uses eligible for the program that are not listed above.” and insert the wording:

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

2. **Section 14, sub-section a):** Remove the wording “invoiced” and replace it with “estimated”.
3. **Section 15:** Insert the following wording at the end of Section 15:

“If the applicant is not otherwise in default of the Loan Agreement, a Forgivable Loan will be forgiven at the end of the term of the Loan. Forgiveness shall not be prorated if the applicant vacates the space to which the Loan was used for leasehold improvements prior to the end of the Loan term. In order to earn the forgiveness, the Applicant must occupy the space to which the Loan was used for leasehold improvements for the entire term of the Loan. The maximum term of the Loan shall be as set out in paragraph 17 below. However, if the applicable lease provides for early termination the minimum term of the Loan shall be one year.”

4. **Section 21:** Remove the wording “The loan under the Program, once approved may be advanced in up to three stages, upon completion of 50%, 75% and 100% completion of the improvements, based on 90% of the actual eligible leasehold improvement costs incurred as evidenced by copies of paid invoices.” Insert the wording:

“The loan under this Program, once approved, may be advanced in up to three stages, upon completion of 50%, 75% and 100% of the leasehold improvements

eligible to be funded by the program. Copies of paid invoices will be required to be provided to the City for advances to be made. In addition to invoices the City may require, in the sole determination of the General Manager of the Planning and Economic Development Department, additional information in order that advances can be made. Advances will be made based on work completed. If the amount of the loan is less than the cost of the eligible leasehold improvements advances will be made as follows:

(i) at the 50% completion stage the amount advanced shall equal the amounts invoiced for eligible improvements less 10% up to a maximum amount of 50% of the Loan amount;

(ii) at the 75% completion stage the amount advanced shall equal the amounts invoiced for eligible improvements less 10% up to a maximum of 25% of the Loan amount; and

(iii) at the 100% completion stage the amount advanced shall equal the amounts invoiced for eligible improvements less 10% up to a maximum of 25% of the Loan amount.

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

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

(ii) at the 75% completion stage the amount advanced shall equal 90% of the amounts invoiced for eligible improvements less any amounts previously advanced; and

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

If the total of the invoiced cost of eligible improvements exceeds the estimated cost, the total of all advances cannot exceed the approved amount of the loan and the final advance shall be reduced in order to conform to this requirement.”

5. **Section 24:** Remove the wording “The four month period may be extended by the City in its absolute discretion in cases where an applicant submits a work schedule in a format acceptable to the City. The work schedule must be submitted no later than the time of the first advance (i.e. 50% complete) and demonstrate that a longer period is required to complete the balance of the leasehold improvements.”

6. **Section 25:** Insert a new section as Section 25 that reads “Leasehold improvements to be completed within four months from the First Advance. The four month period can be extended at the sole discretion of the General Manager of the Planning and Economic Development Department.”
7. **Section 34:** Insert a Section 34 that reads “Leasehold improvements to commence one year following Council’s approval of the loan. The one year period can be extended at the sole discretion of the General Manager of the Planning and Economic Development Department.”

ALTERNATIVES FOR CONSIDERATION

Decline the Loan

Declining the loan could terminate or delay the project. This alternative is not recommended.

Approve a Reduced Loan Amount

Council may decide to approve a reduced loan amount. This would compromise the intent of the OTAP, as well as undermine the renewal efforts in general. This alternative is not recommended.

Financial: A forgivable loan totalling approximately \$25,000.00 would not be issued.

Staffing: Not applicable.

Legal: Not applicable.

ALIGNMENT TO THE 2012 – 2015 STRATEGIC PLAN

Strategic Priority #1

A Prosperous & Healthy Community

WE enhance our image, economy and well-being by demonstrating that Hamilton is a great place to live, work, play and learn.

Strategic Objective

- 1.1 Continue to grow the non-residential tax base.
- 1.5 Support the development and implementation of neighbourhood and City wide strategies that will improve the health and well-being of residents.
- 1.6 Enhance Overall Sustainability (financial, economic, social and environmental).

Strategic Priority #2

Valued & Sustainable Services

WE deliver high quality services that meet citizen needs and expectations, in a cost effective and responsible manner.

Strategic Objective

2.3 Enhance customer service satisfaction.

APPENDICES AND SCHEDULES ATTACHED

Appendix "A" to Report PED15063 – Program Description of the Office Tenancy Assistance Program

Appendix "B" to Report PED15063 – Location Map

HM/em