May 4, 2022 (2)

THE CITY OF WINNIPEG

BY-LAW NO. /2022

A By-law of THE CITY OF WINNIPEG to implement the Heritage and Economic Development Incentive Program

WHEREAS Council has enacted *OurWinnipeg 2045* as the development plan required by *The City of Winnipeg Charter*, and has adopted *Complete Communities 2.0* as an *OurWinnipeg* direction strategy and the *COVID-19 Economic Response and Recovery Plan* on November 25, 2021;

AND WHEREAS Section 222 of The City of Winnipeg Charter authorizes Council by by-law to establish tax increment financing programs in designated areas of the city for the purpose of encouraging investment or development in those areas;

AND WHEREAS on February 24, 2022, Council approved a Tax Increment Financial Policy which includes grant programs for the conservation of heritage buildings, the development of surface parking lots and the development of new or expanded businesses;

NOW THEREFORE THE CITY OF WINNIPEG, in Council assembled, enacts as follows:

PART 1
INTRODUCTORY PROVISIONS

Short title

1(1) This By-law may be cited as the "Heritage and Economic Development Incentive Program By-law".

Definitions

2(1) In this By-law

"applicant" means the owner of a property who has applied for a Grant under this By-law;

"approval", unless otherwise stated, means the approval of a Grant application under this By-law made by way of a Conditional Approval Letter, and "approved" has a corresponding meaning;

"approved development" means a development in relation to which a Grant application has been approved under this By-law;

"approved property" means a property in relation to which a grant application has been approved under this By-law;

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"base taxes", in respect of an approved property, means the annual municipal real property taxes payable in the year of approval on the basis of the assessed value of the property as of the date of approval under this By-law;

"capital investment" includes all costs to establish a new, renovated or expanded building or business including the cost of land acquisition, renovation, demolition costs or costs to plan the development;

"charitable organization" means an organization registered as a charity with Canada Revenue Agency;

"Charter" means *The City of Winnipeg Charter*;

"City" means The City of Winnipeg continued under section 8 of the Charter;

"city" means the geographical area under the jurisdiction of The City of Winnipeg;

"Conditional Approval Letter" has the meaning ascribed thereto in subsection 6(4).

"Conservation" includes one or more of the restoration, rehabilitation or preservation of a heritage building;

"Council" means the council of the City;

"designated employee" means the Senior Manager of Economic Development and Policy or another employee of the City appointed by the Chief Administrative Officer to perform the functions of the designated employee under this By-law;

"development" means the construction or renovation of a building for which a Grant under the Program is sought, as well as the business, enterprise or activity operating or taking place on the property after the construction or renovation of the building;

"Downtown" means the area within the City of Winnipeg included in the Downtown Winnipeg Zoning By-law No. 100/2004, excluding the area covered by the SHED TIF Zone By-law No. 98/2012;

"Evaluation Committee" means a committee of employees of the City named by the Chief Administrative Officer of the City to provide recommendations concerning applications for Grants;

"Grant" means the grant of money payable under the Program in annual installments, conditional upon approval of a Grant under this By-law and continued compliance by the recipient with the terms and conditions of the Grant;

"grant" means an annual installment of the Grant;

"heritage building" means a building that is a listed resource under the Historical Resources By-law;

"incremental taxes" means the municipal real property taxes payable in relation to an approved property (and, in respect of a property in respect of which a declaration and

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plan have been registered under *The Condominium Act*, means the aggregate of all municipal real property taxes in respect of all units on the property) for any year after an occupancy permit is approved for the approved property, less the amount of the property's base taxes;

"municipal real property taxes" means taxes imposed by the City for its own purposes on real property pursuant to clauses 334(1)(a) and 341(1) of The City of Winnipeg Charter and, for greater certainty, does not include:

(a) taxes levied for school purposes;

(b) business or business improvement taxes or fees for licences in lieu of business taxes;

(c) fees for mobile home licences;

(d) personal property taxes;

(e) arrears of taxes;

(f) any amounts added to taxes for the recovery of a debt pursuant to a statutory authority;

(g) electricity and gas taxes;

(h) local improvement taxes;

(i) frontage taxes;

(j) encroachment fees; or

(k) penalties for unpaid taxes;

"non-government capital investment" means the capital investment required for eligibility under the Program, from individuals, corporations or other entities other than the Province of Manitoba, the Government of Canada, a First Nation, or a charitable organization;

"owner" includes a person who is the owner of a freehold estate in real property and includes

(a) a person who is an owner with another person as joint tenant or tenant in common, of a freehold estate in property;

(b) a real owner as defined in subsection 1(1) of *The Municipal Assessment Act*; or

(c) a person who will become the owner of the property before the development meets all of the eligibility requirements set out in section 5;

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"preservation" means the action or process of protecting, maintaining, or stabilizing the exiting materials, form, and integrity of a heritage building or portion of it, while protecting its heritage value;

"Program" means the Heritage and Economic Development Grant Program established by section 3;

"real property" means real property as defined in the Charter**;**

"rehabilitation" means actions or processes that make possible a continuing or compatible contemporary use of a heritage building or portion of it while protecting its character-defining elements;

"restoration" means actions or process that accurately reveal, recover or represent one or more the character-defining elements of a heritage building as it appeared at a particular period in its history;

"surface parking lot" means a property located Downtown that is exclusively or primarily used for the parking of motorized vehicles at grade and, for greater certainty, does not include a building or structure used for the parking of motorized vehicles;

"underutilized", in respect of a building, means that one or more of the following applies:

(a) more than half of the building is vacant;

(b) less than half of the building is occupied by uses falling into one or more of the following use categories as set out in the Winnipeg Zoning By-law or the Downtown Winnipeg Zoning By-law, whichever is applicable to the building:

(i) residential and residential-related;

(ii) public and institutional;

(iii) cultural and entertainment;

(iv) office;

(v) commercial sales and service;

(c) the building fails to meet standards established in the current editions of the *Manitoba Building Code*, the *Manitoba Electrical Code* or the *Manitoba Fire Code* for uses that are permitted by the Winnipeg Zoning By-law or the Downtown Winnipeg Zoning By-law, whichever is applicable to the building, and making the modifications or renovations required to meet these standards would not be cost effective on a business basis;

"Vacant", in respect of a building, means a building that is not being used or occupied.

2(2) For the purposes of the definition "surface parking lot", a property is primarily used for the parking of vehicles at grade if

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(a) the majority of the square footage of the property is used for the parking of vehicles at grade; or

(b) any other use to which the property is being put is incidental to the parking of vehicles at grade.

PART 2
GENERAL PROVISIONS

Heritage and Economic Development Grant Program established
3(1) A program for the distribution and administration of Grants to be provided in accordance with this By-law is hereby established as the "Heritage and Economic Development Grant Program".

Program overview
4(1) The Heritage and Economic Development Grant Program provides financial support for developments that align with *OurWinnipeg 2045*, *Complete Communities 2.0* and the C*OVID-19 Economic Response and Recovery Plan*, as adopted and amended by Council from time to time.

4(2) Grants may be paid to an applicant out of the incremental taxes in respect of an approved property as follows:

(a) A Heritage Buildings Conservation Grant, payable for the conservation of a vacant or underutilized heritage building;

(b) A Surface Parking Lot Redevelopment Grant, payable for a development on a surface parking lot located Downtown;

(c) A New or Expanded Business Grant, payable for new or expanded businesses or non-profit organizations that will create and maintain at least new 10 jobs after completion and that align with the economic development objectives in *OurWinnipeg* 2045 and the *Economic Growth Action Plan* launched by the Province of Manitoba in December 2018.

Grants payable to applicants
5(1) Subject to this By-law, a Heritage Buildings Conservation Grant or a Surface Parking Lot Redevelopment Grant shall be paid to an approved applicant in respect of an approved property in the amount of the lesser of

(a) 80% of the incremental taxes in respect of the property on which the heritage building or surface parking lot is located for a maximum of 10 years; or

(b) the maximum payable out of incremental taxes as determined by the designated employee or Council, as the case may be, to a maximum of $2.0 million and set out in the Conditional Approval Letter issued for the property.

5(2) Subject to this By-law, a New or Expanded Business Grant shall be paid to an approved applicant in respect of an approved property in the amount of the lesser of

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(a) 80% of the incremental taxes paid in respect of the property on which the approved development is located

(i) for a maximum of 10 years in the case of an approved development Downtown; or

(ii) for a maximum of 5 years in the case of a development other than Downtown, excluding areas identified as Greenfield in the map attached as a Schedule to this By-law;

(b) the maximum payable out of incremental taxes as determined by the designated employee or Council, as the case may be, to a maximum of $2.0 million and set out in the Conditional Approval Letter issued for the property.

5(3) The total allocation of all grants under subsection 5(2) shall not exceed

(a) $10,000,000 for developments located Downtown, or such additional amount as may be approved by Council; and

(b) $10,000,000 for developments located outside Downtown, or such additional amount as may be approved by Council.

5(4) A grant payable out of an approved property's incremental taxes for a year

(a) is not payable for any year or part of a year before the first full year after an interim or final occupancy permit for the building is issued and a final assessment of the entire approved property is completed; and

(b) is not payable until the later of September 1 of that year and, subject to subsection 5(7), the date the property taxes for the property have been paid in full.

5(5) The annual grants which constitute a Grant

(a) are payable to applicant unless the applicant has transferred the Grant in accordance with section 10, in which case subsequent grants are payable to the transferee; and

(b) at the City's option, may be withheld until the property taxes for that property have been paid in full or may be applied first to pay any unpaid taxes or charges imposed by the City on the property in respect of which the grant is paid, and any other debts owed to the City by the grant recipient, with only the balance in excess of those unpaid taxes or charges or debts being paid to the grant recipient.

5(6) Where, after grants under the Program have been paid, an assessment is revised with the result that the amount of the incremental taxes on the property for previous years is changed, the impact of the revised assessment on the amount of the Grant may be accounted for by way of a payment made by or to the City or by adjusting the amount of subsequent grants, at the City's option.

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5(7) For the purpose of subsection (4), property taxes are paid in full if they are being paid in installments under the Tax Installment Payment Plan By-law.

Approval of grant - general

6(1) When considering a grant application, the designated employee or Council (as the case may be)

(a) must consider its alignment with OurWinnipeg 2045, Complete Communities 2.0, other secondary plan by-laws and the City of Winnipeg's *COVID-19 Economic Response and Recovery Plan*; and

(b) may have discussions with the applicant about the type and amount of grant to be provided with a view to maximizing the benefits of the Grant to the city.

6(2) An application under the Program shall not be approved if

(a) subject to subsection (10), construction has begun on the development;

(b) subject to subsection (11), a material financial contribution determined by the designated employee or Council, as the case may be, to be substantial in the context of the development has not been provided or committed to the development by

(i) the Province of Manitoba,

(ii) the Government of Canada,

(iii) a First Nation; or

(iv) a charitable organization;

(c) zoning and other development approvals have not been issued for the development.

6(3) Approval of a grant application, and the payment of grants in accordance with that approval, is conditional upon

(a) the property being located within the boundaries of the city of Winnipeg;

(b) the development not being located within the SHED TIF Zone, as defined in the SHED TIF Zone By-law No. 98/2012;

(c) the property not being owned by the City of Winnipeg, any other municipality, the Government of Manitoba or the Government of Canada;

(d) the development or property not currently receiving funding nor having been approved for funding through a municipal property tax-based grant by the City, including any grant provided under this Program;

(e) the development complying with all City by-laws, standards and codes during and after construction;

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(f) the applicant submitting, within a period of time specified by the designated employee, a construction schedule demonstrating that completion of the entire development will occur within four years after the date of the Conditional Approval Letter or before any later deadline established by the designated employee in writing;

(g) full and complete building permit applications for the development being submitted within 18 months after the date of the Conditional Approval Letter or before any later deadline established by the designated employee in writing;

(h) an interim or final occupancy permit for the building being issued by the end of the fourth full calendar year after the year of approval or before any later deadline established by the designated employee in writing;

(i) the owner of the property not

(i) being bankrupt or insolvent;

(ii) going into receivership; or

(iii) having taken benefit of any statute from time-to-time in force relating to bankrupt or insolvent debtors;

(j) no creditor of the owner or any subsequent owner

(i) attaching or garnishing any funds for the development, or

(ii) seizing or encumbering the development or any substantial asset used in connection with the development,

(k) the owner having provided information and documentation, including a statutory declaration, to the designated employee when reasonably required by the designated employee to enforce or administer this By-law, including information and documentation required to determine whether the conditions set out in this section are being met;

(l) the grant recipient not conveying or leasing the property unless, before the conveyance or lease takes effect, the designated employee has approved the conveyance or lease;

(m) the grant recipient complying with all other conditions reasonably imposed by the designated employee to administer this By-law.

6(4) When a grant application is approved by the designated employee or Council (as the case may be), the designated employee must issue an approval letter (referred to in this By-law as a “Conditional Approval Letter”) identifying the proposed development and setting out

(a) the name of the Grant recipient;

(b) the type and maximum amount of each Grant to be provided under this By-law for the development; and

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(c) the maximum length of any grants being provided per section 5.

6(5) The Conditional Approval Letter may also set out any conditions, in addition to those set out in subsection 6(3), reasonably imposed by the designated employee or Council (as the case may be) that may apply to the approval.

6(6) Subject to the Conditional Approval Letter and any written agreement between the City and the applicant regarding a Grant payable to the owner, the conditions in subsection 6(3) continue to apply until the grant has been paid in full.

6(7) The City is obligated to make grants in accordance with the Conditional Approval Letter unless

(a) any representation or warranty made by the applicant is false or misleading in a material respect;

(b) in the opinion of the designated employee, there is a material adverse change in risk in the owner's ability to operate or manage the development;

(c) the development is entirely or substantially destroyed; or

(d) the designated employee is reasonably of the opinion that

(i) the development is not being managed or operated in accordance with, or

(ii) the property, the development, the owner or a subsequent owner has failed to meet,

any of the terms and conditions that apply to the grants according to this By-law, the Conditional Approval Letter or any subsequent agreement entered into between the owner and the City regarding the grants.

In these circumstances, the designated employee may cease the payment of grants and withdraw the Conditional Approval Letter by written notice to the owner setting out the reason for doing so.

6(8) If a Conditional Approval Letter is withdrawn under subsection 6(7) in respect of an approved property,

(a) that property ceases to be an approved property; and

(b) any money previously committed to the payment of a grant under the Program for that property and not yet paid may be committed to the payment of grants under the Program for other approved properties.

6(9) If a property, a development or an owner fails to meet any terms or conditions that apply in respect of development for which a grant has been paid under this By-law, the City may recover all or any part of the grant as a debt owing by the current owner to the City in respect of the property.

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6(10) For the purposes of clause 2(a), “construction” does not include planning of a development or the creation of drawings or blueprints, but does include excavation and other work to prepare the property for construction.

6(11) If a property in respect of which an application is made is owned by a First Nation or a charitable organization, a material financial contribution by the owner will satisfy the requirement set out in clause (2)(b).

Evaluation criteria

7(1) When considering whether to approve an application for an eligible applicant and the amount of a Grant to be approved, the following criteria shall be applied:

(a) the amount of funding - in addition to the contributions from the Province of Manitoba, the Government of Canada, a First Nation, or a charitable organization, as well as the non-government capital investment required by the Program - which is required in order to make the development viable;

(b) the extent to which the development is projected to result in an increase in the assessment base and long-term municipal property tax revenue from the property;

(c) the extent to which the development is projected to result in an increase in the assessed values of properties adjacent and in proximity to the development;

(d) the extent to which the development supports key policies in *OurWinnipeg 2045, Complete Communities 2.0* as well as applicable local area plans;

(e) the number of new jobs projected to result from the construction and existence of the development and whether these jobs align with *OurWinnipeg* and the *Economic Growth Action Plan* launched by the Province of Manitoba in December 2018.;

(f) whether the applicant is involved in any litigation with the City;

(g) whether the applicant is involved in any litigation with third parties that could affect the development;

(h) whether any properties owned by the applicant or a related entity are the subject of foreclosures, and

(i) any other criteria that would assist in determining the viability of the development or the benefit of the development to the city.

Application and approval process

8(1) Only the owner of a property, or an agent on behalf of an owner, may apply for a Grant under the Program.

8(2) An application for a Grant must be in writing and in a form or format established by the designated employee.

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8(3) An application is not complete until all information reasonably required in order to review the application has been provided.

8(4) Once complete, an application must be reviewed by the Evaluation Committee which must provide a recommendation to the designated employee or Council, as the case may be, concerning the approval or rejection of the application and the maximum amount of a Grant that should be approved for a development.

8(5) Grants of up to $1.0 million may be approved by the designated employee; grants in excess of $1.0 million may only be approved by Council.

8(6) A grant may be approved subject to the applicant securing financial support from other levels of government for the development or any other matter required to satisfy the eligibility criteria for the Grant other than the one set out in clause 6(2)(c) (development approvals required).

Conditions prior to payment of Grant

9(1) Despite being approved, no Grant may be paid until

(a) the applicant has entered into a grant agreement with the City which is determined by the City Solicitor and Director of Legal Services to be sufficient to protect the interests of the City; and

(b) all the conditions imposed under applicable to the payment of the Grant have been met.

Grants transferable

10(1) The designated employee is authorized, prior to the transfer of property in respect of which an application has been made or which has been approved for one or more grants under this By-law, to

(a) approve the transfer of the application to the prospective owner; or

(b) approve the transfer to the prospective owner of the entitlement to receive a Grant.

10(2) The designated employee shall approve the transfer of the application or the entitled to receive a Grant where doing so would not negatively affect the interests of the City.

Powers of designated employee

11(1) The designated officer has the powers of a “designated employee” under the Charter for the purposes of administering and enforcing this By-law.

11(2) In addition to the powers expressly or impliedly given to the designated employee by this By-Law, the designated employee may exercise such reasonable powers in order to administer and enforce this By-Law.

Appeal

12(1) Where a decision of a designated employee is subject to appeal under *The City of Winnipeg Charter*, the appeal shall be heard by the Standing Policy Committee on Innovation and Economic Development.

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PART 3
SPECIFIC PROVISIONS FOR SPECIFIC GRANTS

Qualifications for Heritage Buildings Conservation Grant
13(1) In addition of meeting the other qualifications and conditions set out in this By-law, a Heritage Buildings Conservation Grant may be approved for a development in respect of a heritage building only if the building and the proposed development meets all the following requirements:

(a) the proposed development must involve the conservation of a heritage building;

(b) the proposed development must include the conservation of the character-defining elements of the heritage building in a manner appropriate to the condition of those elements;

(c) the heritage building proposed to be developed must be vacant or underutilized;

(d) the heritage building proposed to be developed must not be a single-family dwelling;

(e) the work necessary to complete the proposed development must be able to be done in compliance with the Standards and Guidelines for the Conservation of Historic Places in Canada and the Historical Resources By-law in respect of the heritage building;

(f) in the reasonable opinion of the designated employee or Council, as the case may be, the proposed development is viable and likely to result in both significant incremental taxes being generated and the building no longer being vacant or underutilized; and

(g) the applicant provides evidence of at least $500,000 of non-governmental capital investment.

Qualifications for Surface Parking Lots Redevelopment Grant
14(1) In addition to meeting the other qualifications and conditions set out in this By-law, a Surface Parking Lot Grant may be approved only if the applicant provides evidence of at least $10 million in non-governmental capital investment.

Qualifications for New or Expanded Business Grant
15(1) In addition to meeting the other qualifications and conditions set out in this By-law, a New or Expanded Business Grant may be approved for a development on a property that is owned by a for-profit or not-for-profit corporation only if

(a) the development involves the creation of a new business or activity, or the expansion of an existing business or activity;

(b) the new or expanded business or activity is reasonably likely to result in the creation of at least 10 new full-time jobs or their equivalent;

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(c) the anticipated jobs align with the economic development objectives in *OurWinnipeg* 2045 and the *Economic Growth Action Plan*, launched by the Province of Manitoba in December, 2018; and

(d) the applicant provides evidence of at least $10 million in non-governmental capital investment.

15(2) The designated employee may cease the payment of grants and withdraw the Conditional Approval Letter under subsection 6(7) in respect of a New or Expanded Business Grant if the designated employee concludes that the development is materially deviating from the creation and maintenance of at least 10 full-time jobs or their equivalent.

Coming into force
16(1) This By-law comes into force upon enactment.

DONE AND PASSED this day of , 2022.

Mayor

City Clerk

Approved as to content:

Legally reviewed and certified as to form:

for Director of Legal Services
and City Solicitor

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Schedule to the Heritage and Economic Development Incentive Program By-Law No. /2022

