



## **COUNCIL MEETING AGENDA**

**Tuesday, October 15, 2019**

**7:00 P.M.**

**COUNCIL CHAMBERS – CIVIC SQUARE**

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1. **COMMITTEE-OF-THE-WHOLE (IN-CAMERA) (6:50 p.m.)  
(See yellow tab)**
  - Proposed or pending acquisition or disposition of land by the municipality or local board:
    - *Youngs Sportsplex lease update.*
  
2. **ARISE FROM COMMITTEE-OF-THE-WHOLE (IN-CAMERA) (6:55 p.m.)**
  
3. **OPEN COUNCIL MEETING (7:00 p.m.)**
  - 3.1 **NATIONAL ANTHEM**
  - 3.2 **OPENING REMARKS**
  - 3.3 **ADDITIONS/DELETIONS TO AGENDA**
  - 3.4 **ADOPTION OF MINUTES**

Regular Council Meeting of October 1, 2019 and Special Council Meeting of October 8, 2019 (*Previously Distributed*)
  - 3.5 **CALL UPON THE CITY CLERK TO REVIEW COMMITTEE-OF-THE-WHOLE ITEMS (IN-CAMERA) TO BE ADDED TO BLOCK**
  - 3.6 **DISCLOSURES OF INTEREST**
  - 3.7 **COUNCILLORS TO DETERMINE AGENDA ITEMS AND BY-LAWS TO BE REMOVED FROM BLOCK FOR DISCUSSION IN COMMITTEE-OF-THE-WHOLE (OPEN) (See pink tab)**
  
4. **ORAL REPORTS AND DELEGATIONS**
  - 4.1 **PRESENTATION(S) - Nil**
  - 4.2 **DELEGATION(S) (maximum 5/10/5 policy)**

**04-48** Mike Watt and Mike Deprez, Walker Environmental Group re: Update on the Atlas Landfill.



## **COUNCIL MEETING AGENDA – Page 2**

*Tuesday, October 15, 2019*

*7:00 P.M.*

**COUNCIL CHAMBERS – CIVIC SQUARE**

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- 4.3 **AGENCIES, BOARDS, COMMISSIONS AND COMMITTEES REPORT(S) - Nil**
  - 4.4 **LEGISLATED PUBLIC HEARINGS/MEETINGS - Nil**
  5. **COMMITTEE-OF-THE-WHOLE (OPEN)**  
(to discuss items removed from Agenda Block)
  6. **BY-LAWS (SEE AGENDA INDEX)**
  7. **NOTICES OF MOTION**
    - 7.1 **Councillor matters discussed with staff for reporting purposes**
    - 7.2 **Notices of Motion (previously submitted for discussion)**  
**(Councillor Chiocchio)**  
  
**19-22** WHEREAS Vanier Estates and Drapers Creek off Clare Avenue will see significant residential growth up to 135 new homes.  
WHEREAS Clare Avenue between Webber Road and Fitch Street has partial sidewalks and a park.  
WHEREAS speeding has been a major concern of local residents and 100% have signed a petition.  
NOW THEREFORE BE IT RESOLVED THAT THE COUNCIL OF THE CITY OF WELLAND directs staff in the interest of public safety, install two stop signs at the intersection of Lynbrook and Clare Avenue next to the park.
  - 7.3 **Call for Notices of Motion (for introduction at the next scheduled Council meeting)**
  8. **CORPORATION REPORTS**
    - 8.1 **Mayor's Report**
    - 8.2 **Chief Administrative Officer's Report**
  9. **CONFIRMATORY BY-LAW**  
  
A By-law to adopt, ratify and confirm proceedings of the Council of the Corporation of the City of Welland at its meeting held on the 15<sup>th</sup> day of October, 2019. Ref. No. 19-1
  10. **ADJOURNMENT**



## **COUNCIL MEETING AGENDA INDEX**

*Tuesday, October 15, 2019  
7:00 P.M.*

**COUNCIL CHAMBERS – CIVIC SQUARE**

---

Page No.

### **AGENDA BLOCK**

1. **BUSINESS ARISING FROM MINUTES, PREVIOUS MEETINGS AND OTHER ITEMS REFERRED FROM COUNCIL FOR DISCUSSION - Nil**

2. **COMMITTEE AND STAFF REPORTS**

1. **Business Arising from Committee-of-the-Whole (closed)**

1                    2. **General Committee Report to Council - October 8, 2019**

2 - 5                **P&B-2019-50** Gen. Mgr., Infrastructure and Development Services, T. Fitzpatrick - Proposed Provincial Policy Statement Update 2019. Ref. No.19-81 **(Appendix I and II are not being reproduced for this agenda, please see October 10, 2019 General Committee Agenda).**

**RECOMMENDATION:**

THAT THE COUNCIL OF THE CITY OF WELLAND directs staff to forward Report P&B-2019-50 to the Regional Municipality of Niagara and to the Minister of Ministry and Municipal Affairs and Housing for their consideration.

3. **Budget Review Committee Report to Council - Nil**

4. **Staff Reports**

6 - 9                **CLK-2019-16** Acting Gen. Mgr., Human Resources and Legislative Services/City Clerk, T. Stephens - Deletion of Lottery Licenses and Provincial Break Open Tickets Policies. Ref. No. 19-3

10 - 14            **CLK-2019-17** Acting Gen. Mgr., Human Resources and Legislative Services/City Clerk, T. Stephens - Updates to Recognition to Welland Individuals and Teams Awarded Championships and Terms of Reference for Appointment of Committee Members Policies. Ref. No. 02-160/19-28

15                   **CLK-2019-18** Acting Gen. Mgr., Human Resources and Legislative Services/City Clerk, T. Stephens - Lottery License. Ref. No 19-3



## COUNCIL MEETING AGENDA INDEX – Page 2

Tuesday, October 15, 2019

7:00 P.M.

COUNCIL CHAMBERS – CIVIC SQUARE

---

### Page No.

- |         |                               |  |
|---------|-------------------------------|--|
| 16 - 40 | <b><u>HR-2019-05</u></b>      | Acting Gen. Mgr., Human Resources and Legislative Services/City Clerk, T. Stephens - Anti-Nepotism Policy and updated Hiring and Workplace Discrimination, Harassment and Workplace Violence Policies. Ref. No. 19-85                                    |
| 41 - 51 | <b><u>FIN-2019-20</u></b>     | Gen. Mgr., Corporate Services, Chief Financial Officer/Treasurer, S. Zorbas - Grants & Special Assistance Policy. Ref. No. 19-5  |
| 52 - 54 | <b><u>FIN-2019-21</u></b>     | Gen. Mgr., Corporate Services, Chief Financial Officer/Treasurer, S. Zorbas - Municipal Act Regulation 284/09 and Public Sector Accounting. Ref. No. 19-4  |
| 55 - 58 | <b><u>P&amp;B-2019-51</u></b> | Gen. Mgr., Infrastructure and Development Services, T. Fitzpatrick - Community Improvement Plan Incentive Applications - Quarterly Summary Report for Third Quarter of 2019. Ref. No. 03-133/11-108  |
| 59 - 62 | <b><u>P&amp;B-2019-52</u></b> | Gen. Mgr., Infrastructure and Development Services, T. Fitzpatrick - Request for Part Lot Control Exemption - for all of Lots 1 & 2, Plan 59M-402, known municipally as 46, 48 & 52 Trent Avenue. Ref. No. 12-138 (See By-law 1)                         |
| 63 - 72 | <b><u>P&amp;B-2019-53</u></b> | Gen. Mgr., Infrastructure and Development Services, T. Fitzpatrick - Brownfield Tax Assistance Program and Brownfield Tax Increment Grant Program - 2321846 Ontario Inc. - 240 Denistoun Street (File No. Brown 2019-02). Ref. No. 19-113 (See By-law 2) |
| 73 - 75 | <b><u>ENG-2019-39</u></b>     | Gen. Mgr., Infrastructure and Development Services, T. Fitzpatrick - Assumption of Pine Creek Estates Subdivision Development. Ref. No. 11-36 (By-law 3)   |
| 76 - 78 | <b><u>ENG-2019-40</u></b>     | Gen. Mgr., Infrastructure and Development Services, T. Fitzpatrick - Climate Resilience Assessment for Municipal Stormwater Management Facilities. Ref. No. 19-76 (By-law 4)   |

### 3. NEW BUSINESS

- |         |    |  |
|---------|----|--|
| 79 - 80 | 1. | Steve Miguel, Marketing Committee, Ontario Rett Syndrome Association re: Request to declare the month of October as “Rett Syndrome Awareness Month”. Ref. No. 19-6 |
|---------|----|--|

#### **RECOMMENDATION:**

THAT THE COUNCIL OF THE CITY OF WELLAND declares the month of October as “Rett Syndrome Awareness Month” in the City of Welland.



## COUNCIL MEETING AGENDA INDEX – Page 3

Tuesday, October 15, 2019

7:00 P.M.

COUNCIL CHAMBERS – CIVIC SQUARE

---

### Page No.

- 81                    2. Signed petition by Clare Avenue residents re: Stop signs northbound and southbound on Clare Avenue at the intersection of Lynbrook making it a 3-way stop to slow down traffic. Ref. No. 19-22

**RECOMMENDATION:**

THAT THE COUNCIL OF THE CITY OF WELLAND receives for information the petition from residents of Clare Avenue requesting a stop sign northbound and southbound on Clare Avenue at the intersection of Lynbrook making it a 3-way stop to slow down traffic and refers the matter to staff; and further  
THAT Welland City Council directs staff to provide a report on the warrants of the 3-way stop.

- 82 - 89                3. Ann-Marie Norio, Regional Clerk, Region of Niagara re: Report PDS 34-2019: Grants and Incentives Review. Ref. No. 19-111

**RECOMMENDATION:**

THAT THE COUNCIL OF THE CITY OF WELLAND receives for information the correspondence from the Region of Niagara dated September 26, 2019 regarding PDS 34-2019: Grants and Incentives Review.

- 90 - 107              4. Association of Municipalities of Ontario re: Submission report to Attorney General on Liability and Insurance Cost Reforms. Ref. No. 19-45

**RECOMMENDATION:**

THAT THE COUNCIL OF THE CITY OF WELLAND receives for information and endorses the submission titled *Towards a Reasonable Balance, Addressing growing municipal liability and insurance costs*, prepared by the Association of Municipalities Ontario, which has been submitted to the Attorney General of Ontario; and  
THAT Welland City Council supports the recommendations outlined in this report; and further  
THAT a copy of this resolution be forwarded to the Attorney General of Ontario, and local municipalities for their information.

Remove From  
Block

5. Councillor Fokkens resigned from the Welland Heritage Advisory Committee. Council to appoint one Councillor Member to the Committee. Ref. No. 05-50

**RECOMMENDATION:**

THAT THE COUNCIL OF THE CITY OF WELLAND appoints \_\_\_\_\_ to the Welland Heritage Advisory Committee for the term October 15, 2019 to November 14, 2022 or until another successor has been appointed.



## **COUNCIL MEETING AGENDA INDEX – Page 4**

*Tuesday, October 15, 2019*

*7:00 P.M.*

**COUNCIL CHAMBERS – CIVIC SQUARE**

---

### **Page No.**

#### **4. BY-LAWS**

**MAY BE VIEWED IN THE CLERK'S DIVISION PRIOR TO THE MEETING IF DESIRED.**

1. A By-law to exempt certain lands from Part-Lot Control - all of Lots 1 & 2, Plan 59M-402, known municipally as 46, 48 & 52 Trent Avenue, City of Welland.  
Ref. No. 12-138  
(Report P&B-2019-52)
2. A By-law to authorize execution of agreements for Brownfields Tax Assistance program and Brownfields Tax Increment Grant Program (Community Improvement Plan) for 240 Denistoun Street (File No. Brown 2019-02). Ref. No. 19-113  
(Report P&B-2019-53)
3. A By-law to assume Pine Creek Estates Subdivision Plan 59M-385. Ref. No. 11-36  
(Report ENG-2019-39)
4. A By-law to authorize the entering into contract with Wood Environment & Infrastructure Solutions a Division of Wood Canada Limited for a Climate Resilience Assessment for Municipal Stormwater Management Facilities. Ref. No. 19-76  
(Report ENG-2019-40)
5. A By-law to appoint Traffic Enforcement Officers of the Corporation of the City of Welland to enforce the provisions of Traffic and Parking By-law 89-2000 at Seaway Mall and to Repeal By-law 2019-111. Ref. No. 19-22  
(By-law to appoint Traffic Enforcement Officers for Seaway Mall security operations)

**GENERAL COMMITTEE REPORT TO COUNCIL**

On Tuesday, October 8, 2019, the General Committee met with the following members in attendance: Chair, A. Moote, F. Campion, J. Chiochio, T. DiMarco (until 9:46 p.m.), B. Green (until 9:28 p.m.), J. Larouche (until 9:48 p.m.), D. McLeod, C. Richard, G. Speck and L. Spinosa.

**The General Committee recommends Council approval on the following matters:**

**DELEGATIONS****19-28**

THAT THE GENERAL COMMITTEE refers the presentation by Aldo Parrotta, Communications Specialist, regarding Welland Telephone Boxes to a Budget Review Committee meeting to consider funding of \$13,200.00 for the telephone boxes.

**19-27**

THAT THE GENERAL COMMITTEE refers the presentation by Sandy Mocsan, President, Welland Rose Festival Inc. and Jeff Ward, Welland Rose Festival Inc., regarding the Terms of Reference of the Welland Rose Festival Inc. back to staff for a report.

**19-22**

THAT THE GENERAL COMMITTEE refers the presentation by Heather Hudson, resident, regarding requesting a By-law be established which would not allow people to attend large functions with their dogs back to staff for a report.

**19-28**

THAT THE GENERAL COMMITTEE receives for information the presentation by James Takeo, Steve Lambert and Bradley Ulch, Co-organizers, Welland Zombie Walk, regarding the 9<sup>th</sup> Annual Welland Zombie Walk.

Respectfully submitted,



TARA STEPHENS  
City Clerk

APPROVALS	
GENERAL MANAGER	
CFO	
CAO	

**GENERAL COMMITTEE**  
**INFRASTRUCTURE AND DEVELOPMENT SERVICES**

19-81

**REPORT P&B-2019-50**  
**October 8, 2019**

**SUBJECT:            PROPOSED PROVINCIAL POLICY STATEMENT UPDATE  
2019**

**AUTHOR:            GRANT MUNDAY, B.A.A., MCIP, R.P.P.  
MANAGER OF DEVELOPMENT APPROVALS**

**APPROVING        TRAVERS FITZPATRICK  
G.M.:                GENERAL MANAGER,  
INFRASTRUCTURE AND DEVELOPMENT SERVICES**

**RECOMMENDATIONS:**

THAT THE COUNCIL OF THE CITY OF WELLAND directs Staff to forward Report P&B-2019-50 to the Regional Municipality of Niagara and to the Minister of Ministry and Municipal Affairs and Housing for their consideration.

**ORIGIN AND BACKGROUND:**

As directed in the Province of Ontario's More Homes, More Choice: Ontario's Housing Supply Action Plan, the Minister of Municipal Affairs and Housing is proposing changes to the Provincial Policy Statement (PPS). The PPS is a consolidated statement of the Province's land use planning system.

The proposed changes are part of broad strategy by the Province where they have made changes to other areas of the Provincial land use planning system. This included changes to the Planning Act, the Growth Plan for the Greater Golden Horseshoe, and the Development Charges Act. The City has been supportive of these changes as they relate to land use planning in Welland.

The Province has posted the proposed changes to the PPS on the Environmental Registry of Ontario (ERO). The deadline for submitting comments is October 21<sup>st</sup>, 2019.

**COMMENTS AND ANALYSIS:**

Staff have reviewed the proposed changes to the PPS and the key changes are as follows:

**Part I: Preamble**

With respect to the Preamble there are two major changes proposed:



- Updated to make it clear at the very beginning of this Policy that Municipal Official Plans, Zoning By-laws and development permit by-laws are the most important vehicles for implementing the PPS;
- Also clarifies that recreational opportunities (e.g. fishing, hunting, hiking etc.) area permitted in the Province's Natural Heritage system;

Staff are supportive of both of these changes in the Preamble. First, making it clear that Municipal Official Plans, Zoning By-laws and Development Permit By-law are the main policy documents for implementing the PPS makes it very clear to all how the land use planning system works in Ontario. Also making it clear that recreational opportunities are permitted in the Natural Heritage System will make it easier for the City to locate recreational uses in natural areas. This is something that is unclear under the current PPS.

### **1.0 Building Strong Health Communities**

A number of changes have been proposed in this policy area in the PPS, the key changes and Staff's respective comments are as follows:

- Section 1.1.1 b has been updated to add in clarification that Municipalities are to accommodate an appropriate "market-based" range and mix residential types.
  - Staff have no issue with this change and feel the City's current Official Plan and Zoning By-law implement this policy by allowing a range of residential uses to be permitted as of right.
- Increasing the planning horizon from 20 years to 25 years and beyond 25 years
  - Staff are supportive of this change for long-term planning purposes it will also provide greater certainty on the City's request to add the North-West Area of the City to the Urban Area. However, the Growth Plan for the Greater Golden Horseshoe would need to be updated to remain consistent with this policy change. Staff would begin implementing this as part of the City's Official Plan review which would begin in 2020.
- Allowing planning for infrastructure, public service facilities, and employment areas to go beyond the proposed planning horizon of 25 years.
  - Staff are supportive of this change as we need to ensure that future employment areas are protected for the today and the future. Also given the costs and timeframes associated with building infrastructure and public service facilities it is critical that in some cases that these be able to service beyond the 25 year timeframe and ensure there is capacity for the future and in line with the City's capital forecast.
- Section 1.1.3.9 is proposed to be replaced with wording which adds flexibility for settlement area boundary expansions. This is consistent with the New Growth Plan which allows for certain types of Settlement Area Expansion (ie. Urban Area Expansions) outside of a municipal comprehensive review.

- Staff support this change as it may provide an opportunity for the City to add the North-West Area of the City to the Urban Area. This change is in line with changes made to the Growth Plan which allows for 40 ha expansions of a Settlement Boundary and to conduct land swaps (ie. to take out land in one or more parts of the Settlement Area and add an equal amount in another part of a municipality).
- Section 1.2.2 has been modified such that it now requires that Municipalities “shall” engage with Indigenous Communities and coordinate on land use planning matters versus the previous wording which “encouraged” coordination with these communities.
  - Staff support this change in wording and we are currently reviewing our public consultation processes to ensure we are properly engaging with Indigenous Communities.
- Section 1.3.1 c) has been added which requires Municipalities to facilitate conditions for economic investment by: identifying strategic sites for investment; monitoring the availability and suitability of employment sites, including market-ready sites; and, seeking to address potential barriers to investment.
  - Staff are supportive of this change as it is intended to promote and facilitate economic development in cities. The City already implements these economic development and planning practices, however, the Province also needs to improve their approval processes and timelines (ie. Ministry of Transportation and Ministry of Environment Approvals) to support municipal economic development efforts.
- A number of amendments were made to Section 1.3.2 Employment Areas which provides stronger protection for major facilities, such as manufacturing and industrial uses, where non-employment uses are planned nearby (i.e. buffering uses from new sensitive land uses). The new proposed policies generally prohibit residential and institutional uses in Employment Areas. The changes also allow for the conversion of Employment Areas under certain criteria.
  - Staff are supportive of the changes proposed. These changes will be reviewed as part of the City’s update to the Official Plan.

#### **FINANCIAL CONSIDERATION:**

There are no financial implications as a result of the content of this Report.

#### **OTHER DEPARTMENT IMPLICATIONS**

Many of the changes proposed in the PPS are currently being implemented. Departments will be involved in the update to the Official Plan.

#### **SUMMARY AND CONCLUSION:**

Staff have reviewed the proposed changes to the PPS and have highlighted the major changes proposed. We are generally supportive of these changes and have provided commentary where necessary. Staff recommend that a copy of this report be sent to the Region of Niagara and the Ministry of Municipal Affairs and Housing for their consideration.

**ATTACHMENTS:**

- Appendix I - More Homes, More Choice: Ontario's Housing Action Plan
- Appendix II - Proposed Provincial Policy Statement 2019

**COUNCIL**  
**CORPORATE SERVICES – CLERKS DIVISION**

APPROVALS	
GENERAL MANAGER	
CFO	
CAO	

REPORT CLK-2019-16  
OCTOBER 15, 2019

19-3

**SUBJECT: DELETION OF LOTTERY LICENSES AND PROVINCIAL BREAK OPEN TICKETS POLICIES**

**AUTHOR & APPROVING G.M.: TARA STEPHENS, ACTING GENERAL MANAGER, HUMAN RESOURCES & LEGISLATIVE SERVICES/CITY CLERK**

**RECOMMENDATION:**

THAT THE COUNCIL OF THE CITY OF WELLAND receives for information report CLK-2019-16; deletion of Lottery Licenses and Provincial Break Open Tickets policies, and  
 THAT Welland City Council approves dissolving the Lottery Licenses policy (policy number LIC-001-0001) and Provincial Break Open Tickets policy (policy number: LIC-001-0002).

**ORIGIN AND BACKGROUND:**

Before 1998, municipalities were required to create their own policies in relation to lottery licensing and provincial break open tickets. In February, 1998, the Alcohol and Gaming Commission of Ontario (AGCO) was established. The AGCO is responsible for regulating Ontario's gaming sector in accordance with the principals of honesty and integrity in the public interest.

**COMMENTS AND ANALYSIS:**

The federal Criminal Code of Canada establishes the types of gaming activities that are permitted. Each province has been assigned the responsibility for operating, licensing and regulating permitting gaming activities.

In Ontario the AGCO is responsible for regulating Ontario Lottery and Gaming Corporation (OLG) lotteries, casino gaming, charitable gaming, OLG charitable gaming, and internet gaming.

The Order-in-Canada 1413/08 provides the Registrar and municipal councils to issue lottery licenses to charitable organizations. The AGCO provides municipalities with the processes and procedure in order to license, administer, and monitor lottery events. Therefore the requirement for municipalities to establish their own policies is no longer required.

**FINANCIAL CONSIDERATION:**

None

**OTHER DEPARTMENT IMPLICATIONS:**

Updates to the City of Welland policies will be completed.

**SUMMARY AND CONCLUSION:**

These policies are no longer required, therefore eliminating the policies is required to ensure we follow the AGCO processes and requirements.

**ATTACHMENTS**

Appendix I – Lottery Licenses

Appendix II – Provincial Break Open Tickets

**CITY OF WELLAND****POLICY**

<b>Policy Title:</b> Lottery Licenses	
<b>Date of Approval:</b> February 18, 1972	<b>Policy Number:</b> LIC-001-0001
<b>Lead Role:</b> City Clerk	<b>Support Role:</b>
<b>Cross Reference:</b>	<b>Next Review Date:</b>
<b>Council File Number:</b> 72-3	<b>Revision Date:</b>

**Policy Statement:**

The City of Welland will, on certain occasions, grant licenses to organizations from outside the City, licensed by the Province of Ontario or another Ontario municipality, to sell raffle tickets within the City. For an organization from outside the City to be granted a license to sell raffle tickets within the City it must:

- a) Arrange to have a local branch of the organization or by prior commitment some other interested charitable organization sell its tickets in the City of Welland
- b) Authorize the local branch or local organization to make application to the City of Welland for a letter of permission, included in its application:
  - i) a photocopy of the applicable Provincial or Municipal License;
  - ii) details of the method whereby the local group will share in the proceeds of the ticket sales; and
  - iii) a statement of the charitable purposes to which all proceeds received by the local organization will be donated.

## CITY OF WELLAND

## POLICY

<b>Policy Title:</b> Provincial Break Open Tickets	
<b>Date of Approval:</b> July 12, 1994	<b>Policy Number:</b> LIC-001-0002
<b>Lead Role:</b> City Clerk	<b>Support Role:</b>
<b>Cross Reference:</b>	<b>Next Review Date:</b>
<b>Council File Number:</b> 94-3	<b>Revision Date:</b>

**Policy Statement:**

Provincial charitable organizations which are licensed by the Province to sell break open lottery tickets at a third party location may sell within the City of Welland under the policies, terms and conditions imposed by the Province as well as under the following municipal conditions:

- 1) The organization must submit a letter of intention to the City and the City must return a letter of acknowledgement before tickets can be sold. The letter of acknowledgement must be attached to the provincial license and posted accordingly.
- 2) The letter of acknowledgement will be issued by the City provided that:
  - i) The organization is licensed by the Province
  - ii) The number of provincial organizations which sell break open tickets in the City of Welland does not exceed 20% of the total number of organizations selling break open tickets under a municipal license.
  - iii) The local chapter of the provincial organization has been contacted and has waived its right to sell break open tickets under a municipal license.
  - iv) The provincial organization has a presence in the Region of Niagara and provides a benefit to individuals residing in the City of Welland.
  - v) The third party location is not presently licensed under a municipal license.
  - vi) The City is satisfied that the location is new or replacing an existing provincial third party location. A provincial organization should not replace a local organization at a third party location unless the City is satisfied that another local organization does not wish to use that location.

**COUNCIL**  
**CORPORATE SERVICES – CLERKS DIVISION**

APPROVALS	
GENERAL MANAGER	
CFO	
CAO	

REPORT CLK-2019-17  
OCTOBER 15, 2019

19-28  
02-160

**SUBJECT:** UPDATES TO RECOGNITION TO WELLAND INDIVIDUALS AND TEAMS AWARDED CHAMPIONSHIPS AND TERMS OF REFERENCE FOR APPOINTMENT OF COMMITTEE MEMBERS POLICIES

**AUTHOR & APPROVING G.M.:** TARA STEPHENS, ACTING GENERAL MANAGER, HUMAN RESOURCES & LEGISLATIVE SERVICES/CITY CLERK

**RECOMMENDATION:**

THAT THE COUNCIL OF THE CITY OF WELLAND receives for information report CLK-2019-17; updates to the Recognition to Welland Individuals and Teams Awarded Championships and Terms of Reference for Appointment of Committee Members policies, and THAT Welland City Council approves the updates to the Recognition to Welland Individuals and Teams Awarded Championships (policy number PUB-001-0002) and Citizen Appointments to Agencies, Boards and Committees policies.

**ORIGIN AND BACKGROUND:**

Policy numbers PUB-001-0002 and GOV-001-0005 have not been reviewed and updated for a number of years. Staff have reviewed the policies and made recommended updates as outlined below.

**COMMENTS AND ANALYSIS:**

The Recognition to Welland Individuals and Teams Awarded Championships policy updates include presenting individuals with a certificate, instead of the plaque as required in the current policy. The individual who may receive recognition include team members, coaches, trainers and managers.

The certificate is a document that is printed on award paper, which will be provided in a City of Welland certificate envelope. Over the years, staff has received feedback from those recognized that they would rather receive a certificate than a glass plaque.

In addition, by creating the certificates in house, there will be a cost savings on for recognition ceremonies, as the certificates cost approximately \$2.50 each to prepare, whereas the glass plaques cost approximately \$40 - \$60 each.



The Terms of Reference for Appointment of Committee Members policy has been renamed to *Citizen Appointments to Agencies, Boards and Committees*. This policy has been updated to suit the current practice the City of Welland is following in relation to committee appointments.

Additional processes have been identified, such as eligibility, application process, and filling vacancies.

**FINANCIAL CONSIDERATION:**

None

**OTHER DEPARTMENT IMPLICATIONS:**

Updates to the City of Welland policies will be completed.

**SUMMARY AND CONCLUSION:**

These policies have been updated to follow the current practices of the City of Welland.

**ATTACHMENTS**

Appendix I – Updated Recognition to Welland Individuals and Teams Awarded Championships.

Appendix II – Updated Citizen Appointments to Agencies, Boards and Committees.

**CITY OF WELLAND****POLICY**

<b>Policy Title:</b> Recognition to Welland Individuals and Teams Awarded Championships	
<b>Date of Approval:</b> July 8, 1980	<b>Policy Number:</b> PUB-001-0002
<b>Lead Role:</b> City Clerk	<b>Support Role:</b> Deputy Clerk
<b>Cross Reference:</b>	<b>Next Review Date:</b>
<b>Council File Number:</b> 80-213	<b>Revision Date:</b> October 15, 2019

**Policy Statement:**

The City of Welland recognizes those Welland individuals or team members, in sanctioned competition, who are awarded Ontario, National or World Championships.

- 1) A written request detailing the individuals or team members' competitive accomplishments should be forwarded to the City Clerk.
- 2) Individuals, Team Members, Coaches, Trainers and Managers will receive a certificate.

## CITY OF WELLAND

## POLICY

<b>Policy Title: Citizen Appointments to Agencies, Boards and Committees</b>	
<b>Date of Approval:</b> xxxx 00, 0000	<b>Policy Number:</b> xxx-000-0000
<b>Lead Role:</b> City Clerk	<b>Support Role:</b> Deputy Clerk
<b>Cross Reference:</b>	<b>Next Review Date:</b>
<b>Council File Number:</b> 0000-000	<b>Revision Date:</b> xxxx 00, 0000

**Policy Statement:**

Council appoints citizen members to the City's agencies, boards and committees.

**Purpose**

Citizen appointments allow Council to utilize the knowledge and skills of the citizens of Welland. This policy establishes eligibility criteria and outlines the application and appointment process.

**Scope**

This policy applies to citizen appointments to any of the City's, agencies, boards and committees, unless Council directs that an alternate appointment process be undertaken.

For the purposes of this policy, "committee" means committee, agencies and boards.

**Eligibility**

Citizen members of committees must be:

- Canadian citizens; and
- A minimum of 18 years of age at the time of application.

Residents who live outside of Welland are able to apply to advisory committees.

Employees of the City of Welland or the Regional Municipality of Niagara are not eligible.

**Application process****Public Notice**

The Office of the City Clerk, Corporate Services, arranges for a public notice to be placed on the City's web site and in newspapers(s) having general circulation in Welland, advising of citizen

Name of Policy xxx-000-0000

positions available on the various committees of Council. The public notice is usually placed in the fall of each election year and appears for three consecutive weeks.

### **Application Forms**

Application forms are available on request from the Office of the City Clerk, at the information session and on the City's web site. Incumbents must reapply each term.

The application form will require applicants to provide information about their interests/experience as it relates to the committee to which they are applying. Applicants for all positions will be asked the same questions to ensure consistency and fairness in the evaluation process.

The application must be completed and submitted to the Office of the City Clerk by an established deadline. No application will be accepted after the deadline.

### **Appointment Process**

#### **Selection**

All applications received by the established deadline will be prepared and provided to Welland City Council for review and consideration.

The appointment of members to Advisory Committees of Council will be discussed by Council in Committee-of-the-Whole (in camera) as the matter of discussions is of a personal nature. Members of council will provide direction to the City Clerk to prepare resolutions to bring forward to Committee-of-the-Whole (open session).

The City Clerk will prepare the resolutions, and announce the additions to the agenda, if any, under item **3.5 Call Upon the City Clerk to Review Committee-of-the-Whole (in-camera) items to be added to block**, in the Council meeting agenda.

Members of Council will have the opportunity to pull the item for further discussion during Committee-of-the-Whole (open session).

#### **Terms of Office**

Citizens members serve a term concurrent with that of Council and retain office until their successors are appointed.

#### **Filling Vacancies during Term of Committee**

Vacancies are not filled after March 31 of an election year.

When a vacancy needs to be filled on a committee the application process will be followed.

19-3

REPORT CLK-2019-18

The following organization has applied for Lottery Licensing and is presented to City Council for approval.

**NAME****ADDRESS**

St. Andrew Catholic School  
Council

16 St. Andrew Avenue  
Welland, Ontario  
L3B 1E1

Respectfully submitted by Tara Stephens, Acting General Manager, Human Resources and Legislative Services/City Clerk

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**RECOMMENDATION:**

THAT THE COUNCIL OF THE CITY OF WELLAND approves the application for lottery licensing for St. Andrew Catholic School Council.

**COUNCIL**  
**HUMAN RESOURCES**

APPROVALS	
GENERAL MANAGER	[Signature]
CFO	[Signature]
CAO	[Signature]

REPORT HR-2019-05  
OCTOBER 15, 2019

19-85

**SUBJECT: ANTI-NEPOTISM POLICY AND UPDATED HIRING AND WORKPLACE DISCRIMINATION, HARASSMENT AND WORKPLACE VIOLENCE POLICIES**

**AUTHOR & APPROVING G.M.: TARA STEPHENS, ACTING GENERAL MANAGER, HUMAN RESOURCES & LEGISLATIVE SERVICES/CITY CLERK**

**RECOMMENDATION:**

THAT THE COUNCIL OF THE CITY OF WELLAND receives for information report HR-2019-05; Anti-Nepotism Policy and updated Hiring and Workplace Discrimination, Harassment and Workplace Violence Policies, and THAT Welland City Council approves the Anti-Nepotism Policy, and further THAT Welland City Council approved the updates to the Hiring and the Workplace Discrimination, Harassment and Workplace Violence Policies.

**ORIGIN AND BACKGROUND:**

At the June 18, 2019, Council meeting, Welland City Council approved a motion to refer the development of an anti-nepotism policy to the Human Resources Committee. Following the approved motion of Council, staff and the Human Resources Committee conducted a review of the Hiring Policy and the creation of an Anti-Nepotism Policy.

**COMMENTS AND ANALYSIS:**

The Anti-Nepotism Policy and Hiring Policy have been reviewed and approved by the Human Resources Committee at its meeting of September 26, 2019.

In 2018, the previous Human Resources Committee for the 2014-2018 term if council, reviewed the Workplace Discrimination, Harassment and Workplace Violence Policy, but the matter was not presented to Welland City Council for consideration.

The Workplace Discrimination, Harassment and Workplace Violence Policy has been reviewed and approved by the Human Resources Committee at its meeting of September 26, 2019.

**FINANCIAL CONSIDERATION:**

None

**OTHER DEPARTMENT IMPLICATIONS:**

All staff will be provided with a copy of the policies, and they will be updated and added to our City of Welland website.

**SUMMARY AND CONCLUSION:**

This policies will be reviewed on an annual basis to ensure compliance with legislated requirements.

**ATTACHMENTS**

Appendix I – Anti-Nepotism Policy

Appendix II – Hiring Policy

Appendix III - Workplace Discrimination, Harassment & Workplace Violence Policy

**CITY OF WELLAND**



**POLICY ON ANTI-NEPOTISM**

**POLICY STATEMENT**

The City of Welland ("the City") makes all hiring and employment related decisions based on transparency, equitable opportunity, and an overall emphasis on merit. This schedule aims to eliminate the influence of nepotism in City hiring and employment related decisions to maintain confidence in the integrity of the City's hiring and employment practices.

The purpose of this policy is to ensure that employment related decisions concerning existing or potential City employees are free from any real or perceived improper influence based on family member or significant social relationships. At the same time, it is recognized that existing family member and significant social relationships with City employees should not unduly or unfairly restrict or enhance an individual's opportunity to pursue employment or changes in employment at the City.

**INTENT**

The City is committed to eliminating nepotism in any employment related decisions to preserve employee moral; to provide the highest quality service possible to citizens and businesses the City services; to ensure equitable opportunities; and to preserve real and perceived integrity in the recruitment process.

**SCOPE OF THIS POLICY**

This schedule is in accordance with the Ontario *Human Rights Code*. S. 24 (1) (d) of the *Code* states that the right under section 5 to equal treatment with respect to employment is not infringed where an employer grants or withholds employment or advancement in employment to a person who is the spouse, child or parent of the employer or an employee.

The hiring process is intended to promote equitable opportunity, and candidates are selected and employment decisions made in accordance with the City's hiring policy and procedures, collective agreements, as well as any other applicable City policies or legislation.



No employee shall attempt to use a family or significant social relationship for his or her personal benefit or gain. This includes an employee misusing their authority to influence or make an employment related decision. Employment related decisions where a benefit may be gained or authority may be misused include but are not limited to the following:

- the approval/denial of compensation increases;
- hire, transfer, promotion, demotion decisions;
- performance rating, discipline or termination;
- the assignment and approval of overtime;
- the assignment or direction of work assignments;
- approval of leaves of absences;
- the negotiation of salary level.

No employee shall attempt to improperly influence a recruitment or selection decision to benefit a family member or someone with whom they have a significant social relationship.

All job applicants will be requested to disclose the names of any spouse, child or parent who is a current employee or elected official of the City. Job applicants will be asked whether they are aware of any family or significant social relationships currently working as a City employee or elected official by disclosing a "yes" or "no" response. With the exception of a spouse, child, or parent relationship, applicants will not be requested to provide the names of any other family member or significant social relationships, in accordance with the *Ontario Human Rights Code*.

A spouse, child or parent of a current City employee or City elected official shall not be considered for employment, or changes in employment, if placement would create a direct or indirect reporting relationship with the above mentioned family members.

No employee shall be in a direct or indirect reporting relationship; or be placed in a position of influence over an employed family member or significant social relationship.

Employees who become involved in a spousal relationship, significant social relationship, or who become related over the course of their employment may continue as employees if no direct reporting or indirect reporting relationship exists between such employees. If there is a direct reporting or indirect reporting relationship the City will attempt to find a suitable job to transfer one of the affected employees. If the City is unable to transfer the employee or the employee is unable to find alternative employment, then a decision will be made, in consultation with Human Resources, as to appropriate next steps.

Family members of City employees and City elected officials will be considered for employment or advancement provided they

- have made application in accordance with established procedure;
- have been considered in accordance with established procedure;
- possess the necessary qualifications; and
- are considered to be the most suitable candidate.

### **RESPONSIBILITIES UNDER THIS POLICY**

#### **Employee**

Immediately notify supervisor in writing of any conflict of interest. This includes the existence or formation of a direct or indirect reporting relationship with a family member or person for whom there is a significant social relationship.

Inform General Manager or Human Resources directly, if the employee has knowledge of a reporting relationship where an undisclosed conflict of interest exists.

#### **Supervisor**

Do not knowingly place employees in positions where their duties could create a conflict of interest with a family member or significant social relationship.

Where conflict of interests exist, notify the department's General Manager, who, in consultation with Human Resources, shall determine whether the employee has breached or may potentially become in breach of this Policy.

#### **General Manager**

If a real or apparent conflict exists, and it is duly reported, such that the employee is or may be or may become in breach of this schedule and the Code of Conduct, instruct the employee, in writing, to withdraw from participation in any dealings or decision making processes relative to the issue at hand. If the employee has knowingly or willfully breached the Policy, determine the appropriate disciplinary measure in consultation with Human Resources.

Where a direct or indirect reporting relationship exists between family members or a significant social relationship, in consultation with Human Resources and the manager or supervisor, make reasonable efforts to transfer one of the employees to a different division or department.

#### **Human Resources**

Provide consultation, as requested, from employees on this Policy and specific situations involving a conflict of interest.

## **DEFINITIONS**

### **Conflict of Interest**

A conflict of Interest, as defined in Schedule A of the Code of Conduct for Employees policy, is a situation in which an employee has personal or private interests that may compete with the public interests of the City of Welland. Such competing interests can make it difficult to fulfill his or her duties impartially. A Conflict of Interest can create an appearance of impropriety or a perception of bias that can undermine confidence in the person and in the City of Welland generally. A conflict exists even if no unethical or improper act results from it. A Conflict of Interest can either be an apparent conflict or a real conflict.

### **Apparent Conflict**

Exists where an informed and reasonable person reviewing the matter and having thought the matter through could conclude that a Conflict of Interest exists.

### **Real Conflict**

Exists where a personal interest exists and that interest:

1. is known to the employee; and
2. has a connection to the employee's duties that is sufficient to influence the exercise of those duties.

### **Direct Reporting Relationship**

Involves a reporting relationship where an individual has the authority to: direct and control the activities and work assignments of another employee; review or approve performance reviews; approve wage and salary adjustments; administer disciplinary action; and recommend or approve the hiring or firing of an employee.

### **Family Member**

Includes the following family relationships:

- spouse (includes married and common-law of the same or opposite sex)
- mother, father, or legal guardian (foster or step)
- son, daughter (foster or step)
- sister, brother, step-sister, step-brother
- aunt, uncle, niece and nephew
- mother-in-law, father-in-law, sister-in-law, brother-in-law,
- son-in-law or daughter-in-law
- grandchild, grandparent, step-grandparent, step-grandchild
- child, mother or father in a relationship where the role of parent has been assumed

**Indirect Reporting Relationship**

Exists between the employee and the second-removed manager.

**Nepotism**

Favoritism granted to a family member or individual of significant social relationship, usually in the form of hiring practices or other employment decisions without regard or with lesser regard to the individual's merit, qualifications or performance.

**Significant Social Relationship**

An emotional association, personal relationship or strong friendship that is not defined by blood or legal bonds e.g. godchild

**COMPLIANCE**

Every employee is expected to be aware of and act in compliance with the Code of Conduct for Employees Policy and the related Schedules. Any employee under investigation may be suspended with or without pay or be re-assigned to other duties pending completion of the investigation, depending on the particulars of the case and the best interests of the City. Where there is a serious wrongdoing, as defined in the Whistleblower By-law, that By-law applies. Violations of this Schedule may result in appropriate disciplinary measures, up to and including dismissal.

**REVIEW**

The City will review this policy when necessary.

Issue Date:	July, 2019
Revision Date:	N/A

## CITY OF WELLAND

POLICY ON HIRINGPOLICY STATEMENT

The City of Welland ("the City") is committed to transparent and merit based selection in all of its hiring decisions. All applicants are given an equal opportunity for employment in compliance with the provisions in the *Ontario Human Rights Code*, the *Accessibility for Ontarians with Disabilities Act* (AODA) and any other applicable legislation.

The purpose of this policy is to set a consistent and equitable standard for the recruitment and selection of employees at the City. This will help to create a diverse and qualified talent pool to support the City's current and future business needs. Effective recruitment, selection and promotion practices optimize the efficiency of human resources, and maximize the number of promotion and career development opportunities for existing employees.

INTENT

The recruitment and selection of all positions within the City shall be coordinated through the Human Resources department, which shall provide professional counsel and assistance to the hiring department which, unless otherwise specified and subject to the approval of the CAO, is solely responsible for the final hiring decision.

SCOPE OF THIS POLICY

Candidates are selected and employment decisions are made in accordance with the City's procedures, collective agreements, anti-nepotism policy as well as any other applicable City policies.

No elected officials, appointed officers or employees shall attempt to misuse their authority to influence or make a decision on the hiring, transfer, promotion, demotion or any other employment related decision of an applicant or current employee.

The City shall ensure internal equity and comply with all requirements of the the *Ontario Pay Equity Act*.

## **PRINCIPLES**

**Merit** – All selections, appointments and promotions shall be based on considerations of merit, and ability to perform effectively in a position. Hiring decisions will be free of nepotism in accordance with the City’s Anti-Nepotism Policy.

**Objectivity** – Selection criteria shall be developed in an objective and non-discriminatory manner and must be based on bonafide job-related requirements.

**Consistency** – Selection systems and procedures will ensure that candidates are treated in a fair and consistent manner.

**Equal Opportunity** – All City recruitment practices and procedures must comply with the *Ontario Human Rights Code*. All internal candidates and external candidates receive equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status or disability.

**Accessibility** – All City recruitment practices and procedures must comply with the AODA requirements for developing, implementing and enforcing accessibility standards for Internal Candidates and External Candidates who may have a disability. This includes identifying and removing any barriers that may exist for persons with disabilities to apply for City of Welland positions; and if qualified, to participate in the interview process.

## **RESPONSIBILITIES UNDER THIS POLICY**

### **Human Resources**

- Develop employment policies, procedures, guidelines and tolls which promote a fair and equitable process, and support the hiring manager or designate in making the best hiring decision possible.
- Ensure the principles in this Policy are abided by during the hiring process and that the hiring manager, or designate, is aware of and follows any associate procedures.
- Provide support to hiring manager, or designate, in determining workforce planning requirements and specific recruitment strategies to attract quality candidates.
- Ensure that all recruitment activities and staffing decisions comply with statutory requirements, collective agreements, and corporate policies and procedures.
- Participate in the recruitment process for all positions.

- Perform candidate screening based on pre-determined objective criteria.
- Work with the hiring manager, or designate, to ensure there is an up-to-date job description that outlines duties and qualifications.
- Post the position as per filling a vacancy procedures.
- Advise and support the hiring manager, or designate, so they are able to conduct a fair and equitable selection process, as per the principles of this policy, and in accordance with the relevant collective agreements, policies, procedures and legislation.
- Ensure the selected hire does not have any Conflict of Interest as per the Anti-Nepotism policy.
- Extend an offer of employment to the successful candidate.
- Maintain documentation associated with all phases of selection process.
- Safeguard the privacy and confidentiality of candidate information.

### **Hiring Managers**

- Review the job description, in consultation with Human Resources, to ensure it is still accurate in terms of duties and requisite qualifications.
- Review applications, in conjunction with Human Resources that meet the identified qualifications.
- Be aware of the employment related statutory requirements, collective agreements and corporate policies and procedures. Seek clarification from Human Resources, as required.
- Participate in the interview process, with Human Resources.
- Make the hiring decision, in consultation with Human Resources.
- Safeguard the privacy and confidentiality of candidate information.

### **Candidate:**

- Carefully read the positions posted requirements.
- Complete an application as per the specified application process, meeting the closing date, and accurately and fully disclose all related information to allow for an objective determination of knowledge, skills and experience.

- Disclose any potential Conflict of Interests at the beginning of the selection process, in accordance with the Anti-Nepotism policy.
- Satisfy all employment conditions and provide proof of the qualifications, as identified on the posting, if requested.
- Consult with Human Resources to disclose and request accommodation, as required, if you have a disability.
- Safeguard and keep confidential any City related information disclosed during the recruitment process.

## **PROCEDURES**

### **Employment Hiring Authority**

The CAO shall have the authority to advise Council on performance and to recommend to Council the appointment, promotion, demotion, suspension, or dismissal of General Managers.

The CAO, in consultation with the appropriate General Manager and Human Resources, shall have the final authority to employ, promote, demote, suspend or dismiss an employee of the City below the rank of General Manager, and not covered by a collective agreement, and in accordance with all applicable employment legislation.

The CAO shall have the authority to, in consultation with the appropriate General Manager and Human Resources, appoint, employ, demote, suspend, and dismiss all other employees of the Corporation within approved staff complement levels, in accordance with the requirements of any/all affected collective agreements and all applicable employment legislation.

### **New Full Time Positions and Vacancies**

All new Full Time positions must be approved by Council via the Budget Review Committee.

Vacancies, or perspective vacancies, for all non-union positions shall be approved by Council prior to filling the vacancy. All full time non-union vacancies shall be posted internally and externally concurrently.

### **Selection of Employee**

The General Manager is responsible for all employees in their Department relative to appointments, evaluations, suspensions, promotions or dismissals.



### **Former City Employees**

Former employees of the City of Welland who have left voluntarily, or through no fault of their own, and who make application for re-employment are to be given fair and equal consideration in any/all hiring processes.

### **Hiring of General Managers**

Short listed applicants will be subject to employment investigations into their educational and work background and professional references. Only fully qualified applicants will be considered for employment.

The appointment of a General Manager, reporting directly to the CAO, is subject to the approval of Council and the selection procedure is as follows:

1. The Human Resources Department verbally advises the selected candidate of the Selection Committee's recommendation to Council.
2. The Council, in closed session, decides on the Selection Committee's recommendation.
3. A formal written offer of employment is extended to the successful candidate, and a written acceptance of the offer is received.
4. A By-law is passed to either establish the position or appoint the successful candidate to the position, or both.

### **Hiring of All Other Staff**

The appointment process for all other senior staff and all other employees is subject to the approval of the General Manager and the CAO, through an Employment Requisition Form. The Selection Committee shall include Human Resources staff and others as deemed appropriate, by Human Resources, for the vacancy being filled.

Items to be reviewed during the screening and short listing process include:

1. Written application and resume.
2. Preliminary interview using the most recent job description, job posting and discussion of all facets of the position.
3. Verification of professional references.
4. Testing procedures where necessary.
5. Pre-employment health examination to determine physical fitness for employment, where necessary.

**COMPLIANCE**

Any attempt to improperly influence a recruitment or selection decision will be reviewed by management and, if verified, result in appropriate disciplinary action.

Failure to comply with this policy and its associated procedures may result in appropriate disciplinary measures, up to and including termination of employment.

Candidates who do not comply with responsibilities listed above may be disqualified from the selection process.

**REVIEW**

The City will review this policy when necessary.

Issue Date:	July, 2019
Revision Date:	N/A



**CITY OF WELLAND**



**POLICY ON WORKPLACE DISCRIMINATION, HARASSMENT  
AND WORKPLACE VIOLENCE**

**POLICY STATEMENT:**

In compliance with the Human Rights Code (Ontario) and the Occupational Health and Safety Act, The Corporation of the City of Welland (herein referred to as the City of Welland or "the City"), has an obligation and responsibility to provide a work environment that is free of discrimination, workplace harassment, workplace sexual harassment and workplace violence as defined under the Human Rights Code (also referred to as "the Code" in this document) and the Occupational Health and Safety Act (also referred to as "the OHSA" in this document).

Discrimination, harassment, sexual harassment, and workplace violence are considered to be unacceptable and a form of employment misconduct. The City of Welland will make every reasonable effort to ensure that no one is subject to it. The City takes very seriously its responsibility to foster and maintain a positive working environment with mutual respect for all and wishes to make it clear that it will neither tolerate nor condone behaviour that is likely to undermine the dignity or self-esteem of any individual or create an intimidating, hostile or offensive workplace. Therefore, individuals who violate this Policy are subject to disciplinary and/or corrective action up to and including termination of employment.

This policy will be developed and maintained in consultation with the Joint Health and Safety Committee or a Health and Safety Representative.

**INTENT:**

The intent of this policy is to ensure that the City of Welland maintains its adherence to the spirit and provisions of the Human Rights Code and the Occupational Health and Safety Act, to encourage appropriate behaviour in the workplace and provide a mechanism for persons to bring forward concerns and issues related to harassment, sexual harassment, workplace violence and discrimination, should they arise in the workplace.

**SCOPE OF THIS POLICY:**

This policy applies to all employees of the Corporation of the City of Welland, volunteers, members of Council and anyone involved with the business of the City, to provide assurance that they can undertake their duties in the workplace, free from discrimination, workplace violence, harassment and sexual harassment, as defined under the Human Rights Code and the OHSA.

**THE WORKPLACE:**

The workplace is not only confined to the various offices and work locations of the City. It also includes washrooms, lunchrooms, outside work sites, on-road vehicles and any other location where the business of the City is being conducted.

Harassment and discrimination which occur outside the workplace (eg: office-related social functions, luncheon meetings, work-related travel) but are an extension of work or duties performed and which can have repercussions in the work environment, are also covered by this policy.

**RESPONSIBILITIES UNDER THIS POLICY:****The City is responsible for:**

Ensuring that corporate policy, practices and conduct comply with the provisions of the Human Rights Code and the OHSA.

- Making sure that all those protected by the policy are fully aware of the policy, their rights and protections under this policy, the Code and the OHSA.
- Creating an environment that encourages prospective complainants to report all incidents of discrimination and harassment.
- Ensuring that all discrimination and harassment complaints can be and are resolved quickly, fairly and in a sensitive manner.
- Conducting an investigation that is appropriate in the circumstances.

**Management personnel have the responsibility to:**

- Protect all employees from discrimination and harassment and prohibit such activity from occurring in the workplace.
- Immediately initiate action upon receipt of, or even prior to, any actual complaint, where discrimination or harassment is known to have taken place.
- Take corrective or disciplinary action where a violation of this policy has been found to have occurred.

**Employees/Council Members/Volunteers/Others:**

All City employees and those persons involved with or undertaking City business have the responsibility of maintaining a positive and business-like workplace and ensuring that the work environment is free from discrimination and harassment. Every employee is discouraged from and directed to not engage in any activity that may be perceived as constituting discrimination or harassment.

**DEFINITIONS:****Discrimination:**

The Human Rights Code ("the Code") states that it is public policy in Ontario to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination.

Section 5(1) of the Code states:

"Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex (including pregnancy, gender identity), sexual orientation, age, and record of offences, marital status, family status or handicap."

The City of Welland is obligated to insure that no discrimination or unequal treatment, based on the prohibited grounds or types of discrimination as outlined above, occurs in the workplace.

Discrimination can be intolerant behaviours towards individuals or groups. The behaviour can be direct (e.g. denying jobs based on colour, race, sex or disability) or systemic (e.g. utilizing job testing that is culturally-biased, height or weight restrictions for particular positions). Discrimination may come from an individual or through systems and attitudes held by an organization. Actions do not have to be intentionally committed to be considered discriminatory or a possible Code violation.

**Harassment:**

Harassment is one form of discrimination and it is illegal under the Human Rights Code.

Section 5(2) of the Code states:

"Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability."

Section 10(1) of the Code defines harassment as meaning:

"...engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome."

Harassment can also be defined as any objectionable, unwanted or un-welcome attention to a person based on any of the discriminatory grounds.

Harassment can include, but is not limited to, the following:

- Verbal - comments, jokes, propositions and the like.
- Physical - touching, leering, patting, pinching, cornering, actions up to and including assault of a criminal nature.
- Visual - suggestive gestures, displays of racial/hate or pornographic materials, E-mails and other computer generated materials that are intended to intimidate or embarrass.

**Workplace Harassment** under the Occupational Health and Safety Act is defined as:

*Engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome; or*

Some examples of **workplace harassment** are:

- verbally abusive behaviour such as yelling, insults, ridicule and name-calling, including remarks, jokes or innuendos that demean, ridicule, intimidate or offend
- workplace pranks, vandalism, bullying and hazing
- gossiping or spreading rumours, regardless of whether they are malicious
- excluding or ignoring someone, such as persistent exclusion of a particular person from workplace-related social gatherings
- workplace supervision done in a demeaning or abusive manner
- humiliating someone
- sabotaging someone else's work
- displaying or circulating offensive pictures or materials
- offensive or intimidating phone calls, emails, texts or social media communications
- a supervisor/manager impeding an individual's efforts at promotions or transfers for reasons that are not legitimate
- making false allegations about someone in memos or other work-related documents

- menacing behaviours including staring, glaring, inappropriate gestures or unwelcome physical closeness
- taunting and intimidation

### **The Test of Harassment**

It does not matter whether you intended to offend someone. The test of harassment is whether you knew or should have known that the comments or conduct were unwelcome to the other person. For example, someone may make it clear through their conduct or body language that the behaviour is unwelcome, in which case you must immediately stop that behaviour.

Although it is commonly the case, the harasser does not necessarily have to have power or authority over the recipient. Harassment can occur from co-worker to co-worker, supervisor to employee and employee to supervisor.

Respect in the workplace is everyone's responsibility. Any acts that demean, harm or exclude are counter to our culture and should be addressed promptly in accordance with the procedures set out below.

### **Poisoned Work Environment:**

Even if no one is being directly targeted, harassing comments or conduct can poison the work environment, making it a hostile or uncomfortable place in which to work. This is also a form of harassment. Some examples of actions that can create a poisoned work environment include:

- displaying offensive or sexual materials such as posters, pictures, calendars, web sites or screen savers
- distributing offensive e-mail messages, or attachments such as pictures or video files
- practical jokes that embarrass or insult someone; or
- jokes or insults that is offensive, racist or discriminatory in nature.

### **What Isn't Harassment?**

#### **The Occupational Health and Safety Act states:**

*A reasonable action taken by an employer or supervisor relating to the management and direction of workers or the workplace is not workplace harassment.*



Therefore, workplace harassment should not be confused with legitimate, reasonable management actions that are part of the normal work function, including but not limited to:

- measures to correct performance deficiencies, such as placing someone on a performance improvement plan
- imposing discipline for workplace infractions
- requesting medical documents in support of an absence from work
- enforcement of workplace rules and policies

It also does not include normal workplace conflict that may occur between individuals or differences of opinion between co-workers.

Workplace and domestic violence that may occur in the workplace are health and safety issues, which are covered under the *Occupational Health and Safety Act*.

### **Sexual Harassment under the Code and the OHSA:**

Sections 7(2) and 7(3) of the Code, state that sexual harassment is a very specific form of illegal discrimination and that employees have the right to be free from harassment in the workplace because of sex.

The Code clearly defines the following activities and behaviours as sexual harassment:

- a) Sexual Solicitations, Advances and Unwanted Attention - made by a person in a position to confer, grant or deny a benefit or advancement, of a persistent or abusive nature, where the person knows or ought reasonably to know that such attention is unwanted or unwelcome.
- b) Implied or Expressed Promise of Reward - for complying with a sexual request or favour.
- c) Threat Of or Actual Reprisal for Refusal - implied or actual reprisal or denial of opportunity for refusal to comply with a sexually oriented request.
- d) Poison or Hostile Work Environment - remarks, behaviour and activities of a sexual nature, not necessarily directed to any one person, which may be perceived to create a negative, intimidating, uncomfortable or offensive workplace or environment. May include a one-time incident as opposed to a "course of" or ongoing harassment, but is of such a severity or weight it taints or poisons the environment.

Examples can include: jokes, pin-ups, T-shirts with inappropriate comments, circulation of offensive materials, E-mails etc. or a one-time comment from a person in authority to the effect "we will never hire woman here for that type of work."

The *Occupational Health and Safety Act* defines workplace sexual harassment as:

- (i) *Engaging in a course of vexatious comment or conduct against a worker in a workplace because of sex, sexual orientation, gender identity or gender expression, where the course of comment or conduct is known or ought reasonably to be known to be unwelcome, or*
- (ii) *Making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advancement to the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome.*

Both men and women can be victims of sexual or gender-based harassment, and someone of the same or opposite sex can harass someone else. Some examples of sexual or gender-based harassment are:

- sexual advances or demands that the recipient does not welcome or want
- threats, punishment or denial of a benefit for refusing a sexual advance
- offering a benefit in exchange for a sexual favour
- leering (persistent inappropriate staring)
- displaying sexually offensive material such as posters, pictures, calendars, cartoons, screen savers, pornographic or erotic websites or other electronic material
- distributing sexually explicit e-mail messages or attachments such as pictures or video files
- sexually suggestive or obscene comments or gestures
- unwelcome remarks, jokes, innuendoes, propositions or taunting about a person's body, clothing or sex
- persistent, unwanted attention after a consensual relationship ends
- physical contact of a sexual nature, such as touching or caressing
- gossip or rumours regarding a person's sexual activities or relationships, regardless of whether they are malicious; and
- sexual assault

**Workplace Violence** is defined under the *Occupational Health and Safety Act* as:

- the exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker
- an attempt to exercise physical force against a worker, in a workplace, that could cause physical injury to the worker
- a statement or behavior that is reasonable for a worker to interpret as a threat to exercise physical force against the worker, in a workplace, that could cause physical injury to the worker.

It is defined broadly enough to include acts that may be considered criminal. Workplace violence includes:

- physically threatening behaviour such as shaking a fist at someone, finger pointing, destroying property, throwing objects
- verbal or written threats to physically attack a worker
- leaving threatening notes or sending threatening emails
- wielding a weapon at work
- stalking someone; and
- physically aggressive behaviours including hitting, shoving, standing excessively close to someone in an aggressive manner, pushing, kicking, throwing an object at someone, physically restraining someone or any other form of physical or sexual assault.

All of the above activities are considered inappropriate. Therefore, a violation of this policy, the Code and the OHS Act will not be condoned by the City.

Further, it is also a violation of the Policy for anyone to knowingly make a false complaint of harassment or violence, such as when a complaint is found to be frivolous, vexatious or made in bad faith with fraudulent or malicious intent, or to provide false information about a complaint.

Violence that occurs outside the normal workplace but which has an impact on the working environment, including working relationships, may also be considered violence in the workplace.

Workplace violence may come from many different sources:

- strangers or people with no ties to the workplace
- clients, customers or patients
- other employees
- intimate relationships outside of work (such as intimate partners, family, friends)

**MAKING A COMPLAINT OF DISCRIMINATION OR HARASSMENT:**

Employees or persons involved in City business are encouraged to bring forward any incidents of discrimination, workplace violence, harassment or sexual harassment that they may encounter in the workplace and should do so in a timely fashion.

Complaints of discrimination, workplace violence, harassment or sexual harassment may be reported to any of the following people:

- General Manager, Human Resources and Legislative Services
- Employee Relations Manager
- Chief Administrative Officer
- Department Head

A union employee may consider seeking the assistance of his/her union. Any union employee who wishes to report a complaint of discrimination, workplace violence, harassment or sexual harassment or who has been accused of a possible violation, is entitled to union representation.

All complaints will be dealt with in a most serious manner and as promptly and discreetly as possible, with due regard for the rights of all parties.

A person always retains the right to file a complaint with the Ontario Human Rights Commission, should they choose to do so.

**CONFIDENTIALITY:**

Confidentiality during the complaint process will be maintained at all times as practicable and appropriate under the circumstances for each case and except where disclosure of names is necessary for purposes of investigating the complaint or taking discipline in relation to the complaint.

**COMPLAINT RESOLUTION:**

Complaints may be dealt with in a number of ways (early dispute resolution, informal, mediation, formal investigation) and as expeditiously as possible. However, if evidence of discrimination, workplace violence, harassment or sexual harassment is found

(considered a form of employee misconduct), corrective or disciplinary measures will be taken as appropriate.

Discipline could involve reprimands or suspensions and depending on the severity of the situation, may result in more serious actions being taken, including discharge or termination for cause. Steps will also be taken to prevent any further reoccurrence of the discrimination or harassment and provide additional support or assistance to those affected.

If the complaint is not supported or substantiated, no documentation of the complaint will be placed with the file of the person alleged to have done the discriminating or harassing.

### **INVESTIGATION:**

If the City chooses to proceed to a formal investigation, the City has discretion to use either an internal or external investigator to conduct an investigation, depending on the nature of the incident.

The investigation may include:

- conducting interviews of relevant individuals to ascertain all of the facts and circumstances relevant to the incident or complaint, including dates and locations
- reviewing any related documentation
- making detailed notes of the investigation and maintaining them in a confidential file

Once the investigation is complete, the investigator(s) will prepare a detailed report of the findings. The goal is to complete any investigation and communicate the results to the complainant and respondent within a reasonable time frame after becoming aware of an incident or a complaint is received, where possible. The timeframe within which an investigation can be completed varies depending on the circumstances of each investigation.

### **LIABILITY UNDER THE HUMAN RIGHTS CODE:**

Whether committed by a co-worker or a supervisor, acts of harassment and discrimination are not only considered a form of employee misconduct, but are also illegal under the Code. Persons engaging in discriminatory actions or harassment of others may be personally liable under the Code. In addition, those in a position of authority who know about such behaviour or ought to know and by omission or failure to take appropriate action, tolerate it, are also guilty of misconduct and could be named and liable in a complaint filed with the Ontario Human Rights Commission.

**NO REPRISAL UNDER THE CODE AND OHSA:**

Section 8 of the Human Rights Code states:

*Every person has a right to claim and enforce his or her rights under this Act, to institute and participate in proceedings under this Act and to refuse to infringe the rights of another person under this Act, without reprisal or threat of reprisal for so doing.*

Section 50 (1) of the OHSA states:

“No employer or person acting on behalf of an employer shall,

- (a) dismiss or threaten to dismiss a worker;
- (b) discipline or suspend or threaten to discipline or suspend a worker;
- (c) impose any penalty upon a worker; or
- (d) intimidate or coerce a worker,

because the worker has acted in compliance with this Act or the regulations or an order made thereunder, has sought the enforcement of this Act or the regulations....”

All levels of Management will insure that no reprisals or retaliation stem from the filing of complaints with respect to the person making the complaint, the accused or any witness. Any form of retaliation or reprisal is considered a serious violation of this policy. Such actions will be subject to disciplinary action.

Persons who make legitimate or "good faith" complaints will not have their employment affected in any way as a result of their complaint.



It is also recognized that false, fabricated or malicious accusations of harassment or discrimination can have serious affects on innocent people. Such accusations or false reporting will not be tolerated and will be regarded as a violation of this policy.

**REVIEW**

The City will review this policy when necessary. At a minimum, the policy will be reviewed annually, and revised accordingly.

Issue Date:	March, 2016
Revision Date:	August, 2019

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19-5

**REPORT FIN-2019-20**  
**OCTOBER 15, 2019**

**SUBJECT: GRANTS & SPECIAL ASSISTANCE POLICY**

**AUTHOR: ELIZABETH PANKOFF, MBA, CPA, CGA**  
**MANAGER OF BUDGETS & FINANCIAL REPORTING/DEPUTY**  
**TREASURER**

**APPROVING G.M.: STEVE ZORBAS, CPA, CMA, B. Comm, DPA,**  
**GENERAL MANAGER, CORPORATE SERVICES, CHIEF FINANCIAL**  
**OFFICER/TREASURER**

**RECOMMENDATION:**

THAT THE COUNCIL OF THE CITY OF WELLAND receive for information the review of the Grants & Special Assistance Policy FIN-001-0007, as outlined in Appendix I and II to Report FIN-2019-20.

**ORIGIN AND BACKGROUND:**

At the April 2, 2019 Council meeting, Council directed staff to review the Grants and Special Assistance policy.

The Grant & Special Assistance Policy was updated in 2017 to include additional controls and guidelines to ensure a transparent application process for both City and the applicant. A further review was conducted in 2019 and staff is recommending that the policy remain status quo.

**COMMENTS AND ANALYSIS:**

During the review by the Finance staff, the focus was on controls, criteria, and general principles.

The current policy outlines, the general principles, which are:

- a) City Significance & Need
- b) Funding
- c) Recognition of the City's Contribution
- d) Use of Funds
- e) Commitment by the City
- f) Organizational Status

The policy also identifies the guidelines for Annual Operating Grants/Permissive Grants, Capital Grants, Travel Assistance Grants, Special Event and Special Assistance Grants, along with criteria for each of these grants.

In addition, during the annual budget process, staff will review in detail each grant application submitted to ensure the guidelines, general principles, and controls set out in the Grants and Special Assistance Policy are met. A summary is completed and reported to Council (see Appendix II for an example). This summary identifies the organization, date submitted, purpose of the grant request, amount request, staff recommendations and all criteria required as outlined in the policy.

**FINANCIAL CONSIDERATION:**

N/A.

**OTHER DEPARTMENT IMPLICATIONS:**

N/A

**SUMMARY AND CONCLUSION:**

Upon completion of the review, staff recommends that the current Grants and Special Assistance Policy FIN-001-0007 remain status quo.

**ATTACHMENTS:**

Appendix I – Proposed Amendments to the Grants & Special Assistance Policy  
Appendix II – Summary of Grant Applications



## CITY OF WELLAND

APPENDIX I  
FIN-2019-20

## POLICY

<b>Policy Title:</b> Grants & Special Assistance	
<b>Date of Approval:</b> April 22, 2008	<b>Policy Number:</b> FIN-001-0007
<b>Lead Role:</b> General Manager, Corporate Services/Treasurer	<b>Support Role:</b>
<b>Cross Reference:</b>	<b>Next Review Date:</b>
<b>Council File Number:</b> 06-5	<b>Revision Date:</b> December 19, 2017

**Policy Statement:**

The objective of the policy is to ensure that funding allocations are made according to established and common criteria. The City of Welland recognizes the contribution of voluntary and charitable organizations and individuals to the quality of life enjoyed by the City. City Council has adopted a policy with respect to providing financial assistance to these organizations and persons.

**Policy Details:**

Legislative Authority in the Municipal Act provides for the making/awarding of grants:

*Section 107, Municipal Act, 2001*

Despite any provision of this or any other Act relating to the giving of grants or aid by a municipality, subject to Section 106, a municipality may make grants on such terms as to security and otherwise as the council considers appropriate, to any person, group or body, including a fund, within or outside the boundaries of the municipality for any purpose that council considers to be in the interests of the municipality.

**Definition:**

For the purposes of this policy and the awarding of grants and assistance to not-for-profit organizations, the definition of not-for-profit corporations (as defined in Section 1.4 of the Not-for-Profit Incorporators Handbook of the Province of Ontario) is as follows:

"Not-for-profit corporations are organizations that carry on activities without pecuniary gain. They are incorporated under Part III of the Corporations Act as corporations without share capital."

This policy recognizes five (5) most common types of not-for-profit corporations:

1. General type - this would include such corporations as ratepayers' associations, professional associations, community organizations, etc.

## **Grants & Special Assistance Policy FIN-001-0007**

2. Sporting and athletic organizations, arts & cultural
3. Social clubs - these are corporations with objects in whole or in part of a social nature.
4. Service clubs such as Rotary, Lions, Kiwanis and Optimist.
5. Charities - these would include religious organizations and organizations that are engaged in carrying out certain good works that are of benefit to society.

Note: A primary difference between a charity and another type of not-for-profit corporation is that upon dissolution a charity is required to distribute its remaining assets to other charities, not to its members. Other types of not-for-profit corporations may (unless prohibited from so doing in its charter or by-laws) on dissolution distribute remaining assets among members. Also, a charitable corporation, because it usually solicits funds from the public and enjoys certain legal and tax advantages (e.g. under the Income Tax Act - Federal) is subject to more stringent reporting requirements than a not-for-profit corporation of another type.

### **GENERAL PRINCIPLES**

#### a) City Significance & Need

This policy does not speak to grants or requests made by the City to other levels of government.

An organization seeking assistance should ensure City significance is stated clearly in its purpose for seeking assistance. City significance includes, but is not limited to, the following:

An organization serving the municipality of the City of Welland;

An organization that does not duplicate services provided by another agency, by the City itself or an area municipality;

An organization that can meet an identified and quantifiable need in the community, as determined by City Council, and can demonstrate the need for the service;

The acceptance of any City grant obligates the accepting organization to allow any citizen of the City to participate in that organization's activities;

Organizations should not be in conflict with the other criteria and conditions in this policy.

#### b) Funding

The City of Welland will not fund organizations whose purpose, or principle source of funding, is the responsibility of other levels of government, e.g. social services agencies who receive, or could receive, greater than 30% of their funding from any or all of the

## **Grants & Special Assistance Policy FIN-001-0007**

Region of Niagara, Province of Ontario, Government of Canada, or their respective boards or agencies.

The City will not provide grants to organizations whose services, in the opinion of City Council, are better funded through purchase-of-service agreements.

The City will not provide grants to organizations that, in turn, give grants.

An organization should be able to demonstrate the need for City funding and also demonstrate that it has sought funding from other sources including appropriate and applicable fundraising. The awarding of grants is to provide assistance, and not establish dependency. City Council will determine the continuation of grants to any organization receiving a grant for 3 consecutive years.

Organizations or individuals seeking assistance are limited to 1 request per fiscal year (City) irrespective of the amount requested. Applicants should include all possible anticipated costs in their application. A denied request constitutes the request for the year (in other words, if a request is denied the organization may not re-apply for any reason for a grant or grant-in-lieu within the fiscal year).

### c) Recognition of the City's Contribution

Any organization receiving a grant from the City will recognize the City's contribution in any promotional literature which may be prepared by the organization.

### d) Use of Funds

Any grant funding approved by the City must be used for the purposes stated in the organization's application, unless prior approval to change the purpose of the grant is given by the City.

### e) Commitment by the City

The approval of a grant in one year or over several years in no way obligates the City of Welland to future funding for an organization. Likewise, meeting all of the conditions for a grant does not obligate the City to provide a grant to any organization.

### f) Organizational Status

For an organization to be considered for a grant from the City, it must:

Be managed by a voluntary board of directors who will take responsibility for the receipt and disbursement of funds,

Be a not-for-profit organization,

**Grants & Special Assistance Policy FIN-001-0007**

Have a majority of its clients or members as residents of the City or otherwise provide a significant benefit to the City; and

Be committed to the use of volunteers.

**ANNUAL OPERATING GRANTS/PERMISSIVE GRANTS**

Council approval is required for annual operating grant/ permissive grant requests and applications will be considered during the City's annual budget approval process. In general:

The City will not fund more than 15% of the operating costs for organizations with budgets in excess of \$10,000.00. This is an upper limit for grants, and this limit should not be interpreted as a/the funding level for organizations seeking grants.

The City will not provide grants for the purpose(s) of funding or assisting an organization's operating deficit.

The City will not fund organizations whose purpose is the responsibility of other levels of government. (See General Principles)

The annual operating grant/permissive grants must be used for the delivery of programs to a defined target audience and not for existing overhead, administrative expenses, fundraising activities, funding of previous year's deficits, debt charges or capital costs.

Applications for operating grants/ permissive grants must be submitted by September 30 in order to be considered for budget approval. All applications will be reviewed by the General Manager, Corporate Services/Treasurer who will report eligible grant requests to the Budget Review Committee. The Budget Review Committee will make recommendations to City Council with respect to the awarding of grants. The Budget Review Committee reserves the right to deny any application received after the deadline.

Applications for annual operating grants/permissive grants must include financial statements for the previous year including balance sheet and statement of revenue and expenses. Organizations not normally audited by professional accountants are required to submit an independent review of the statements attesting to the accuracy of the information.

**CAPITAL GRANTS**

A capital grant is defined as a one-time grant to an organization for the purpose(s) of acquiring a physical asset for use by the organization to carry out its programs within the City. Council approval is required for capital grants and Council may consider a capital grant if:

## **Grants & Special Assistance Policy FIN-001-0007**

The purchase of the asset will benefit the recreational, social and cultural life or the delivery of service to the organization's clients or members,

The application is made prior to the organization acquiring or committing to the acquisition of the asset,

The organization has conducted a fundraising campaign and has approached all other sources of potential funding.

In general:

a) Applications for capital grants must be submitted by September 30 in order to be considered for budget approval. All applications will be reviewed by the General Manager, Corporate Services/Treasurer who will report eligible grant requests to the Budget Review Committee. The Budget Review Committee will make recommendations to City Council with respect to the awarding of grants. The Budget Review Committee reserves the right to deny any application received after the deadline.

b) The application for a capital grant must be accompanied by a complete capital budget showing the sources and uses of all funds and an estimation of ongoing operating costs for the project (if any).

c) The sources of funds should indicate any significant level of funding from other sources. Funding information should distinguish between funds-in-hand, funds pledged but not received, and projected additional funding, and any conditions which could in any way affect the availability of those funds.

d) The maximum contribution of the City will be 10% of the cost of the project.

e) Applications for capital grants must include financial statements for the previous year including balance sheet and statement of revenue and expenses. Organizations not normally audited by professional accountants are required to submit an independent review of the statements attesting to the accuracy of the information.

f) Any anticipated future funding requests to the City must accompany the capital grant request.

g) Capital grants will be awarded only once per project or related project.

### **TRAVEL ASSISTANCE GRANTS**

Grants for travelling expenses to provincial/national, or international competitions will be considered if there is significant City benefit from the attendance at such an event.

**Grants & Special Assistance Policy FIN-001-0007****Criteria for Travel Assistance Grants:**

A provincial, national, or international governing body must sanction the competitive event for which the assistance is being asked.

The event must be a recognized competition, and the competitor must have qualified for the event. Grants will not be considered for open invitational tournaments.

Residents applying for assistance must be residents of Welland, and 18 years of age or younger. There is no age restriction for Special Olympics athletes.

Assistance will only be available when travel to the site exceeds 100 kilometres one way.

The individual or group must show an indication that other fundraising efforts have been made.

Competitive events include, but are not necessarily limited to essay competitions, 'spelling bees,' and sporting events.

**Limits for Travel Assistance Grants:**

The following is a breakdown of the amounts that may be distributed by the General Manager Corporate Services/Treasurer without Council approval based on requests that qualify:

**a) Provincial Competitions:**

Individuals - maximum \$100

Team - maximum \$30 per competitor to a maximum of \$500

**b) National Competitions:**

Individuals - maximum \$125

Team - maximum \$30 per competitor to a maximum of \$750

**c) International Competitions:**

Individuals - maximum \$150

Team - maximum \$50 per competitor to a maximum of \$1,000

**SPECIAL EVENT and SPECIAL ASSISTANCE GRANTS**

The City of Welland will award funding to eligible applicants for special events, or for special assistance. This funding is intended to assist individuals and organizations for one-time events and occurrences in Welland. Examples of special events include 'pep'

## **Grants & Special Assistance Policy FIN-001-0007**

rallies, awareness campaigns (MADD), welcoming celebrations. The General Manager Corporate Services/Treasurer has authority to make decisions for grant amounts up to \$2,000.00. Budget Review Committee and Council approval is required for grant amounts over \$2,000.00.

### **Criteria for Special Event and Special Assistance Grants:**

Grants for special events or special assistance require that the event or assistance provide significant City benefit, and will include promotion, awareness, public relations, volunteer recognition, community involvement, and employment opportunities.

The City will not consider grants for the purpose(s) of holding fundraising events.

The General Manager, Corporate Services/Treasurer reserves the right to seek Council approval for amounts less than \$2,000.00 if in his opinion, the event is/may be potentially sensitive.

Organizations requesting these grants are not required to be registered non-profit organizations.

### **NEW FUNDING REQUESTS**

Agencies or organizations requesting grant funding for the first time or requesting funding for new program initiatives must demonstrate the following (in addition to those listed in the General Principles):

- a) That a genuine and demonstrable need in the City is being met;
- b) That the service or program is not duplicated either in whole or in part by another organization within the City, regardless of whether or not the City funds the other organization;
- c) That the City grant will be used for the delivery of programs to its defined target audience and not for existing overhead, administrative expenses, fundraising activities, funding of previous year's deficits, debt charges or capital costs;
- d) That other sources of revenue have been examined and pursued including consideration of user fees (depending on the ability of the clients/participants to contribute financially to the program).

The City of Welland will not normally consider extending grants to replace financial support previously provided by other funding bodies.

City Council may or may not decide to receive new funding applications depending on the funds available in any budget year.

**Grants & Special Assistance Policy FIN-001-0007****APPLICATION PROCEDURE**

All grant requests must be submitted by September 30 to the General Manager, Corporate Services/Treasurer on the standardized forms.

**PAYMENT OF CITY GRANTS**

In general:

Capital grants will be paid to the organization once the asset has been purchased and payment is due. Where the asset forms part of a larger project which is not yet complete at the time of payment of the grant by the City, the agency will provide such security or indemnification as may be required by the City to cover the eventuality that the remainder of the project is not completed.

Travel assistance grants, Special Event grants and Special Assistance grants will be provided to the individual, or organization upon approval of the General Manager, Corporate Services/Treasurer or Council upon satisfactory completion/submission of application criteria. Payment is provided on the understanding that the individual or organization will provide a follow up report, or testimony concerning the event, competition, etc., as may be requested by Council from time to time.





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19-4

**REPORT FIN-2019-21**  
**OCTOBER 15, 2019**

**SUBJECT: MUNICIPAL ACT REGULATION 284/09 AND PUBLIC SECTOR ACCOUNTING**

**AUTHOR: ELIZABETH PANKOFF, MBA, CPA, CGA,  
MANAGER OF BUDGETS AND FINANCIAL REPORTING/DEPUTY  
TREASURER**

**APPROVING G.M.: STEVE ZORBAS, CPA, CMA, B.Comm, DPA,  
GENERAL MANAGER, CORPORATE SERVICES, CHIEF FINANCIAL  
OFFICER/TREASURER**

**RECOMMENDATION:**

THAT THE COUNCIL OF THE CITY OF WELLAND approves the exclusion of amortization and post-employment benefit expenses from the 2020 Budgets.

**ORIGIN AND BACKGROUND:**

The City's annual budget is prepared based on a 'cash basis' of accounting. Key outcomes of the annual budget are the tax and water and wastewater rates which Council is asked to approve. The *Municipal Act, 2001*, requires that financial statements and budgets be prepared in accordance with Generally Accepted Accounting Principles (GAAP) and these principles would require the inclusion of asset amortization and post-employment benefit expenses in the City's budget. The *Municipal Act, 2001*, does not mandate that budgets be prepared on an accrual basis. In fact, the majority of municipalities continue to prepare cash-based budgets.

Ontario Regulation 284/09 allows municipalities and local boards to exclude amortization expenses and post-employment benefit expenses from the budget; however, this does require that Council approves the exclusion of these expenses from the annual budget.

**COMMENTS AND ANALYSIS:**

The full accrual accounting practices followed by municipalities consider the minimum level of funding to cover operating expenses, interest expense, debt, and amortization of tangible capital assets. Currently, the City is meeting its current expenses but needs to do a better job at adequately planning for the future. The sustainable level of revenue should account for current period expenses as well as future capital investment requirements.

**FINANCIAL CONSIDERATION:**

The following analysis displays the City's estimated spending surplus/(deficit) with regards to its tangible capital assets:

<b>Assets</b>	<b>Historical Cost as of December 31, 2018</b>	<b>Estimated Replacement Cost</b>	<b>Estimated 2020 Amortization</b>	<b>2020 Capital Spending*</b>	<b>Sustainable Annual Spending**</b>	<b>Spending Surplus/ (Deficit)***</b>
	\$419.0M	\$1,146.0M	\$11.8M	47.3M	\$23.9M	\$23.4M

\*2020 Capital Budgets

\*\*Sustainable Annual Spending represents the estimated replacement cost divided by the useful life of the assets in the category

\*\*\*Spending Surplus/(Deficit) is calculated as capital spending less sustainable annual spending

Based on the estimated replacement cost of \$1,146.0 million reported in the City's 2016 Addendum to the Asset Management Plan of 2015, an annual sustainable spending level to ensure that the City's assets are replaced and redeveloped in a timely manner would be approximately \$23.9 million. Reviewing the 2020 capital spending of \$47.3 million, it is \$23.4 million above the annual sustainable spending level of \$23.9 million. However, the 2020 capital budget includes approximately \$5.6 million for preapproved capital projects, \$4.2 million for the construction of Fire Stations #1 & #2 (additional funding) and \$13.6 for the Transit Facility.

The City's tangible capital asset spending requirements, funding requirements and capital financing policies require further refinement to achieve the annual sustainable spending level. With the completion of the City's 2016 Addendum to the Asset Management Plan of 2015 and the recommendations by BMA Consulting Inc. during the City's service delivery review to develop an asset management funding strategy, review of capital funding will be a priority in the execution of the 10-year budget cycle.

The Public Sector Accounting Board (PSAB) does not require liabilities associated with post-employment benefits to be fully funded by setting aside any portion of the accumulated surpluses as reserves or reserve funds. At the end of 2018, the City had approximately \$8 million of post-employment liabilities. The City's annual operating budget includes expenses for expected payments for retirement plans, sick leave benefit plans, long-term disability plans, WSIB and vacation agreements.

**OTHER DEPARTMENT IMPLICATIONS:**

Not applicable.

**SUMMARY AND CONCLUSION:**

Staff recommends that Council approves the exclusion of amortization expenses and post-employment benefit expenses from the 2020 Budgets.

**ATTACHMENTS:**

Appendix I – The *Municipal Act, 2001*, Ontario Regulation 284/09, Budget Matters – Expenses

**Municipal Act, 2001**  
**Loi de 2001 sur les municipalités**

**ONTARIO REGULATION 284/09**  
**BUDGET MATTERS — EXPENSES**

Consolidation Period: From July 31, 2009 to the e-Laws currency date.

No amendments.

*This Regulation is made in English only.*

**Exclusion**

1. In preparing the budget for a year, a municipality or local board may exclude from the estimated expenses described in paragraph 3 of subsection 289 (2) and in paragraph 3 of subsection 290 (2) of the Act all or a portion of the following:

1. Amortization expenses.
2. Post-employment benefits expenses.
3. Solid waste landfill closure and post-closure expenses. O. Reg. 284/09, s. 1.

**Report**

2. (1) For 2011 and subsequent years, the municipality or local board shall, before adopting a budget for the year that excludes any of the expenses listed in section 1,

- (a) prepare a report about the excluded expenses; and
- (b) adopt the report by resolution. O. Reg. 284/09, s. 2 (1).

(2) If a municipality or local board plans to adopt or has adopted a budget for 2010 that excludes any of the expenses listed in section 1, the municipality or local board shall, within 60 days after receiving its audited financial statements for 2009,

- (a) prepare a report about the excluded expenses; and
- (b) adopt the report by resolution. O. Reg. 284/09, s. 2 (2).

**Contents**

3. A report under section 2 shall contain at least the following:


1. An estimate of the change in the accumulated surplus of the municipality or local board to the end of the year resulting from the exclusion of any of the expenses listed in section 1.
2. An analysis of the estimated impact of the exclusion of any of the expenses listed in section 1 on the future tangible capital asset funding requirements of the municipality or local board. O. Reg. 284/09, s. 3.

**Review**

4. The Ministry of Municipal Affairs and Housing shall initiate a review of this Regulation on or before December 31, 2012. O. Reg. 284/09, s. 4.

5. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS REGULATION). O. Reg. 284/09, s. 5.

Back to top

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03-133  
11-108

**COUNCIL**

**INFRASTRUCTURE AND DEVELOPMENT SERVICES**

**REPORT P&B-2019-51  
OCTOBER 15, 2019**

**SUBJECT: COMMUNITY IMPROVEMENT PLAN INCENTIVE  
APPLICATIONS – QUARTERLY SUMMARY REPORT  
FOR THIRD QUARTER OF 2019**

**AUTHOR: CHRISTINE ROSSETTO, B.A. (Hons.)  
PLANNING ASSISTANT**

**APPROVING SUPERVISOR: ROSE DI FELICE, M.PI., M.Sc., MCIP, R.P.P.  
MANAGER OF POLICY PLANNING**

**APPROVING G.M.: TRAVERS FITZPATRICK  
GENERAL MANAGER,  
INFRASTRUCTURE AND DEVELOPMENT SERVICES**

**RECOMMENDATION:**

THAT THE COUNCIL OF THE CITY OF WELLAND receives for information Report P&B-2019-51 being a quarterly summary Report of approved 2019 Community Improvement Plan Incentive Applications between July 1, 2019 and September 30, 2019.

**ORIGIN AND BACKGROUND:**

On July 19, 2016, Council delegated, by By-law, Community Improvement Plan (CIP) Incentive Grant Approvals to Staff and adopted procedures for the processing of the Applications subject to the Delegated Authority. This Report deals with the Incentive Applications that were approved in the third quarter of 2019.

**COMMENTS AND ANALYSIS:**

Ten Community Improvement Plan Incentive Applications were approved in the third quarter of 2019. This includes eight Applications within the Downtown and Health and Wellness Cluster Project Area and two Applications within the Brownfield Project Area.

Supplementary information is also provided regarding Tax Increment Grants which have been approved by Council (under By-law 2016-104) and are associated with other incentives for proposals noted in the following Tables.

The following table outlines the Grant details for the eight Applications approved under the Downtown and Health and Wellness Cluster CIP.

LOCATION, INCENTIVE PROGRAM AND TYPE OF WORK	ESTIMATED PROJECT COST OR FEES	MAXIMUM ELIGIBLE GRANT	CITY PORTION OF GRANT	REGIONAL PORTION OF GRANT
<b>5, 25 and 49 Denistoun Street</b>  Residential Grant Program - street townhouses  Planning and Building Fees Grant Program - refund of building permit fees  Tax Increment Grant Program - approved by Council August 6, 2019	 \$2,395,600    \$25,933   	 \$60,000    \$5,000    \$275,670   	 \$30,000    \$5,000    \$152,730   	 \$30,000    \$0    \$122,939   
<b>112-114 Division Street</b>  Facade Improvement Grant Program - front and side façade work  Building Improvement Grant Program - furnace and air conditioner	 \$36,045    \$9,292   	 \$16,979    \$4,646   	 \$8,489    \$2,323   	 \$8,489    \$2,323   
<b>232 East Main Street</b>  Residential Grant Program - fire code work to existing units  Planning and Building Fees Grant Program - refund of building permit fee	 \$75,378    \$160   	 \$53,905    \$160   	 \$26,952    \$160   	 \$26,952    \$0   

LOCATION, INCENTIVE PROGRAM AND TYPE OF WORK	ESTIMATED PROJECT COST OR FEES	MAXIMUM ELIGIBLE GRANT	CITY PORTION OF GRANT	REGIONAL PORTION OF GRANT
<b>139 East Main Street</b>				
Building Improvement Grant Program - electrical and fire safety work	\$27,520	\$12,500	\$6,250	\$6,250
Residential Grant Program - dwelling units	\$59,832	\$27,525	\$13,762	\$13,762
Planning and Building Fees Grant Program - refund of building permit fee	\$3,900	\$3,900	\$3,900	\$0
Tax Increment Grant Program - approved by Council September 3, 2019	\$78,030	\$13,500	\$7,479	\$6,020
<b>226 King Street</b>				
Building Improvement Grant Program - window and eaves	\$6,214	\$3,107	\$1,553	\$1,553
Facade Improvement Grant Program - front and side façade work	\$3,900	\$1,950	\$975	\$975
<b>676 King Street</b>				
Building Improvement Grant Program - roof	\$26,543	\$12,500	\$6,250	\$6,250
<b>51-55 West Main Street</b>				
Building Improvement Grant Program - roof	\$31,500	\$12,500	\$6,250	\$6,250
<b>515-521 King Street</b>				
Building Improvement Grant Program - roof	\$51,772	\$12,500	\$6,250	\$6,250
<b>TOTAL</b>	<b>\$2,831,619</b>	<b>\$516,342</b>	<b>\$278,323</b>	<b>\$238,013</b>

The following table outlines the Grant details for the two Applications approved under the Brownfield Environmental Study Grant Program.

LOCATION	ESTIMATED STUDY COST	MAXIMUM ELIGIBLE GRANT	CITY PORTION OF GRANT	REGIONAL PORTION OF GRANT
51 Niagara Street	\$25,795	\$12,897	\$7,897	\$5,000
115 Lincoln Street (first study)	\$39,605	\$19,802	\$14,802	\$5,000
115 Lincoln Street (second study)	\$45,000	\$15,000	\$10,000	\$5,000
<b>TOTAL</b>	<b>\$110,400</b>	<b>\$47,699</b>	<b>\$32,699</b>	<b>\$15,000</b>

As per Council's request, the following information is included with respect to the Downtown and Health and Wellness Cluster CIP Programs in the second quarter of 2019:

- A total of 15 general and specific inquiries were received;
- A total of 5 pre-Application meetings were held by Staff;
- All complete Incentive Applications submitted were approved.

**FINANCIAL CONSIDERATION:**

The City's portion of the Grants for these Approvals, upon completion, will be covered with funds from the Incentives Program Fund.

**OTHER DEPARTMENT IMPLICATIONS:**

The Finance Division, upon completion of the approved works, will be involved with all financial aspects associated with the issuance of these Grants.

The Building Division will be involved with the issuance of the required Permits.

**SUMMARY AND CONCLUSION:**

Council delegated CIP Incentive Grant Approvals to Staff. As part of the approval procedures contained within the Delegation By-law, a Report outlining the Incentive Grant Applications that have been approved is to be prepared for Council's information on a quarterly basis. As noted in this Report, a total of ten CIP Incentive Applications were submitted and approved in the third quarter of 2019.

**ATTACHMENTS:**

None.



APPROVALS	
GENERAL MANAGER	
CFO	
CAO	

12-138

COUNCILINFRASTRUCTURE AND DEVELOPMENT SERVICES

REPORT P&B-2019-52  
OCTOBER 15, 2019

**SUBJECT:** REQUEST FOR PART LOT CONTROL EXEMPTION –  
FOR ALL OF LOTS 1 & 2, PLAN 59M-402, KNOWN  
MUNICIPALLY AS 46, 48 & 52 TRENT AVENUE

**AUTHOR:** RACHELLE LAROCQUE, BES, M.Sc., MCIP, RPP  
PLANNING SUPERVISOR

**APPROVING SUPERVISOR:** GRANT MUNDAY, B.A.A., MCIP, RPP  
MANAGER OF DEVELOPMENT APPROVALS

**APPROVING G.M.:** TRAVERS FITZPATRICK  
GENERAL MANAGER,  
INFRASTRUCTURE AND DEVELOPMENT SERVICES

RECOMMENDATION:

1. THAT THE COUNCIL OF THE CITY OF WELLAND approves the Exemption of Part Lot Control for all of Lots 1 & 2 on Plan 59M-402, known municipally as 46, 48 & 52 Trent Avenue, to realize the sale of the semi-detached residential units on 46 & 48 Trent Avenue and the future development on 52 Trent Avenue; and further,
2. THAT Welland City Council authorizes Staff to prepare the necessary By-laws.

ORIGIN AND BACKGROUND:

The subject lands (Lots 1 & 2 on Plan 59M-402) are part of the Woods Estates Plan of Subdivision which was registered in 2013. As with all Registered Plans of Subdivision, a Subdivision Agreement between the City and Owner was executed. The properties are zoned Residential Low Density 1 (RL1) which permits the development of the property with single detached and semi-detached dwellings.

Lot 2 has been developed with a semi-detached dwelling and a Reference Plan has been deposited with the Registry Office. Parts 1-4 on Plan 59R-16338 reflect the semi-detached dwelling that was constructed on the property. Part 1 on Plan 59R-16338 is a drainage easement in favour of the City and part of a Bell Telecommunications easement. Part 2 on Plan 59R-16338 is an easement in favour of Bell Telecommunications.

COMMENTS AND ANALYSIS:

The property owner, J. Di Franco & Son Construction has requested an Exemption to Part Lot Control as a semi-detached dwelling has been constructed on Lot 2 and they are looking to construct an additional semi-detached dwelling on Lot 1. and the owner would

now like to sell the units individually. The constructed semi-detached dwelling units are municipally known as 46 & 48 Trent Avenue. The vacant lot is currently known as 52 Trent Avenue.

Once the semi-detached dwelling units are constructed and sold, the By-law should be discharged from Title. A timeline of five (5) years has been incorporated in said By-law to ensure its discharge. Staff is of the opinion that the five (5) year timeline is sufficient with respect to the sale of the units.

The granting of an Exemption to Part Lot Control, under Section 50(5) of the Planning Act will permit the proposed dwellings to be in conformity with the Zone provisions applicable to the subject lands for each semi-detached dwelling unit. Staff is of the opinion that such a By-law is appropriate.

**FINANCIAL CONSIDERATION:**

All costs associated with the development of this property will be borne by the Owner.

**OTHER DEPARTMENT IMPLICATIONS:**

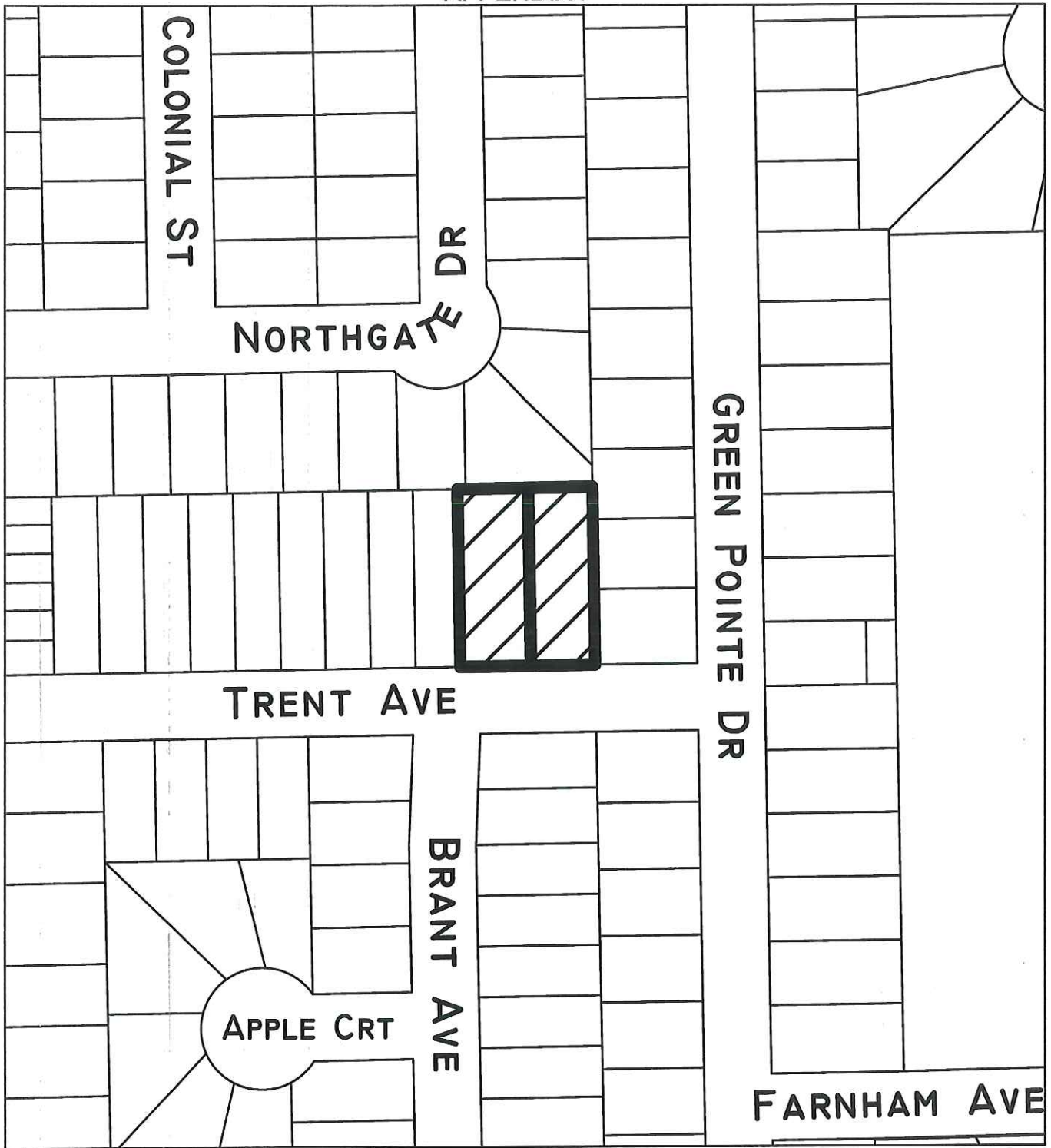
The Legal Division will assist with the Registration of this By-law.

**SUMMARY AND CONCLUSION:**

Staff recommends that Council approve the request for Exemption to Part Lot Control for Lots 1 & 2 on Plan 59M-402, to realize the sale of these lands for residential development purposes. Staff will prepare the necessary By-law in this regard.

**ATTACHMENTS:**

- Appendix I - Key Map
- Appendix II - Registered Reference Plan



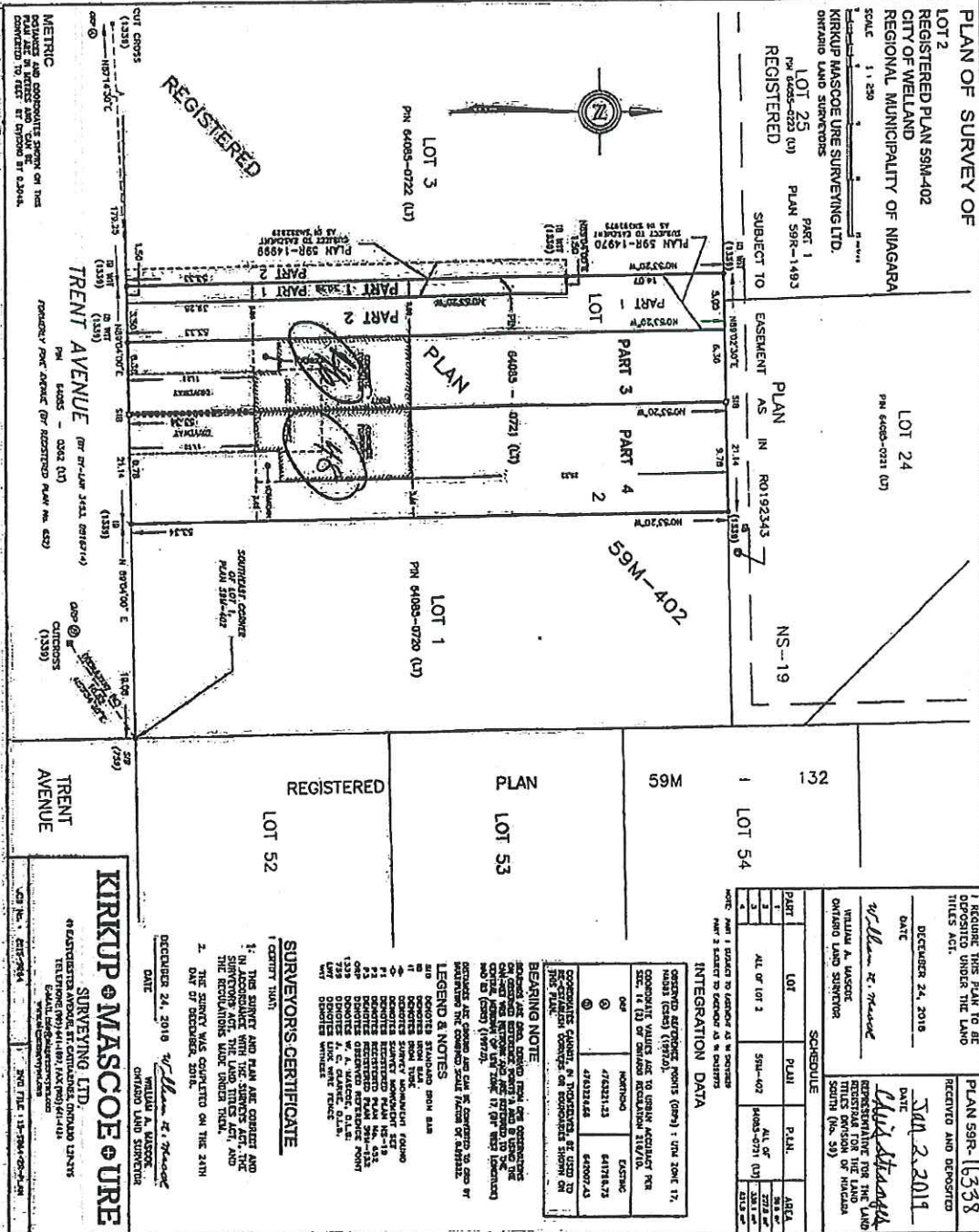
# KEY MAP



**SUBJECT LANDS**



*Infrastructure and  
Development Services*  
Planning Division



1. REQUIRE THIS PLAN TO BE DEPOSITED UNDER THE LAND TITLES ACT.  
 DATE: DECEMBER 24, 2018  
 W. A. MASCOE  
 ONTARIO LAND SURVEYOR  
 REPRESENTATIVE FOR THE LAND SURVEYORS OF ONTARIO (REG. NO. 39)  
 DATE: JAN 2, 2019  
 A. J. MASCOE  
 ONTARIO LAND SURVEYOR

PLAN 59R-16338  
 RECEIVED AND DEPOSITED  
 DATE: JAN 2, 2019

PART	LOT	PLAN	P.L.N.	AREA
1	ALL OF LOT 2	59M-402	64085-0721 (U)	28.8 m <sup>2</sup>
2				38.1 m <sup>2</sup>
3				21.9 m <sup>2</sup>
4				

NOTE: PART 1 SUBJECT TO EASEMENT AS IN EASEMENT PLAN 5 SUBJECT TO EASEMENT AS IN EASEMENT

COORDINATE SYSTEM	UNIT	PROJECTION
UTM	METRE	UTM
43Q	1/62500.00	43Q/18N

ORIGINALLY DETECTED POINTS (OPEN) : UTM ZONE 17, DATUM: NAD 83, ELEVATION: 100.00 METRES  
 COORDINATE VALUES FOR TO BRINK, ACQUADRY FOR SEC. 16 (U) OF CHANNO, REGULATION 11/1/10.

BEARING NOTE:  
 BEARINGS ARE ALSO DERIVED FROM THE OBSERVATIONS ON GEODETIC REFERENCE POINTS A AND B FROM THE CHAIN MEASUREMENT OF THE ZONE 17 (UTM) BEARING AND TO (59M) (1972).

LEGEND & NOTES:  
 1. THIS SURVEY AND PLAN ARE CORRECT AND ACCURATE IN ACCORDANCE WITH THE LAND TITLES ACT, AND THE REGULATIONS MADE UNDER THEREIN.  
 2. THE SURVEY WAS COMPLETED ON THE 24TH DAY OF DECEMBER, 2018.  
 DATE: DECEMBER 24, 2018  
 W. A. MASCOE  
 ONTARIO LAND SURVEYOR

**SURVEYOR'S CERTIFICATE**  
 I, CERTIFY THAT:  
 1. THIS SURVEY AND PLAN ARE CORRECT AND ACCURATE IN ACCORDANCE WITH THE LAND TITLES ACT, AND THE REGULATIONS MADE UNDER THEREIN.  
 2. THE SURVEY WAS COMPLETED ON THE 24TH DAY OF DECEMBER, 2018.  
 DATE: DECEMBER 24, 2018  
 W. A. MASCOE  
 ONTARIO LAND SURVEYOR

**KIRKUP MASCOE URE**  
**SURVEYING LTD.**  
 4 EASTVIEW AVENUE, ST. CATHARINES, ONTARIO L2M 4L7  
 TELEPHONE: (905) 641-1821 FAX: (905) 641-1141  
 EMAIL: kirkup@kirkupmascoeure.com  
 REG. NO. 39

APPROVALS	
GENERAL MANAGER	
CFO	
CAO	

COUNCILINFRASTRUCTURE AND DEVELOPMENT SERVICES

19-113

REPORT P&B-2019-53  
OCTOBER 15, 2019

**SUBJECT: BROWNFIELD TAX ASSISTANCE PROGRAM AND  
BROWNFIELD TAX INCREMENT GRANT PROGRAM  
2321846 ONTARIO INC.  
240 DENISTOUN STREET (FILE NO. BROWN 2019-02)**

**AUTHOR: CHRISTINE ROSSETTO, B.A. (Hons.)  
PLANNING ASSISTANT**

**APPROVING SUPERVISOR: ROSE DI FELICE, M.PI., M.Sc., MCIP, R.P.P.  
MANAGER OF POLICY PLANNING**

**APPROVING G.M.: TRAVERS FITZPATRICK  
GENERAL MANAGER,  
INFRASTRUCTURE AND DEVELOPMENT SERVICES**

RECOMMENDATION:

THAT THE COUNCIL OF THE CITY OF WELLAND approves the Application for Brownfield Incentive Programs for the property known municipally as 240 Denistoun Street for the Brownfield Tax Assistance Program in the estimated amount of \$3,213 (City and Region) and the Brownfield Tax Increment Grant Program in the estimated amount of \$1,750,889 (City and Region) plus any remaining eligible costs not covered under the Tax Assistance Program; and further

THAT Welland City Council supports in principle a By-law to cancel City property taxes for a maximum of 3 years and the said By-law and this Report be circulated to the Niagara Region to request the Region's participation in the Tax Assistance Program for cancellation of the increase in the Regional portion of property taxes and in the Tax Increment Grant Program; and further

THAT Welland City Council directs Staff to prepare the required By-law(s) and Agreement(s); and further

THAT Welland City Council authorizes the Mayor and City Clerk to execute any documentation required to satisfy conditions related to participation in the Brownfield Incentive Programs.

ORIGIN AND BACKGROUND:

A Brownfield Community Improvement Plan (CIP) Incentive Application has been received for property municipally known as 240 Denistoun Street. The Owner proposes to

remediate the property for future residential purposes and is seeking approval under the Brownfield Tax Assistance (BTA) Program and the Brownfield Tax Increment Grant (BTIG) Program. In addition, the Owner has made Application for the Brownfields Fees Grant Program for a refund of all Planning and Building Permit fees.

The purpose of the BTA is to encourage the remediation and rehabilitation of brownfield sites by providing a cancellation of the City's property tax for up to 3 years on a property that is undergoing or has undergone remediation and redevelopment to assist with payment of the cost of environmental remediation. Based on the lowest quotes, the estimated remediation costs eligible under this Program is \$101,850.

The purpose of the BTIG Program is to provide an annual grant for up to 10 years after project completion to assist with the cost of remediating and redeveloping brownfield properties where the project results in an increase in property assessment and property taxes. Based on the lowest quotes, the total estimated eligible remediation and redevelopment costs under this Program is \$16,026,436 (\$66,436 for relocating on-site hydro lines and \$15,960,000 for building construction) plus any remaining eligible costs not covered under the BTA Program.

#### **COMMENTS AND ANALYSIS:**

The subject property is located at the north east corner of Lincoln and Denistoun Streets and is illustrated on the attached Location Map (Appendix I). The property is vacant apart from Hydro lines and walking path traversing the site. The Owner proposes to remediate the property for future residential use of a 6 storey condominium building comprised of approximately 80 dwelling units. Although a development Application has not been submitted or approved by the City, Appendix II identifies a possible concept plan.

This site qualifies as an eligible property in accordance with the CIP. The environmental consultants have noted that remediation is required in order to permit the filing of a Record of Site Condition (RSC). As the environmental standards for residential land use are not met, an RSC must be obtained to permit the redevelopment of the property for residential purposes.

#### **Brownfield Tax Assistance Program**

The BTA Program provides a financial incentive in the form of cancellation of City property taxes for up to 3 years during the rehabilitation period and redevelopment period. The Niagara Region tax assistance is a cancellation of the increase in Region property taxes during the rehabilitation period.

As shown on Appendix III, it is estimated that City total property taxes of \$3,140 could be cancelled under the BTA Program starting in 2019 for 3 years. The Region's contribution has been estimated to be \$73 starting in 2019 for 3 years. The cancelled property taxes (City and Region) are deducted from the amount of eligible remediation costs that can be rebated through the BTIG Program. This financial incentive will cease when the total tax assistance provided equals the total eligible costs, or after 3 years, whichever comes first.

The Owner has not requested approval under the Provincial Brownfield Financial Tax Incentive Program for the education component of taxes.

Pursuant to the Municipal Act, a By-law must be passed by Council authorizing the municipal (City and Region) tax assistance.

Niagara Region must confirm their participation in the Brownfield Tax Assistance Program.

### **Brownfield Tax Increment Grant Program**

The BTIG Program provides an annual grant equivalent to a percentage of the increase in municipal (City and Region) property taxes that result from the project for up to 10 years, after the BTA ends. The annual City grant will equal 80% of the property tax increase created by the project. If the as-built project meets minimum City criteria provided for under the Program, the annual City grant will equal 100% of the property tax increase. The annual Region grant will equal a variable percentage of the property tax increase created by the project from 70% in Year 1 to 20% in Year 10.

The estimated post-project assessed value (current assessment plus eligible costs) of the completed development has been used to estimate the TIG. As shown on Appendix IV, the City's contribution at 80% of the property tax increase has been estimated to be \$1,082,253 and at 100% of the property tax increase has been estimated to be \$1,285,316 both over the 10 year period. As shown on Appendix V, the Region's contribution at 70% (Year 1) down to 20% (Year 10) has been estimated to be \$465,573. The TIG is payable for 10 years or up to time when total payments equal the total eligible costs.

Niagara Region must confirm their participation in the Brownfield Tax Increment Grant Program.

### **Summary**

The total estimated eligible costs for both Tax Incentive Programs is \$16,128,286. Based on the estimated Grant calculations, the Owner could recover approximately \$1,754,102 in eligible costs through both Programs.

If Council approves the Application, the Owner will be required to enter into a Grant Agreement(s) for the respective Brownfield Programs which will specify the terms for each Grant. The environmental remediation works may not commence until the Agreement(s) has been executed and the By-law(s) have been passed. Successful completion of a residential redevelopment project is a requirement of both Grant Programs.

The proposal meets the goals of the Brownfield CIP by improving the physical and visual quality of the site and improving environmental health and public safety by remediating the property for human habitation. Site redevelopment will increase tax assessment and property tax revenues. One of the goals of the CIP is to increase the long-term assessment base and property tax revenues for the City.

Staff recommends approval of the Application for the BTA and BTIG Programs for 240 Denistoun Street. These financial incentives will help offset the costs of environmental remediation and redevelopment of this Brownfield property. Redeveloping this Brownfield site for residential use will increase the municipal tax base, revitalize the vacant property, improve the environmental quality of the site and City as a whole and provide housing opportunities for people.

### **FINANCIAL CONSIDERATION:**

The BTA Program will be administered as follows:

- Cancellation of City property taxes for the rehabilitation period and redevelopment period for up to 3 years;
- Regional participation is subject to Regional Council approval;
- The period during which City property taxes are cancelled commences when the By-law is passed or on the date specified in the By-law; and
- The tax assistance will end if the eligible property is severed, subdivided, sold or conveyed prior to the end of the 3 year period specified in the By-law.

The BTIG Program will be administered as follows:

- Tax increment based grant program uses future tax increase (tax increment) to pay for eligible remediation and redevelopment costs by way of a property tax rebate;
- City Grant is 80% of the City portion of the property tax increase rebated annually each year for up to 10 years.
- City Grant will be increased to 100% of the property tax increase rebated annually each year for up to 10 years if the as-built project meets the Program criteria.
- Regional participation is subject to Regional Council approval;
- Region Grant is a variable percentage of the property tax increase rebated annually each year for up to 10 years as follows:

Year	No LEED Certification	LEED Certification	LEED Silver	LEED Gold	LEED Platinum
1	70%	80%	80%	80%	90%
2	60%	80%	80%	80%	90%
3	60%	70%	70%	80%	90%
4	50%	70%	70%	80%	90%
5	50%	60%	70%	80%	90%
6	50%	60%	70%	80%	90%
7	40%	50%	60%	80%	90%
8	30%	50%	60%	80%	90%
9	20%	40%	60%	80%	90%
10	20%	30%	60%	80%	90%
<b>TOTAL</b>	<b>450</b>	<b>590</b>	<b>680</b>	<b>800</b>	<b>900</b>

The total amount of all Grants provided through all available Incentive Programs shall not exceed the total cost of remediation and redeveloping the property which is estimated at \$16,128,286.

#### **OTHER DEPARTMENT IMPLICATIONS:**

The Legal Division will be involved in the registration of the Agreement(s) and By-laws. The Planning Division will be involved with the Plan of Condominium approval, the Site Plan Control approval and any subsequent planning approvals required. The Building Division will be responsible for processing the future Building Permit Applications and implementing the Development Charge Reductions. The proposed redevelopment will be



eligible for an automatic 75% City Development Charge exemption with an additional 25% exemption if the proposed development incorporates Smart Growth principles. The Finance Division will be involved with all financial aspects associated with each specific Incentive Program.

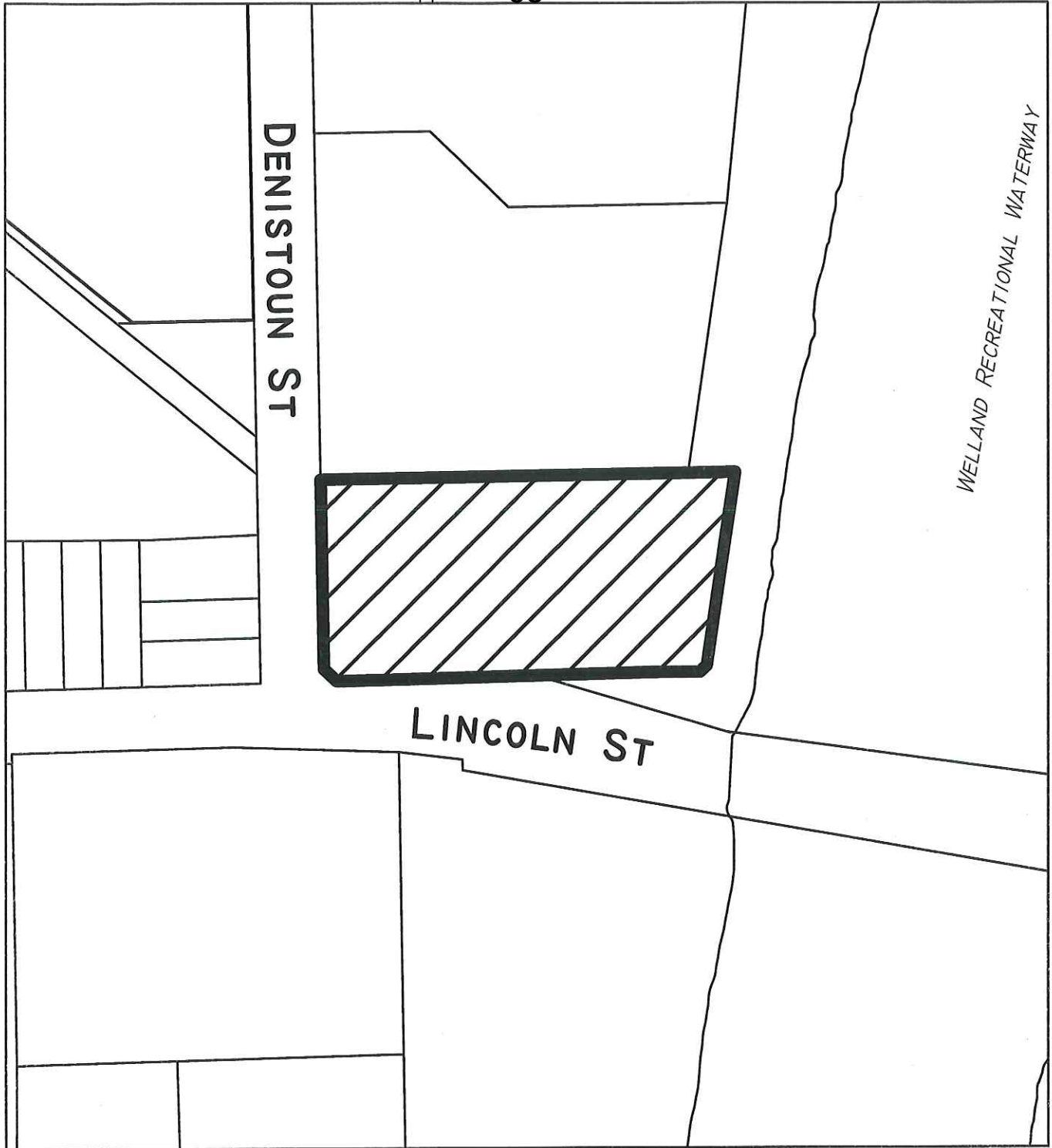
**SUMMARY AND CONCLUSION:**

The Owner of 240 Denistoun Street has requested funding under 2 Brownfield Incentive Programs for the proposed remediation and redevelopment of this property. Council's implementation of these Programs facilitates redevelopment of Brownfield properties by assisting property Owners with costs associated with environmental remediation and development. The proposed residential use of the property will provide approximately 80 residential dwelling units.

Staff recommends approval of the Application for the Brownfield Tax Assistance Program and the Brownfield Tax Increment Grant Program for 240 Denistoun Street as discussed in this Report. The approval of the Application will provide an estimated financial incentive to the Owner of \$1,754,102 in eligible costs. The construction of new residential units will increase the assessed value, revitalize the vacant property, improve the environmental quality of the site and provide new housing opportunities.

**ATTACHMENTS:**

- Appendix I - Location Map
- Appendix II - Concept Plan
- Appendix III - Tax Assistance Program Estimated Calculation
- Appendix IV - City Tax Increment Grant Estimated Calculation
- Appendix V - Region Tax Increment Grant Estimated Calculation



# LOCATION MAP

240 Denistoun Street

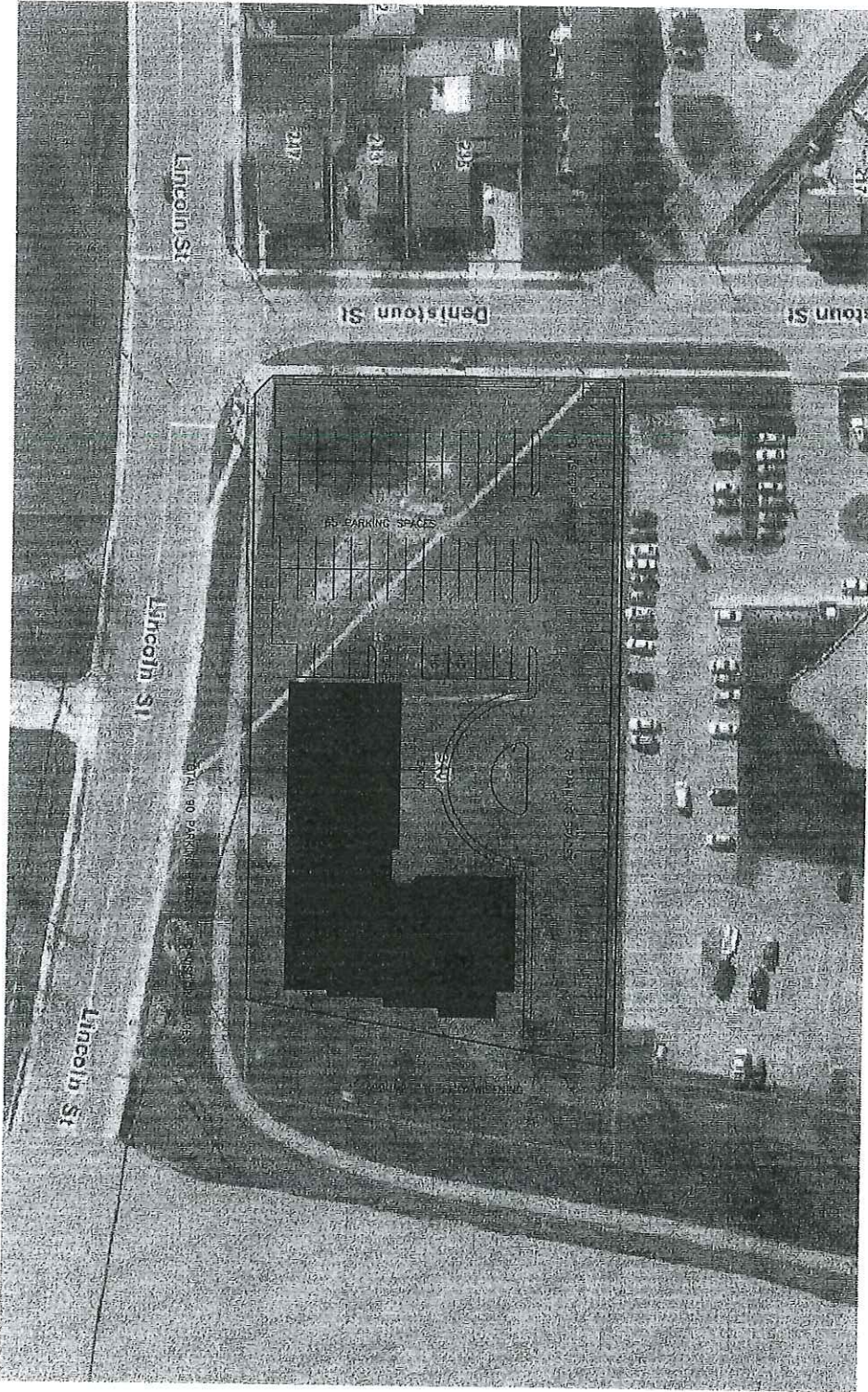


**SUBJECT LANDS**



*Infrastructure and  
Development Services*  
Planning Division

Appendix II



CITY OF WELLAND BROWNFIELD CIPS  
TAX ASSISTANCE PROGRAM CALCULATOR - FOR CITY and REGION PORTION  
240 Dentistoun Street

Dated: September 25, 2019

	Pre-Project (RT)	Estimated Year 1 Taxes (3% Increase)	Estimated Year 1 Tax Assistance	Estimated Year 2 Taxes (3% Increase)	Estimated Year 2 Tax Assistance	Estimated Year 3 Taxes (3% Increase)	Estimated Year 3 Tax Assistance	Estimated Total Tax Assistance
Roll 271905000200100	\$123,766.00							
Assessment Value		\$1,015.92	\$1,015.92	\$1,046.40	\$1,046.40	\$1,077.79	\$1,077.79	\$3,140.11
Municipal Taxes	\$986.33	\$817.76	\$23.82	\$842.29	\$24.53	\$867.56	\$25.27	\$73.62
Regional Taxes	\$793.94							
<b>Total</b>	<b>\$1,780.27</b>	<b>\$1,833.68</b>	<b>\$1,039.74</b>	<b>\$1,888.69</b>	<b>\$1,070.93</b>	<b>\$1,945.35</b>	<b>\$1,103.06</b>	<b>\$3,213.73</b>

The City portion of the Brownfield Tax Assistance has been calculated using the June 2018 CIP which provides for a cancellation of taxes. The Region portion of the Brownfield Tax Assistance has been calculated using the 2007 CIP which provides for tax assistance based on the increase in taxes. The pre-project assessment value is based on actual 2019 MPAC assessment. The results are estimates only, assume a 3% tax increase and are subject to change as the annual tax base and rates change. The results shall not be relied upon as a guarantee or assurance of tax assistance.

Welland Property Tax Rate (Residential - RT) 0.00796933  
 Regional Property Tax (Residential - RT) 0.00641486  
 Education Property Tax Rate (Residential - RT) 0.00161000

CITY OF WELLAND BROWNFIELD CIP JUNE 2018  
 TAX INCREMENT GRANT PROGRAM CALCULATOR - FOR CITY PORTION  
 240 Denistoun Street - Estimated City Grant

Dated: September 25, 2019

Roll	Pre-Project (RT)	Estimated Post-Project (RT)	Tax Increment	Annual City Grant Payment 80% Tax Increment	Total City Grant Payment 80% Tax Increment	Annual City Grant Payment 100% Tax Increment	Total City Grant Payment 100% Tax Increment
Assessment Value	\$123,766.00	\$16,252,052.59		\$102,625.31	\$1,026,253.11	\$128,531.64	\$1,285,316.38
Municipal Taxes	\$986.33	\$129,517.97	\$128,531.64				
Regional Taxes	\$793.94	\$104,254.64	\$103,460.70				
Education Taxes	\$199.26	\$26,165.80	N/A				
<b>Total</b>	<b>\$1,979.54</b>	<b>\$259,938.42</b>	<b>\$231,992.34</b>				
		% of Tax Increment	80.00%				
		Duration of Grant Payment	10				
		% of Tax Increment	100.00%				

The estimated post-project assessment value of \$16,252,052.59 is based on 2019 assessment of the subject lands plus estimated remediation and construction/servicing costs (\$16,128,286.59). The actual post-project assessment value will be completed by MPAC following project completion. The pre-project assessment value is based on actual 2019 MPAC assessment. The results are based on 2019 tax rates, assume a constant tax rate and are subject to change as the annual tax base changes. The annual grant payment and the total grant payment are estimates only and do not constitute any guarantee or assurance of a grant and should not be relied upon as such.

- Welland Property Tax Rate (Residential - RT) 0.00796933
- Regional Property Tax (Residential - RT) 0.00641486
- Education Property Tax Rate (Residential - RT) 0.00161000
- Welland Property Tax Rate (Multi-Residential - MT) 0.01569959
- Regional Property Tax Rate (Multi-Residential - MT) 0.01263727
- Education Property Tax Rate (Multi-Residential - MT) 0.00161000

Appendix V

CITY OF WELLAND BROWNFIELD CIP 2007  
240 Division Street - Estimator Region Grant  
TAX INCREMENT GRANT PROGRAM CALCULATOR - FOR REGION PORTION

Roll 27 10/01/02-03/00	Pre-Project (RT)	Claimable Post-Project	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Total Region Grant Payment
Assessment Value	\$12,795.00	\$16,287,052.50	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$1,250,000.00
Municipal Taxes	2883.33	272,517.57	272,517.57	272,517.57	272,517.57	272,517.57	272,517.57	272,517.57	272,517.57	272,517.57	272,517.57	272,517.57	2,725,175.70
Regional Taxes	1,100.00	1,100.00	1,100.00	1,100.00	1,100.00	1,100.00	1,100.00	1,100.00	1,100.00	1,100.00	1,100.00	1,100.00	11,000.00
Education Taxes	1,100.00	252,162.60	252,162.60	252,162.60	252,162.60	252,162.60	252,162.60	252,162.60	252,162.60	252,162.60	252,162.60	252,162.60	2,521,626.00
Education Taxes - Total	\$1,100.00	\$252,162.60	\$252,162.60	\$252,162.60	\$252,162.60	\$252,162.60	\$252,162.60	\$252,162.60	\$252,162.60	\$252,162.60	\$252,162.60	\$252,162.60	\$2,521,626.00
% of Tax Increment	76.00%	69.00%	69.00%	69.00%	69.00%	69.00%	69.00%	69.00%	69.00%	69.00%	69.00%	69.00%	69.00%
Region Year 1 Tax Increment			\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$1,250,000.00
Region Year 1 Tax Increment Payment			\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$724,726.00
Region Year 2 Tax Increment			\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$1,250,000.00
Region Year 2 Tax Increment Payment			\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$724,726.00
Region Year 3 Tax Increment			\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$1,250,000.00
Region Year 3 Tax Increment Payment			\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$724,726.00
Region Year 4 Tax Increment			\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$1,250,000.00
Region Year 4 Tax Increment Payment			\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$724,726.00
Region Year 5 Tax Increment			\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$1,250,000.00
Region Year 5 Tax Increment Payment			\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$724,726.00
Region Year 6 Tax Increment			\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$1,250,000.00
Region Year 6 Tax Increment Payment			\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$724,726.00
Region Year 7 Tax Increment			\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$1,250,000.00
Region Year 7 Tax Increment Payment			\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$724,726.00
Region Year 8 Tax Increment			\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$1,250,000.00
Region Year 8 Tax Increment Payment			\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$724,726.00
Region Year 9 Tax Increment			\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$1,250,000.00
Region Year 9 Tax Increment Payment			\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$724,726.00
Region Year 10 Tax Increment			\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$1,250,000.00
Region Year 10 Tax Increment Payment			\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$72,472.60	\$724,726.00
Total Region Grant Payment													\$7,247,260.00

The estimated post-project assessment value of \$10,252,802.00 is based on construction/working costs (516,120,262.51). The actual post-project assessment value will be completed by MPAC following project completion. The pre-project assessment value is based on the 2006 assessment roll. The tax rate and millage rate are based on 2006 tax rates and millage rates. The tax rate and millage rate are subject to change as the annual tax base changes. The annual grant payment and the total grant payment are estimates only and do not represent any guarantee or assurance of a grant and should not be relied upon as such.

Welland Property Tax Rate (Residential - RT) \$ 0.0024252  
Welland Property Tax Rate (Commercial - CT) \$ 0.0042446  
Welland Property Tax Rate (Industrial) \$ 0.0078100  
Regional Property Tax Rate (Multi-Residential - RT) \$ 0.0159916  
Regional Property Tax Rate (Commercial - CT) \$ 0.0280000  
Education Property Tax Rate (Multi-Residential - RT) \$ 0.0101100

**COUNCIL**  
**INFRASTRUCTURE AND DEVELOPMENT SERVICES**  
**ENGINEERING DIVISION**

APPROVALS	
GENERAL MANAGER	
CFO	
CAO	

REPORT ENG-2019-39  
OCTOBER 15, 2019

**SUBJECT:** ASSUMPTION OF PINE CREEK ESTATES SUBDIVISION DEVELOPMENT

**AUTHOR(S):** C. SCOTT RICHARDSON, C.E.T.  
DEVELOPMENT SUPERVISOR

**APPROVING MANAGER:** CHRIS ANDERS, P. ENG.  
MANAGER OF ENGINEERING SERVICES

**APPROVING G.M.:** TRAVERS FITZPATRICK, GENERAL MANAGER,  
INFRASTRUCTURE AND DEVELOPMENT SERVICES

**RECOMMENDATIONS:**

THAT THE COUNCIL OF THE CITY OF WELLAND approves Report ENG-2019-39 for the Assumption of the Pine Creek Estates (Plan 59M-385), Subdivision; and further

THAT Welland City Council directs the City Clerk to prepare all necessary and appropriate by-laws to execute same.

**ORIGIN AND BACKGROUND:**

The Developer, Lea Silvestri Investments Ltd., of the Pine Creek Estates Development, has complied with all of the requirements of the subdividers agreement entered into October 3, 2011 with the City of Welland. Upper Canada Consultants, acting on behalf of the developer, has certified that all requirements were completed in accordance with the City of Welland Municipal Standards. Subsequently, approval may be given for the assumption of the public portions of the plan of subdivision, and the transfer of responsibility for the future ongoing maintenance of the roadway, watermain, sewer, and other assets of the public right-of-way to the City of Welland.

**COMMENTS AND ANALYSIS:**

The Pine Creek Estates development is located in the central west portion of the city, see attached location map. The development is bounded by Foxtail Avenue, Thorold Road, and South Pelham Road. The terms and conditions of the Subdivider's Agreement between the Developer and the City of Welland are complete to the satisfaction of the City of Welland Infrastructure and Development Services.

It is now in order to grant proper and final assumption of the development. It is the request of Infrastructure and Development Services for the Clerk to prepare the necessary by-law to assume the subdivision, and further, that the City will accept the development for future maintenance and release all securities currently held on account.

All requirements of the subdivision agreement, as well as property transfers have now been completed.

Please refer to Appendices for location map.

**FINANCIAL CONSIDERATION:**

There are no financial impacts to the Corporation at this time with the exception of future normal routine maintenance. All security deposits on account will be released post assumption of the subdivisions. There will be no costs incurred by the Municipality at this time.

**LINK TO THE ASSET MANAGEMENT PLAN:**

The infrastructure assumed as part of this development will form part of the city's infrastructure for inclusion in the future asset management plan.

**OTHER DEPARTMENT IMPLICATIONS:**

The Infrastructure and Development Services Department is responsible for administering the agreements and providing Corporate Services with the approval to release the securities once finalized. The Clerks Department, along with the Legal Division, will be required to prepare the required by-laws.

The Public Works Division of the Infrastructure and Development Services Department must now maintain the City owned portions of the development.

**SUMMARY AND CONCLUSION:**

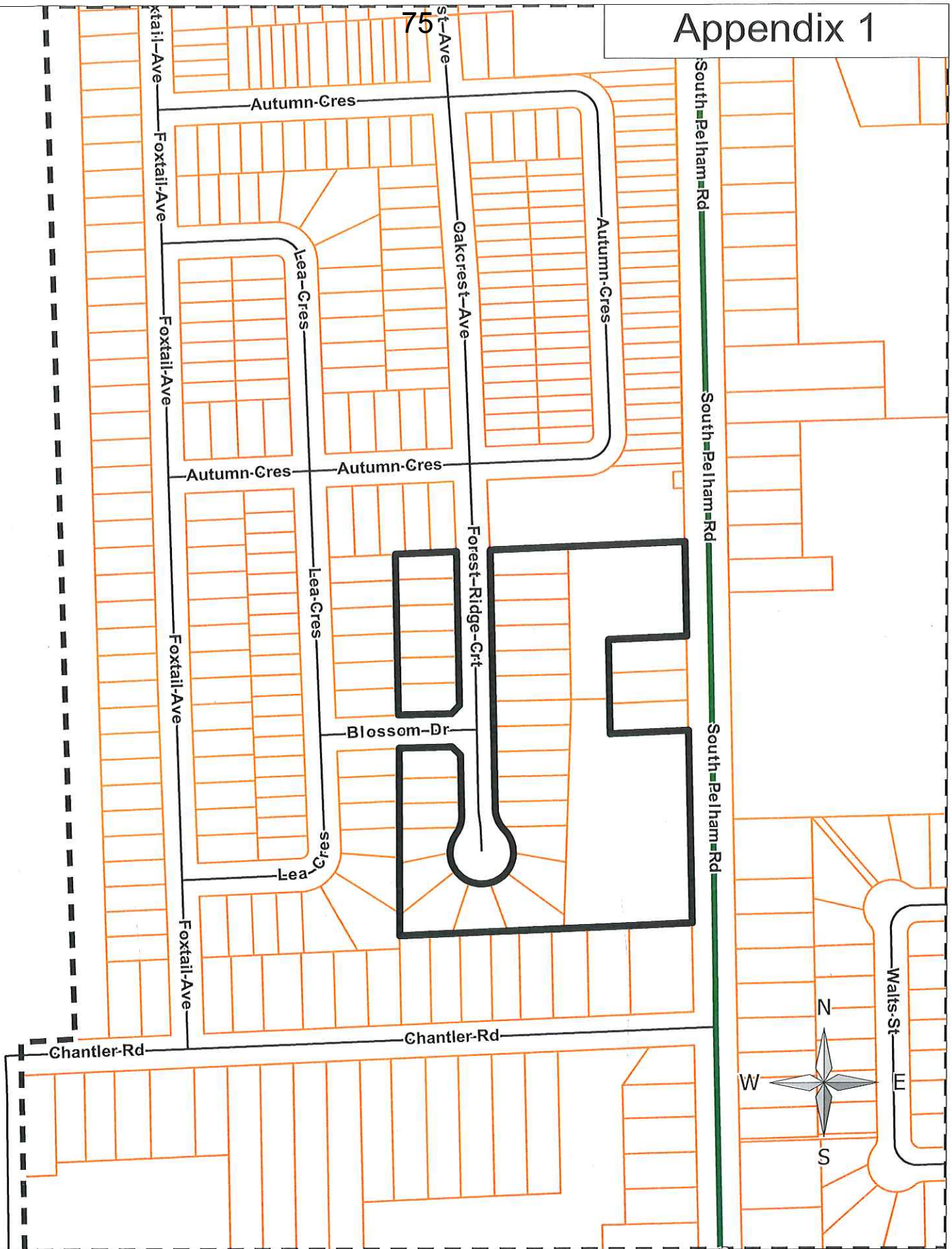
That the Council of the City of Welland approves Report ENG-2019-39 for the Assumption of the Pine Creek Estates (Plan 59M-385) Subdivision.

All obligations of the Subdivider's Agreements between the developer and the City of Welland have been satisfied. Consequently, compliance with the requirements of the Subdivision Assumption Policy have been met and formal assumption is now recommended.

**ATTACHMENTS:**

Appendix I – Pine Creek Estates Location Drawing





**CITY OF WELLAND**  
INFRASTRUCTURE SERVICES/ENGINEERING DIVISION

The information contained in this map may represent unintended errors or distortions of fact and the City of Welland (the City) makes no representations or warranties, express or implied, as to the accuracy or completeness of the data and all information should be verified independently. No part of these drawings, or information, or hard copies made from them may be reproduced and/or distributed without written permission from the City. Depictions of features, including property lines and infrastructure are provided for schematic purposes for reference only, and do not represent "as-built" conditions.  
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## LOCATION MAP FOR

## Pine Creek Estates Subdivision


*Infrastructure and  
Development Services*  
Engineering Division

DATE: 03/20/2018 2:11:23 PM

<http://gis.welland.ca/wms/default.asp>

76  
COUNCIL

INFRASTRUCTURE AND DEVELOPMENT SERVICES  
ENGINEERING DIVISION

APPROVALS	
GENERAL MANAGER	
CFO	
CAO	

1976

REPORT ENG-2019-40  
OCTOBER 15, 2019

**SUBJECT:** CLIMATE RESILIENCE ASSESSMENT FOR MUNICIPAL  
STORMWATER MANAGEMENT FACILITIES

**AUTHOR:** MARVIN INGEBRIGTSEN, P. ENG.  
INFRASTRUCTURE PLANNING & DEVELOPMENT  
SUPERVISOR

**APPROVING G.M.:** TRAVERS FITZPATRICK, GENERAL MANAGER,  
INFRASTRUCTURE AND DEVELOPMENT SERVICES

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**RECOMMENDATIONS:**

- 1) THAT THE COUNCIL OF THE CITY OF WELLAND authorize Wood Environment & Infrastructure Solutions (Wood) to complete a climate resilience assessment for municipal storm water management facilities in the City of Welland as per their proposal dated August 26, 2019 for an amount of \$122,542.00 exclusive of HST.; and
- 2) THAT Welland City Council directs the City Clerk to prepare all necessary and appropriate by-laws to enter into contract with Wood Environment & Infrastructure Solutions to complete the described work.

**ORIGIN AND BACKGROUND:**

The City of Welland has been investigating the effects of climate change on our sewer systems since 2010. Staff engaged the services of AMEC (now Wood Environment & Infrastructure Solutions (Wood) as of 2018) to look at the storm water and wastewater systems vulnerability to climate change. This was done through the application of the Engineers Canada / Public Infrastructure Engineering Vulnerability Committee (PIEVC), climate change vulnerability assessment protocol. This analysis also included the wastewater treatment plant. This study produced new Intensity-Duration-Frequency (IDF) rainfall data, which is used for storm sewer design. This study was completed in 2012 and included more than forty (40) recommendations for Staff, one of which was to update the City's Municipal Design Guidelines.

Before updating the Municipal Design Guidelines, Staff wanted to understand the impact that the new IDF rainfall data would have on storm water infrastructure. AMEC was retained in 2014 to review recently constructed subdivisions to see how the proposed IDF rainfall data would change the storm water design. In 2015, the study concluded that in order to properly assess the impacts of the IDF rainfall data on storm water pond design; a dynamic model should be completed.

In 2016, AMEC was retained to complete a dynamic model of the South Pelham Subdivision storm water pond. This pond experienced a flooding event in late 2013. AMEC looked at the current design of the pond and how it would change under the new IDF rainfall data. The report found that the pond was undersized for the increased storm intensities. As a result, an emergency spillway has been constructed for the pond to help convey flows to prevent future flooding.

As an extension of the work completed in 2016, a funding application was submitted to the National Disaster Mitigation Program (NDMP), which is part of the Public Safety Canada Department of the Federal Government. The purpose of this program is to address rising flood risks and costs, and to build the foundation for informed mitigation investments that could reduce, or even negate, the effects of flood events. Staff have applied for funding to focus on the climate resilience assessment of Welland's storm water management facilities. The funding application was approved and the program must be completed by March 31, 2020.

### **COMMENTS & ANALYSIS**

The purpose of this climate resilience assessment for municipal storm water management (SWM) facilities is to assess the vulnerability of the City's eleven (11) SWM ponds to climate change.

SWM ponds are designed to provide quality and quantity control of storm water runoff. Undersized ponds cannot appropriately store or control the storm water runoff, which can result in flooding of public and private property including homes.

Completion of this climate resilience assessment will identify the SWM ponds in the City that are undersized, vulnerable to climate change and present a risk of flooding. Further findings from this assessment will be utilized as part of the update to the City's Municipal Design Standards and will also be used in the preparation of the City's Climate Adaptation Plan and incorporated into SWM facility maintenance plans.

A competitive Request for Proposal (RFP) process was followed and five proposals were received in response. The proposals were reviewed and scored based on both technical and cost criteria and the proposal from Wood Environment & Infrastructure Solutions (Wood) received the highest overall score.

Wood has been working with the City of Welland on climate change vulnerability and resiliency studies dating back almost ten years. Wood has been instrumental in building the foundation to climate change assessments in the City with specific knowledge of the storm water system, climate change data, models, and risk assessments. Wood completed the SWM facility climate resilience assessment in 2017, which is the basis and foundation for this NDMP project.

### **FINANCIAL CONSIDERATION:**

The funding formula for this NDMP project is a 50/50 cost sharing partnership with the Federal government. The successful application for funding under this program is for \$150,000, with \$75,000 being funded from the Federal Government and \$75,000 from the City of Welland. This project is identified in the approved 2019 Capital Budget.

<b>2019 Capital Budget</b>	<b>Amount</b>
Storm Pond Sizing Risk Assessment (10-327-19526)	\$150,000.00

The cost associated with the proposal submitted by Wood Environment & Infrastructure Solutions is \$122,542.00 exclusive of HST and is within the approved budget amount.

**OTHER DEPARTMENT IMPLICATIONS:**

Findings from this assessment will be used to update the City's Municipal Design Standards and as part of the City's Climate Change Adaptation Plan, both of which will have positive impacts on other City departments and the City of Welland as a whole.

**SUMMARY AND CONCLUSION**

As a continuation of climate change vulnerability and resiliency work in the City of Welland, a successful application for funding has been received through the Federal National Disaster Mitigation Program. The funding application submitted is to complete a climate resiliency assessment for the City's eleven (11) storm water management facilities. Findings from this assessment will be used to update the City's Municipal Design Standards, support the City's Climate Change Adaptation Plan and incorporate into future maintenance of the City's SWM facilities.

A competitive request for Proposal (RFP) process was followed and five proposals were received in response. The proposals were reviewed and scored based on both technical and cost criteria and the proposal from Wood Environment & Infrastructure Solutions (Wood) received the highest overall score.

Staff recommend authorizing Wood to complete the climate resilience assessment for municipal storm water management facilities as per their proposal dated August 26, 2019 at a cost of \$122,542.00 exclusive of HST.

Wood has been working with the City of Welland on climate change vulnerability and resiliency studies dating back almost ten years. Wood has been instrumental in building the foundation to climate change assessments in the City of Welland with specific knowledge of the storm water system, climate change data, models, and risk assessments. Wood completed the SWM facility climate resilience assessment in 2017, which is the basis and foundation for this NDMP project.

**ATTACHMENTS:**

**None**



Ontario  
Rett Syndrome  
Association  
Building Healthy Tomorrows



October 1, 2019

### Request for Proclamation

Dear City Clerk

On behalf of the Ontario Rett Syndrome Association (O.R.S.A), and the diagnosed individuals living in the City of Welland, I am writing to request your proclamation of the month of October as Rett Syndrome Awareness Month.

Rett Syndrome is a rare neurodevelopment condition that affects mainly females (1 in 10,000 births) and is caused by a mutation in the X chromosome. Individuals with Rett syndrome will lose some if not most acquired skills including speech, and gross and fine motor skills. Some never develop the ability to walk or even talk.

O.R.S.A. exists to ensure that children and adults with Rett syndrome are enabled to achieve their full potential and enjoy the highest quality of life within their community.

This observance gives us a means to focus attention in making it possible for O.R.S.A. to continue public awareness and advocacy, provide parent/family support, operate the Resource Centre, fund research projects through the Hope Fund, host conferences, maintain the Canadian Rett Syndrome Registry, and fund three Rett syndrome clinics in Ontario that provide medical assistance.

If you need anything further, please don't hesitate to contact me by email: [smiguel@rett.ca](mailto:smiguel@rett.ca) or phone at 519-474-6877.

Thank you for taking the time to consider recognizing and supporting O.R.S.A. as we strive to build "healthy tomorrows" for all Canadians living with Rett syndrome.

Sincerely,

Steve Miguel  
Marketing Committee  
Ontario Rett Syndrome Association

19-6



Ontario  
Rett Syndrome  
Association  
Building Healthy Tomorrows



It is the Ontario Rett Syndrome Association's desire to have the following proclamation considered.

## PROCLAMATION

### *October as Rett Syndrome Awareness Month*

- WHEREAS:** October is RETT Syndrome Awareness Month which aims to bring much needed awareness to RETT Syndrome; and
- WHEREAS:** RETT Syndrome is a rare neurodevelopment condition that affects mainly females (1 in 10,000 births) and is caused by a mutation in the X chromosome. Individuals with RETT syndrome will lose some if not most acquired skills including speech, mobility, and gross and fine motor skills; and
- WHEREAS:** There is currently no cure but advancements in treatments and research provide thousands of people with hope; and
- WHEREAS:** The Ontario RETT Syndrome Association (O.R.S.A.) is a volunteer, non-profit charity for parents, caregivers, researchers, medical professionals and other interested support agencies and individuals; and
- WHEREAS:** The Ontario RETT Syndrome Association exists to ensure that children and adults with RETT syndrome are enabled to achieve their full potential and enjoy the highest quality of life within their community; and
- THEREFORE** I (Mayor Name or Designate), do hereby declare October as RETT Syndrome Awareness Month.

Dated at (municipality), Ontario this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.



PRESCRIBED FORM OF PETITION

To: The Council of the City of Welland  
 c/o City Clerk  
 60 East Main Street  
 Welland, ON L3B 3X4

I/We the undersigned, petition the Council of the City of Welland as follows:

Petition Text: **Enter a brief description of the matter to be brought forward here and include the text on every page of the petition.**

PRINTED NAME	PRINTED ADDRESS	SIGNATURE
G. VALOVICH	334 CLARE	<i>[Signature]</i>
M. Valovich	334 Clare	<i>[Signature]</i>
R. Guay	330 CLARE	<i>[Signature]</i>
R. Guay	322 Clare	<i>[Signature]</i>
Justin Rowe	348 Clare	<i>[Signature]</i>
J. Cybuchowski	348 Clare	<i>[Signature]</i>
Trevor Goulding	346 Clare	<i>[Signature]</i>
Phanna Kiskadee	346 Clare	<i>[Signature]</i>
Keith McCondy	338 Clare	<i>[Signature]</i>
ARSHAD KHAAN	326 Clare	<i>[Signature]</i>
Jeff Byng	320 Clare	<i>[Signature]</i>
Beke Kausa	1 Lynbrook	<i>[Signature]</i>
Elaina Byng	320 Clare	<i>[Signature]</i>
Jordan Byng	320 Clare	<i>[Signature]</i>
PAUL BUSH	342 CLARE	<i>[Signature]</i>
Amy Bush	342 Clare Ave	<i>[Signature]</i>
Alexis Visser	342 Clare Ave	<i>[Signature]</i>

By signing this petition, I hereby acknowledge that this petition will become a record belonging to the City of Welland and that all information contained in this petition will be available for viewing by the public and may be reproduced in a future Council Agenda.

LOOKING FOR STOP SIGNS NORTH BOUND AND SOUTHBOUND  
 ON CLARE AVE AT THE INTERSECTION OF LYNBROOK MAKING  
 IT A 3-WAY STOP TO SLOW DOWN TRAFFIC.

19-22

**Administration**

Office of the Regional Clerk

1815 Sir Isaac Brock Way, PO Box 1042, Thorold, ON L2V 4T7

Telephone: 905-980-6000 Toll-free: 1-800-263-7215 Fax: 905-687-4977

[www.niagararegion.ca](http://www.niagararegion.ca)

September 26, 2019

CL 16-2019, September 19, 2019  
 COTW 7-2019, September 5, 2019  
 PDS 34-2019, September 5, 2019

**LOCAL AREA MUNICIPALITIES****SENT ELECTRONICALLY**

Re: **Grants and Incentives Review**  
**PDS 34-2019**

Regional Council, at its meeting of September 19, 2019, approved the following recommendation from the Committee of the Whole meeting held on September 5, 2019:

That Report PDS 34-2019, dated September 5, 2019, respecting Grants and Incentives Review, **BE RECEIVED** and the following recommendations **BE APPROVED**:

That staff **BE DIRECTED** to develop incentive programs under the categories:

- affordable/rental housing (single and mixed use)
- brownfield/archaeological remediation
- employment growth in key sectors
- quality of life/public realm

That staff **BE DIRECTED** to consult and advise Local Area Municipalities on the direction of the incentive programs prior to bringing recommendations back to Regional Council; and

That Report PDS 34-2019 **BE CIRCULATED** to Local Area Municipalities.

A copy of Report PDS 34-2019 is enclosed for your information.

19-111



Yours truly,



Ann-Marie Norio  
Regional Clerk

CLK-C 2019-233

Cc: R. Mostacci, Commissioner, Planning and Development Services  
N. Oakes, Executive Assistant, Commissioner, Planning and Development Services

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**Subject:** Grants and Incentives Review  
**Report to:** Committee of the Whole  
**Report date:** Thursday, September 5, 2019

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## Recommendations

1. That staff **BE DIRECTED** to develop incentive programs under the categories:
  - affordable/rental housing
  - brownfield remediation
  - employment growth in key sectors
  - quality of life/public realm;
2. That recommendations to repurpose Niagara Investment in Culture funding to the incentive program categories above and to not reinvest in Waterfront Improvement and Smarter Niagara Incentive Simple Grants **BE REFERRED** to the 2020 budget process;
3. That staff **BE DIRECTED** to not approve or partner with any new CIPs or incentive programs until such time as Regional Council approves incentive programs under the categories above;
4. That staff **BE DIRECTED** to advise Local Area Municipalities on the direction of the incentive programs prior to bringing recommendations back to Regional Council; and
5. That this report **BE CIRCULATED** to Local Area Municipalities.

## Key Facts

- The purpose of this report is to provide information on the 19 Regional grants and incentive programs currently under review (Appendix 1), and to obtain Council direction to develop new incentive programs.
- Niagara Region offers a range of grant and incentive programs administered by Planning and Development Services, Finance, and Economic Development which serve a sizable and diverse number of stakeholders.
- Most Regional incentives involve matching funding with applicants, who in the majority of programs are Local Area Municipalities.
- There have been continual and significant increases in the number of programs, partners, and requests for Regional funding since the establishment of the first incentives in 2002. The programs under review were created at different times,

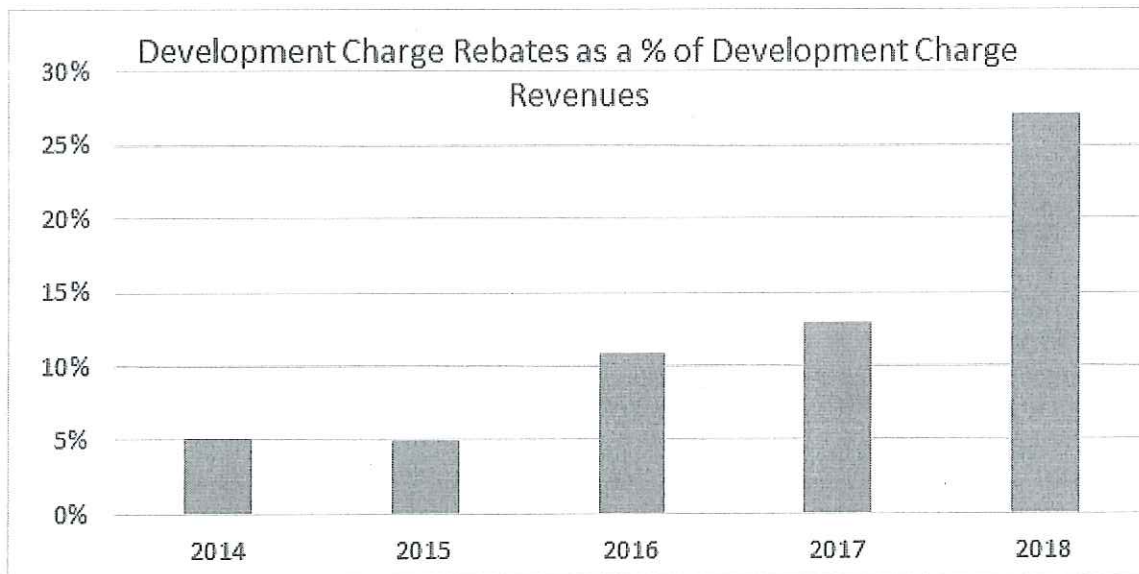
under different economic and regulatory environments. Their objectives, resourcing and parameters still largely reflect needs and contexts at the time of their creation.

- The current review is the first comprehensive examination of Regional incentive programs. The purpose of the review is to ensure that Regional incentive programs align with Regional Council priorities and are clear, current, accountable and effective.
- Key steps in the Regional incentive review to date include process and value-for-money audits of incentives, stakeholder engagement, and development of incentive options including the recommendation provided here by a Regional interdepartmental Working Group.

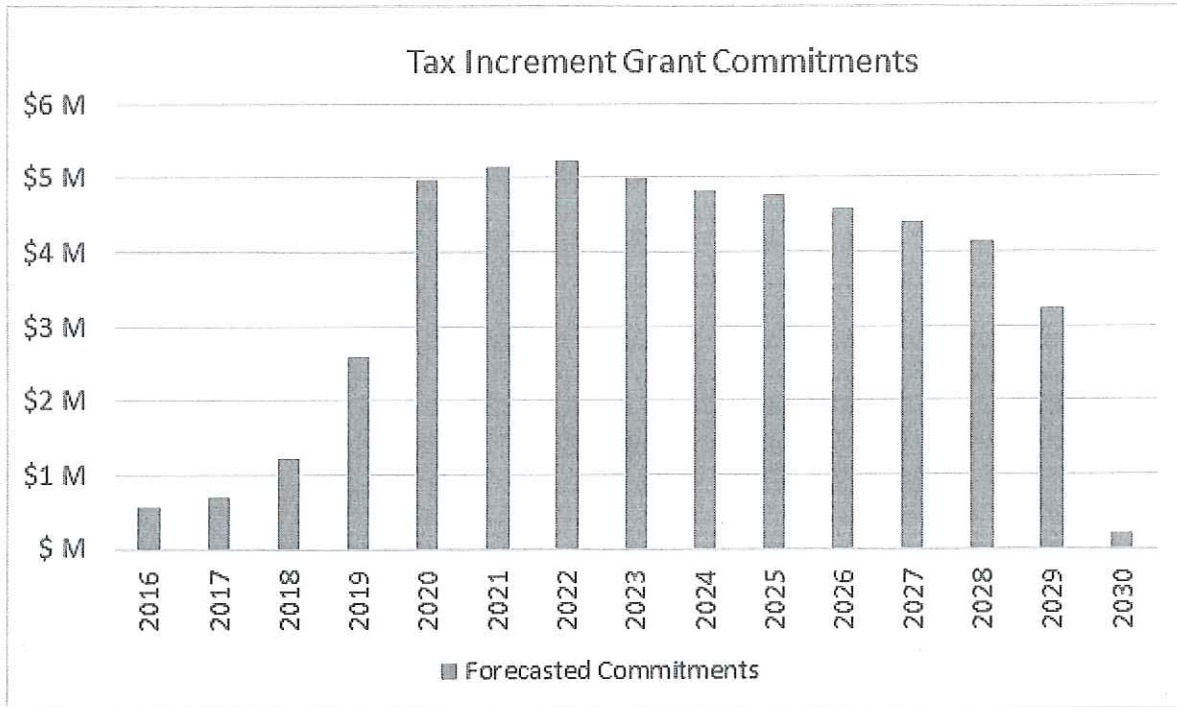
### Financial Considerations

The budget for existing Regional incentives currently under review is \$7.8 million for 2019. It funds the following programs: development charge rebates (\$5.3M), Niagara Investment in Culture (\$0.3M), Public Realm Investment Program (\$0.3M), Smarter Niagara Incentive Program tax increment grants (\$1.6M) and Gateway CIP tax increment grants (\$0.3M)

The Public Realm and Investment in Culture programs have base funding which can be committed each year. Development Charges (DCs) are also committed each year, but the discretionary programs are locked in under the Regional DC By-Law which is not best practice. The DC By-law expires August 2022 (potentially sooner due to Bill 108). The 2019 DC rebate budget is \$5.3 M and there is inadequate budget to meet demands of by-law programs.



Tax Increment Grants under the Smarter Niagara and Gateway CIP programs are a refund of taxes on assessment growth directly related to development, and are usually 5 -10 years in duration. Therefore this base funding is a multi-year commitment and it is not available to fund new commitments until current agreements expire (starting in 2023). The current Regional commitment for these grants is \$46.5 M from 2020 to 2030 (the 2019 budget is \$1.873 M) not including pending new commitments.



Recommendations to repurpose and allocate funding to align with a new incentive strategy will be included in the 2020 budget process. Recommendations include repurposing Niagara Investment in Culture funding (\$0.3M), and removing the reinvestment in Waterfront Investment Program (\$0.9M) and Smarter Niagara Incentive Program simple grant funding (\$0.6M) both of which are currently without base funding.

## Analysis

### Existing Incentive Programs

This report focuses on 19 incentive programs administered by the Planning and Development Services, Finance, and Economic Development departments (Appendix 1) which are currently under review. These programs are designed to support a wide range of initiatives including brownfield study and remediation, residential and mixed use development, agriculture, culture, heritage, industrial development, employment,

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streetscaping and public realm improvement, façade improvement, and waterfront development and access.

Since the first program was established in 2002, the number of Regional incentive programs has significantly expanded, resulting in a lack of consistency and clarity with regard to their budgeting, implementation and monitoring. Many of these Regional incentives were originally designed for economic and regulatory climates very different from the current environment. Regional incentives have evolved to relate far more to local than Regional core business, and increasing exceptions to Regional practices result in inconsistent allocation of resources and issues with equity and clarity.

The Region now matches funding in more than 70 different local programs, and this number and diversity challenge the administration of Regional funding. Perhaps most importantly, critical changes over the last seventeen years mean that projects now receive incentives which do not require them: in many cases, the work would have gone forward without Regional incentive funding.

Though there have been periodic updates and improvements to some programs, a comprehensive review was warranted to ensure Regional incentive programs align with current Regional priorities, reflect the current economic climate and growth management goals, promote economic prosperity, generate meaningful return on investment, are adequately resourced, and embody greater transparency, accountability and efficiency.

An interdepartmental working group was tasked with providing recommendations to Council on the optimal way to move forward with incentives. After careful deliberation, the option which determined to provide the greatest impact while reflecting the values of sustainability, consistency, transparency and alignment with Regional priorities was to specifically target Regional incentive funding in four categories: affordable housing, brownfields redevelopment, employment, and public realm.

These categories align with Council priorities and would encourage projects with true Regional benefit and scope. These categories also reflect serious, ongoing needs in Niagara and successes on these fronts would have significant social, economic and environmental impact. Clear, consistent and sustainable programs could be quickly developed from effective models to accomplish measurable goals in these areas. Funding from existing programs could be efficiently repurposed to each target area to optimize return on investment.

### **Alternatives Reviewed**

Options have been considered ranging from an enhanced status quo to putting all incentive funding toward a single, high-need project area like affordable housing to suspending incentives entirely and earmarking their funding for priority projects such as

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Regional infrastructure. None of these options effectively accomplished the goals of the review and incentive improvement outlined above.

### **Relationship to Council Strategic Priorities**

This report relates to all four Council Strategic Priorities -- Supporting Businesses and Economic Growth, Healthy and Vibrant Communities, Responsible Growth and Infrastructure Planning, and Sustainable and Engaging Government.

### **Other Pertinent Reports**

PDS 42-2017 Overview of 2018 Incentive Review  
 PDS 31-2018 Regional Incentive Delivery and Eligibility in 2019  
 PDS-C 19-2018 ICOP Phase 1 Audit Report on Regional Incentive Review  
 PDS-C 31-2018 ICOP Phase 2 Audit Report on Regional Incentive Review  
 PDS-C 38-2018 Local Municipal Responses to Incentive Review Audit Report

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#### **Prepared by:**

Doug Giles, BES, MUP  
 Director, Community and Long Range  
 Planning  
 Planning and Development Services

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#### **Recommended by:**

Rino Mostacci, MCIP, RPP  
 Commissioner  
 Planning and Development Services

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#### **Submitted by:**

Ron Tripp, P.Eng.  
 Acting Chief Administrative Officer

*This report was prepared in consultation with Helen Chamberlain, Director Financial Management and Planning/Deputy Treasurer.*

### **Appendices**

Appendix 1            List of Regional Incentive Programs under Review

Page 6

## List of Regional Incentive Programs under Review

### **Smarter Niagara Incentive Program (SNIP)**

- Environmental Assessment Study Grant
- Building and Façade Improvement Grant/Loan
- Residential Grant/Loan
- Heritage Restoration and Improvement Grant/Loan
- Agricultural Buildings and Facilities Revitalization Grant/Loan
- Agricultural Feasibility Study Grant
- Community Improvement Plans (CIPs)/Planning Studies Grant
- Affordable Housing Grant/ Loan Program
- Property Rehabilitation and Redevelopment Tax Increment Grant/Loan
- Brownfield Tax Assistance Program
- Development Charge Reduction Grant

### **Public Realm Investment Program**

### **Niagara Investment in Culture Program**

### **Waterfront Investment Program**

#### **Gateway Economic Zone and Centre**

- Gateway CIP Tax Increment Based Grant
- Gateway CIP Regional DC Reduction Grant

#### **Industrial Development Charge Grant**

#### **Non-Profit Regional Development Charge Grant**

#### **Heritage Tax Rebate Program**



# Towards a Reasonable Balance:

Addressing growing municipal liability and insurance costs

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Submission to the Attorney General of Ontario

October 1, 2019

19-45



## Table of Contents

<b>Letter to the Attorney General of Ontario</b> .....	3
<b>Executive Summary</b> .....	5
<b>Recommendations</b> .....	7
<b>Insurance Cost Examples</b> .....	8
<b>Joint and Several in Action - Recent Examples</b> .....	9
<b>Joint and Several Liability in Action - Other notable cases</b> .....	11
<b>2011 Review of Joint and Several Liability – Law Commission of Ontario</b> .....	11
<b>2014 Resolution by the Ontario Legislature and Review by the Attorney General</b> .....	12
<b>Options for Reform – The Legal Framework</b> .....	13
<b>The Saskatchewan Experience</b> .....	15
<b>Insurance Related Reforms</b> .....	17
<b>Conclusion</b> .....	18

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Sent via email to: [doug.downeyco@pc.ola.org](mailto:doug.downeyco@pc.ola.org)  
[magpolicy@ontario.ca](mailto:magpolicy@ontario.ca)

October 1, 2019

The Honourable Doug Downey  
Attorney General of Ontario  
McMurtry-Scott Building, 11th Floor  
720 Bay Street  
Toronto, Ontario  
M7A 2S9

Dear Attorney General Downey,

Municipal governments accept the responsibility to pay their fair share of a loss. Always. Making it right and paying a fair share are the cornerstones of our legal system. Citizens expect nothing less of their local governments.

But what is a challenge for municipalities and property taxpayers alike, is being asked to assume someone else's responsibility for someone else's mistake. Municipal governments should not be the insurer of last resort. For municipalities in Ontario, however, the principle of joint and several liability ensures that they are just that.

Joint and several liability means higher insurance costs. It diverts property tax dollars from delivering public services. It has transformed municipalities into litigation targets while others escape responsibility. It forces municipal government to settle out-of-court for excessive amounts when responsibility is as low as 1%.

There must be a better way. There must be a better way to help ensure those who suffer losses are made whole again without asking municipalities to bear that burden alone. There must be a better way to be fair, reasonable, and responsible.

AMO welcomes the government's commitment to review joint and several liability. It is a complex issue that has many dimensions. Issues of fairness, legal principles, "liability chill", insurance failures and high insurance costs are all intertwined. Many other jurisdictions have offered additional protection for municipalities and AMO calls on the Ontario government to do the same.

What follows is a starting point for that discussion. Our paper reasserts key issues from AMO's 2010 paper, AMO's 2011 insurance cost survey, provides more recent examples, and details some possible solutions of which there are many options.

Municipalities are in the business of delivering public services. Municipal governments exist to connect people and to advance the development of a community. It is time to find a reasonable balance to prevent the further scaling back of public services owing to joint and several liability, "liability chill", or excessive insurance costs.



Together with the provincial government, I am confident we can find a better way.

Sincerely,

A handwritten signature in black ink, appearing to read 'JMCGARVEY', with a long horizontal line extending to the right.

Jamie McGarvey  
AMO President

## Executive Summary

AMO's advocacy efforts on joint and several liability in no way intends for aggrieved parties to be denied justice or damages through the courts. Rather, municipal governments seek to highlight the inequity of how much "deep pocket" defendants like municipalities are forced to pay, for both in and out of court settlements.

It is entirely unfair to ask property taxpayers to carry the lion's share of a damage award when a municipality is found at minimal fault or to assume responsibility for someone else's mistake.

Municipal governments cannot afford to be the insurer of last resort. The principle of joint and several liability is costing municipalities and taxpayers dearly, in the form of rising insurance premiums, service reductions and fewer choices. The *Negligence Act* was never intended to place the burden of insurer of last resort on municipalities.

As public organizations with taxation power and "deep pockets," municipalities have become focal points for litigation when other defendants do not have the means to pay. At the same time, catastrophic claim awards in Ontario have increased considerably. In part, joint and several liability is fueling exorbitant increases in municipal insurance premiums.

The heavy insurance burden and legal environment is unsustainable for Ontario's communities. Despite enormous improvements to safety, including new standards for playgrounds, pool safety, and better risk management practices, municipal insurance premiums and liability claims continue to increase. All municipalities have risk management policies to one degree or another and most large municipalities now employ risk managers precisely to increase health and safety and limit liability exposure in the design of facilities, programs, and insurance coverage. Liability is a top of mind consideration for all municipal councils.

Joint and several liability is problematic not only because of the disproportioned burden on municipalities that are awarded by courts. It is also the immeasurable impact of propelling municipalities to settle out of court to avoid protracted and expensive litigation for amounts that may be excessive, or certainly represent a greater percentage than their degree of fault.

Various forms of proportionate liability have now been enacted by all of Ontario's competing Great Lakes states. In total, 38 other states south of the border have adopted proportionate liability in specific circumstances to the benefit of municipalities. Many common law jurisdictions around the world have adopted legal reforms to limit the exposure and restore balance. With other Commonwealth jurisdictions and the majority of state governments in the United States having modified the rule of joint and several liability in favour of some form of proportionate liability, it is time for Ontario to consider various options.

There is precedence in Ontario for joint and several liability reform. The car leasing lobby highlighted a particularly expensive court award made in November of 2004 against a car leasing company by the victim of a drunk driver. The August 1997 accident occurred when the car skidded off a county road near Peterborough, Ontario. It exposed the inequity of joint and several liability for car leasing companies. The leasing companies argued to the government that the settlement had put them at a competitive disadvantage to lenders. They also warned that such liability conditions would likely drive some leasing and rental companies to reduce their business in Ontario. As a result, Bill 18 amended the *Compulsory Automobile Insurance Act*, the *Highway Traffic*

*Act* and the Ontario *Insurance Act* to make renters and lessees vicariously liable for the negligence of automobile drivers and capped the maximum liability of owners of rental and leased cars at \$1 million. While Bill 18 has eliminated the owners of leased and rented cars as “deep pocket” defendants, no such restrictions have been enacted to assist municipalities.

A 2011 survey conducted by AMO reveals that since 2007, liability premiums have increased by 22.2% and are among the fastest growing municipal costs. Total 2011 Ontario municipal insurance costs were \$155.2 million. Liability premiums made up the majority of these expenses at \$85.5 million. Property taxpayers are paying this price.

These trends are continuing. In August of 2019, it was reported the Town of Bradford West Gwillimbury faces a 59% insurance cost increase for 2019. This is just one example. AMO encourages the municipal insurance industry to provide the government with more recent data and trends to support the industry’s own arguments regarding the impact joint and several has on premiums.

Insurance costs disproportionately affect small municipalities. For 2011, the per capita insurance costs for communities with populations under 10,000 were \$37.56. By comparison, per capita costs in large communities with populations over 75,000 were \$7.71. Property taxpayers in one northern community are spending more on insurance than their library. In one southern county, for every \$2 spent on snowplowing roads, another \$1 is spent on insurance.

In 2016, the Ontario Municipal Insurance Exchange (OMEX), a not-for-profit insurer, announced that it was suspending reciprocal underwriting operations. The organization cited, a “low pricing environment, combined with the impact of joint and several liability on municipal claim settlements” as reasons for the decision. Fewer choices fuels premium increases.

Learning from other jurisdictions is important for Ontario. The Province of Saskatchewan has implemented liability reforms to support its municipalities. As a municipal lawyer at the time, Neil Robertson, QC was instrumental in laying out the arguments in support of these changes. Now a Justice of the Court of Queen’s Bench for Saskatchewan, AMO was pleased to have Neil Robertson prepare a paper and address AMO conference delegates in 2013. Much of the Saskatchewan municipal experience (which led to reforms) is applicable to the Ontario and the Canadian municipal context. Summarised below and throughout this paper are some of Robertson’s key findings.

Robertson found that, regardless of the cause, over the years municipalities in Canada have experienced an accelerating rate of litigation and an increase in amounts of damage awards. He noted these developments challenge municipalities and raise financial, operational and policy issues in the provision of public services.

Robertson describes the current Canadian legal climate as having placed municipalities in the role of involuntary insurer. Courts have assigned municipal liability where liability was traditionally denied and apportioned fault to municipal defendants out of proportion to municipal involvement in the actual wrong.

This increased exposure to liability has had serious ramifications for municipalities, both as a deterrent to providing public services which may give rise to claims and in raising the cost and reducing the availability of insurance. The cost of claims has caused insurers to reconsider not only

what to charge for premiums, but whether to continue offering insurance coverage to municipal clients.

Robertson also makes the key point that it reasonable for municipal leaders to seek appropriate statutory protections. He wrote:

“Since municipalities exist to improve the quality of life for their citizens, the possibility of causing harm to those same citizens is contrary to its fundamental mission. Careful management and wise stewardship of public resources by municipal leaders will reduce the likelihood of such harm, including adherence to good risk management practices in municipal operations. But wise stewardship also involves avoiding the risk of unwarranted costs arising from inevitable claims.”

And, of course, a key consideration is the reality that insurance premiums, self-insurance costs, and legal fees divert municipal funds from other essential municipal services and responsibilities.

It is in this context that AMO appreciated the commitments made by the Premier and the Attorney General to review the principle of joint and several liability, the impact it has on insurance costs, and the influence “liability chill” has on the delivery of public services. Now is the time to deliver provincial public policy solutions which address these issues.

## Recommendations

AMO recommends the following measures to address these issues:

1. The provincial government adopt a model of full proportionate liability to replace joint and several liability.
2. Implement enhancements to the existing limitations period including the continued applicability of the existing 10-day rule on slip and fall cases given recent judicial interpretations, and whether a 1-year limitation period may be beneficial.
3. Implement a cap for economic loss awards.
4. Increase the catastrophic impairment default benefit limit to \$2 million and increase the third-party liability coverage to \$2 million in government regulated automobile insurance plans.
5. Assess and implement additional measures which would support lower premiums or alternatives to the provision of insurance services by other entities such as non-profit insurance reciprocals.
6. Compel the insurance industry to supply all necessary financial evidence including premiums, claims, and deductible limit changes which support its, and municipal arguments as to the fiscal impact of joint and several liability.
7. Establish a provincial and municipal working group to consider the above and put forward recommendations to the Attorney General.

## Insurance Cost Examples

The government has requested detailed information from municipalities regarding their insurance costs, coverage, deductibles, claims history, and out-of-court settlements. Municipalities have been busy responding to a long list of provincial consultations on a wide range of topics. Some of the information being sought is more easily supplied by the insurance industry. AMO's 2011 survey of insurance costs produced a sample size of 122 municipalities and assessed insurance cost increases over a five-year period. The survey revealed an average premium increase which exceeded 20% over that period.

All of the same forces remain at play in 2019 just as they were in 2011. Below are some key examples.

**Ear Falls** - The Township of Ear Falls reports that its insurance premiums have increased 30% over five years to \$81,686. With a population of only 995 residents (2016), this represents a per capita cost of \$82.09. This amount is a significant increase from AMO's 2011 Insurance Survey result. At that time, the average per capita insurance cost for a community with a population under 10,000 was \$37.56. While the Township has not been the subject of a liability claim, a claim in a community of this size could have significant and long-lasting financial and service implications. The Township has also had to impose stricter insurance requirements on groups that rent municipal facilities. This has had a negative impact on the clubs and volunteers' groups and as a consequence, many have cut back on the service these groups provide to the community.

**Central Huron** - For many years the municipality of Central Huron had a deductible of \$5,000. In 2014, the deductible was increased to \$15,000 to help reduce insurance costs. The municipality also increased its liability coverage in 2014 and added cyber security coverage in 2018. The combined impact of these changes represents a premium cost of \$224,774 in 2019, up from \$141,331 in 2010. Per capita costs for insurance alone are now \$29.67.

**Huntsville** - Since 2010, the Town of Huntsville reports an insurance premium increase of 67%. In 2019 this represented about 3.75% of the town's property tax levy. At the same time, Huntsville's deductible has increased from \$10,000 to \$25,000. The town also reports a reluctance to hold its own events for fear of any claims which may affect its main policy. Additional coverage is purchased for these events and these costs are not included above.

**Ottawa** - In August 2018, the City began working with its insurance broker, Aon Risk Solutions ("Aon"), to prepare for the anticipated renewal of the Integrated Insurance Program in April 2019. As the cost of the City's insurance premiums had risen by approximately 25% between 2017 and 2018, this early work was intended to ensure that any further increase could be properly accounted for through the 2019 budget process. Early indications of a possible further 10% premium increase prompted the City and Aon in late 2018 to explore options for a revised Program, and to approach alternative markets for the supply of insurance.

On January 11, 2019, an OC Transpo bus collided with a section of the Westboro Station transit shelter, resulting in three fatalities and numerous serious injuries. This was the second major incident involving the City's bus fleet, following approximately five years after the OC Transpo - VIA train collision in September 2013.



The January 2019 incident prompted insurance providers to re-evaluate their willingness to participate in the City Program. Despite Aon's work to secure an alternative provider, only Frank Cowan Company ("Cowan"), the City's existing insurer, was prepared to offer the City an Integrated Insurance Program. Cowan's offer to renew the City's Program was conditional on revised terms and limits and at a significant premium increase of approximately 84%, or nearly \$2.1 million per year. According to Cowan, these changes and increases were attributable to seven principle factors, including Joint and Several Liability:

1. Escalating Costs of Natural Global Disasters;
2. Joint and Several Liability;
3. Claims Trends (in the municipal sector);
4. Increasing Damage Awards;
5. Class Action Lawsuits;
6. New and/or Adverse Claims Development; and,
7. Transit Exposure.

Cowan also indicated that the primary policy limits for the 2019-2020 renewal would be lowered from \$25 million to \$10 million per occurrence, thereby raising the likelihood of increased costs for the City's excess liability policies.

## Joint and Several in Action - Recent Examples

The following examples highlight joint and several in action. The following examples have occurred in recent years.

**GTA Municipality** – A homeowner rented out three separate apartments in a home despite being zoned as a single-family dwelling. After a complaint was received, bylaw inspectors and Fire Prevention Officers visited the property. The landlord was cautioned to undertake renovations to restore the building into a single-family dwelling. After several months of non-compliance, charges under the fire code were laid. The owner was convicted and fined. A subsequent visit by Fire Prevention Officers noted that the required renovations had not taken place. Tragically, a fire occurred which resulted in three fatalities. Despite having undertaken corrective action against the homeowner, joint and several liability loomed large. It compelled the municipality to make a payment of \$504,000 given the 1% rule.

**City of Ottawa** - A serious motor vehicle accident occurred between one of the City's buses and an SUV. The collision occurred at an intersection when the inebriated driver of the SUV failed to stop at a red light and was struck by the City bus. This collision resulted in the deaths of the SUV driver and two other occupants, and also seriously injured the primary Plaintiff, the third passenger in the SUV. The secondary action was brought by the family of one of the deceased passengers.

The Court ultimately concluded that the City was 20% liable for the collision, while the SUV driver was 80% at fault. Despite the 80/20 allocation of fault, the City was required to pay all of the approximately \$2.1 million in damages awarded in the primary case and the \$200,000 awarded in the secondary case, bringing the amount paid by the City to a total that was not proportionate to its actual liability. This was due to the application of the principle of joint and several liability, as well as the interplay between the various automobile insurance policies held by the SUV owner and



passengers, which is further explained below. Although the City appealed this case, the Ontario Court of Appeal agreed with the findings of the trial judge and dismissed it.

This case was notable for the implications of various factors on the insurance policies held by the respective parties. While most automobile insurance policies in Ontario provide for \$1 million in third party liability coverage, the insurance for the SUV was reduced to the statutory minimum of \$200,000 by virtue of the fact that the driver at the time of the collision had a blood alcohol level nearly three times the legal limit for a fully licensed driver. This was contrary to the requirements of his G2 license, which prohibit driving after the consumption of any alcohol. Further, while the Plaintiff passengers' own respective insurance provided \$1 million in coverage for underinsured motorists (as the SUV driver was at the time), this type of coverage is triggered only where no other party is in any way liable for the accident. As a result, the primary Plaintiff could only effectively recover the full \$2.1 million in damages if the Court attributed even a small measure of fault to another party with sufficient resources to pay the claim.

In determining that the City was at least partially responsible for the collision, the Court held that the speed of the bus – which according to GPS recordings was approximately 6.5 km/h over the posted limit of 60 kilometres an hour – and momentary inattention were contributing factors to the collision.

To shorten the length of the trial by approximately one week and accordingly reduce the legal costs involved, the parties had earlier reached an agreement on damages and that the findings regarding the primary Plaintiff would apply equally to the other. The amount of the agreement-upon damages took into account any contributory negligence on the part of the respective Plaintiffs, attributable to such things as not wearing a seat belt.

**City of Ottawa, 2<sup>nd</sup> example** – A Plaintiff was catastrophically injured when, after disembarking a City bus, he was struck by a third-party motor vehicle. The Plaintiff's injuries included a brain injury while his impairments included incomplete quadriplegia.

As a result of his accident, the Plaintiff brought a claim for damages for an amount in excess of \$7 million against the City and against the owner and driver of the third-party vehicle that struck him. Against the City, the Plaintiff alleged that the roadway was not properly designed and that the bus stop was placed at an unsafe location as it required passengers to cross the road mid-block and not at a controlled intersection.

Following the completion of examinations for discovery, the Plaintiff's claim against the Co-Defendant (the driver of the vehicle which struck the plaintiff) was resolved for \$1,120,000 comprising \$970,000 for damages and \$120,000 for costs. The Co-Defendant's policy limit was \$1 million. The claim against the City was in effect, a "1% rule" case where the City had been added to the case largely because the Co-Defendant's insurance was capped at \$1 million, which was well below the value of the Plaintiff's claim.

On the issue of liability, the pre-trial judge was of the view that the City was exposed to a finding of some liability against it on the theory that, because of the proximity of the bus stop to a home for adults with mental health issues, the City knew or should have known that bus passengers with cognitive and/or physical disabilities would be crossing mid-block at an unmarked crossing. This, according to the judge, could have resulted in a finding being made at trial that the City should

either have removed the bus stop or alternatively, should have installed a pedestrian crossing at this location.

The judge assessed the Plaintiff's damages at \$7,241,000 exclusive of costs and disbursements which he then reduced to \$4,602,930 exclusive of costs and disbursements after applying a reduction of 27.5% for contributory negligence and subtracting the \$970,000 payment made by the Co-Defendant's insurer.

Settlement discussions took place and the judge recommended that the matter be resolved for \$3,825,000 plus costs of \$554,750 plus HST plus disbursements.

## Joint and Several Liability in Action - Other notable cases

**Deering v Scugog** - A 19-year-old driver was driving at night in a hurry to make the start time of a movie. She was travelling on a Class 4 rural road that had no centerline markings. The Ontario Traffic Manual does not require this type of road to have such a marking. The driver thought that a vehicle travelling in the opposite direction was headed directly at her. She swerved, over-corrected and ended up in a rock culvert. The Court found the Township of Scugog 66.7% liable. The at-fault driver only carried a \$1M auto insurance policy.

**Ferguson v County of Brant** - An inexperienced 17-year-old male driver was speeding on a road when he failed to navigate a curve which resulted in him crossing the lane into oncoming traffic, leaving the roadway, and striking a tree. The municipality was found to have posted a winding road sign rather than a sharp curve sign. The municipality was found 55% liable.

**Safranyos et al v City of Hamilton** - The plaintiff was leaving a drive-in movie theatre with four children in her vehicle at approximately 1 AM. She approached a stop sign with the intention of turning right onto a highway. Although she saw oncoming headlights she entered the intersection where she was struck by a vehicle driven 15 km/h over the posted speed limit by a man who had just left a party and was determined by toxicologists to be impaired. The children in the plaintiff's vehicle suffered significant injuries. The City was determined to be 25% liable because a stop line had not been painted on the road at the intersection.

**Mortimer v Cameron** - Two men were engaged in horseplay on a stairway and one of them fell backward through an open door at the bottom of a landing. The other man attempted to break the first man's fall and together they fell into an exterior wall that gave way. Both men fell 10 feet onto the ground below, one of whom was left quadriplegic. The trial judge determined both men were negligent, but that their conduct did not correspond to the extent of the plaintiff's injuries. No liability was attached to either man. The building owner was determined to be 20% and the City of London was found to be 80% liable. The Court awarded the plaintiff \$5 M in damages. On appeal, the City's liability was reduced to 40% and building owner was determined to be 60% liable. The City still ended up paying 80% of the overall claim.

## 2011 Review of Joint and Several Liability – Law Commission of Ontario

In February 2011 the Law Commission of Ontario released a report entitled, *"Joint and Several Liability Under the Ontario Business Corporations Act"*. This review examined the application of

joint and several liability to corporate law and more specifically the relationship between the corporation and its directors, officers, shareholders and stakeholders.

Prior to the report's release, AMO made a submission to the Law Commission of Ontario to seek to expand its review to include municipal implications. The Law Commission did not proceed with a broader review at that time, but the context of its narrower scope remains applicable to municipalities. In fact, many of the same arguments which support reform in the realm of the *Business Corporations Act*, are the same arguments which apply to municipal governments.

Of note, the Law Commission's<sup>1</sup> report highlighted the following in favour of reforms:

**Fairness:** "it is argued that it is unfair for a defendant, whose degree of fault is minor when compared to that of other defendants, to have to fully compensate a plaintiff should the other defendants be insolvent or unavailable."

**Deep Pocket Syndrome:** "Joint and several liability encourages plaintiffs to unfairly target defendants who are known or perceived to be insured or solvent."

**Rising Costs of Litigation, Insurance, and Damage Awards:** "Opponents of the joint and several liability regime are concerned about the rising costs of litigation, insurance, and damage awards."

**Provision of Services:** "The Association of Municipalities of Ontario identifies another negative externality of joint and several liability: municipalities are having to delay or otherwise cut back services to limit exposure to liability."

The Law Commission found that the principle of joint and several liability should remain in place although it did not explicitly review the municipal situation.

## **2014 Resolution by the Ontario Legislature and Review by the Attorney General**

Over 200 municipalities supported a motion introduced by Randy Pettapiece, MPP for Perth-Wellington which called for the implementation a comprehensive, long-term solution in 2014. That year, MPPs from all parties supported the Pettapiece motion calling for a reform joint and several liability.

Later that year the Ministry of the Attorney General consulted on three options of possible reform:

### **1. The Saskatchewan Model of Modified Proportionate Liability**

Saskatchewan has adopted a modified version of proportionate liability that applies in cases where a plaintiff is contributorily negligent. Under the Saskatchewan rule, where a plaintiff is contributorily negligent and there is an unfunded liability, the cost of the unfunded liability is split among the remaining defendants and the plaintiff in proportion to their fault.

<sup>1</sup> Law Commission of Ontario. "Joint and Several Liability Under the Ontario *Business Corporations Act*." Final Report, February 2011 Pages 22-25.

## 2. Peripheral Wrongdoer Rule for Road Authorities

Under this rule, a municipality would never be liable for more than two times its proportion of damages, even if it results in the plaintiff being unable to recover full damages.

## 3. A combination of both of the above

Ultimately, the government decided not to pursue any of the incremental policy options ostensibly because of uncertainty that insurance cost reductions would result. This was a disappointing result for municipalities.

While these reviews did not produce results in Ontario, many other common law jurisdictions have enacted protections for municipalities. What follows are some of the options for a different legal framework.

## Options for Reform – The Legal Framework

To gain a full appreciation of the various liability frameworks that could be considered, for comparison, below is a description of the current joint and several liability framework here in Ontario. This description will help to reader to understand the further options which follow.

This description and the alternatives that follow are taken from the Law Commission of Ontario's February 2011 Report entitled, *"Joint and Several Liability Under the Ontario Business Corporations Act"* as referenced above.<sup>2</sup>

### Understanding the Status Quo and Comparing it to the Alternatives

Where three different defendants are found to have caused a plaintiff's loss, the plaintiff is entitled to seek full payment (100%) from any one of the defendants. The defendant who fully satisfies the judgment has a right of contribution from the other liable parties based on the extent of their responsibility for the plaintiff's loss.

For example, a court may find defendants 1 (D1), 2 (D2) and 3 (D3) responsible for 70%, 20%, and 10% of the plaintiff's \$100,000 loss, respectively. The plaintiff may seek to recover 100% of the loss from D2, who may then seek contribution from D1 and D3 for their 70% and 10% shares of the loss. If D1 and/or D3 is unable to compensate D2 for the amount each owes for whatever reason, such as insolvency or unavailability, D2 will bear the full \$100,000 loss. The plaintiff will be fully compensated for \$100,000, and it is the responsibility of the defendants to apportion the loss fairly between them.

The descriptions that follow are abridged from pages 9-11 of the Law Commission of Ontario's report. These are some of the key alternatives to the status quo.

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<sup>2</sup> Ibid. Page 7.

## 1. Proportionate Liability

### a) Full Proportionate Liability

A system of full proportionate liability limits the liability of each co-defendant to the proportion of the loss for which he or she was found to be responsible. Per the above example, (in which Defendant 1 (D1) is responsible for 70% of loss, Defendant 2 (D2) for 20% and Defendant 3 (D3) for 10%), under this system, D2 will only be responsible for \$20,000 of the \$100,000 total judgement: equal to 20% of their share of the liability. Likewise, D1 and D3 will be responsible for \$70,000 and \$10,000. If D1 and D3 are unable to pay, the plaintiff will only recover \$20,000 from D2.

### b) Proportionate Liability where Plaintiff is Contributorily Negligent

This option retains joint and several liability when a blameless plaintiff is involved. This option would cancel or adjust the rule where the plaintiff contributed to their loss. As in the first example, suppose the plaintiff (P) contributed to 20% of their \$100,000 loss. D1, D2 and D3 were responsible for 50%, 20% and 10% of the \$100,000. If D1 and D3 are unavailable, P and D2 will each be responsible for their \$20,000 shares. The plaintiff will remain responsible for the \$60,000 shortfall as a result of the absent co-defendants' non-payment (D1 and D3).

### c) Proportionate Liability where Plaintiff is Contributorily Negligent with a Proportionate Reallocation of an Insolvent, Financially Limited or Unavailable Defendant's Share

In this option of proportionate liability, the plaintiff and remaining co-defendants share the risk of a defendant's non-payment. The plaintiff (P) and co-defendants are responsible for any shortfall in proportion to their respective degrees of fault.

Using the above example of the \$100,000 total judgement, with a shortfall payment of \$50,000 from D1 and a shortfall payment \$10,000 from D3, P and D2 must pay for the missing \$60,000. P and D2 have equally-apportioned liability, which causes them to be responsible for half of each shortfall - \$25,000 and \$5,000 from each non-paying defendant. The burden is shared between the plaintiff (if determined to be responsible) and the remaining defendants.

### d) Proportionate Liability with a Peripheral Wrongdoer

Under this option, a defendant will be proportionately liable only if their share of the liability falls below a specified percentage, meaning that liability would be joint and several. Using the above example, if the threshold amount of liability is set at 25%, D2 and D3 would only be responsible for 20% and 10%, regardless of whether they are the only available or named defendants. However, D1 may be liable for 100% if it is the only available or named defendant. This system tends to favour defendants responsible for a small portion of the loss, but the determination of the threshold amount between joint and several liability and proportionate liability is arbitrary.

### e) Proportionate Liability with a Reallocation of Some or All of an Insolvent or Unavailable Defendant's Share

This option reallocates the liability of a non-paying defendant among the remaining defendants in proportion to their respective degrees of fault. The plaintiff's contributory negligence does not

impact the application of this reallocation. Joint and several liability would continue to apply in cases of fraud or where laws were knowingly violated.

#### **f) Court Discretion**

Similar to the fraud exception in the option above, this option includes giving the courts discretion to apply different forms of liability depending on the case.

For example, if a particular co-defendant's share of the fault was relatively minor the court would have discretion to limit that defendant's liability to an appropriate portion.

### **2. Legislative Cap on Liability**

Liability concerns could be addressed by introducing a cap on the amount of damages available for claims for economic loss.

### **3. Hybrid**

A number of jurisdictions provide a hybrid system of proportionate liability and caps on damages. Co-defendants are liable for their portion of the damages, but the maximum total amount payable by each co-defendant is capped to a certain limit.

## **The Saskatchewan Experience**

As referenced earlier in this paper, the Province of Saskatchewan responded with a variety of legislative actions to assist municipalities in the early 2000s. Some of those key developments are listed below which are abridged from *"A Question of Balance: Legislative Responses to Judicial Expansion of Municipal Liability – the Saskatchewan Experience."* The paper was written by Neil Robertson, QC and was presented to the annual conference of the Association of Municipalities of Ontario in 2013. Two key reforms are noted below.

#### **1. Reforming joint and several liability by introducing modified proportionate liability: "The Contributory Negligence Act" amendments**

The *Contributory Negligence Act* retained joint and several liability, but made adjustments in cases where one or more of the defendants is unable to pay its share of the total amount (judgement). Each of the parties at fault, including the plaintiff if contributorily negligent, will still have to pay a share of the judgement based on their degree of fault. However, if one of the defendants is unable to pay, the other defendants who are able to pay are required to pay only their original share and an additional equivalent share of the defaulting party's share.

The change in law allows municipalities to reach out-of-court settlements, based on an estimate of their degree of fault. This allows municipalities to avoid the cost of protracted litigation.

Neil Robertson provided the following example to illustrate how this works in practise:

"...If the owner of a house sues the builder for negligent construction and the municipality, as building authority, for negligent inspection, and all three are found equally at fault, they would each be apportioned 1/3 or 33.3%. Assume the damages are \$100,000. If the builder has no funds, then the municipality would pay only its share (\$33,333) and a 1/3 share of the builder's defaulting share

(1/3 of \$33,333 or \$11,111) for a total of \$44,444 (\$33,333 + \$11,111), instead of the \$66,666 (\$33,333 + \$33,333) it would pay under pure joint and several liability.”

This model will be familiar to municipal leaders in Ontario. In 2014, Ontario’s Attorney General presented this option (called the Saskatchewan Model of Modified Proportionate Liability) for consideration. At the time, over 200 municipal councils supported the adoption of this option along with the “Peripheral Wrongdoer Rule for Road Authorities” which would have seen a municipality never be liable for more than two times its proportion of damages, even if it results in the plaintiff being unable to recover full damages. These two measures, if enacted, would have represented a significant incremental step to address the impact of joint and several to Ontario municipalities.

## **2. Providing for uniform limitation periods while maintaining a separate limitation period for municipalities: “The Limitations Act”**

This act established uniform limitation periods replacing many of the pre-existing limitation periods that had different time periods. The Municipal Acts in Saskatchewan provide a uniform one-year limitation period “from time when the damages were sustained” in absolute terms without a discovery principle which can prolong this period. This helps municipalities to resist “legacy” claims from many years beforehand. This act exempts municipalities from the uniform two-year discoverability limitation period.

Limitation periods set deadlines after which claims cannot be brought as lawsuits in the courts. The legislation intends to balance the opportunity for potential claimants to identify their claims and, if possible, negotiate a settlement out of court before starting legal action with the need for potential defendants to “close the books” on claims from the past.

The reasoning behind these limitations is that public authorities, including municipalities, should not be punished by the passage of time. Timely notice will promote the timely investigation and disposition of claims in the public interest. After the expiry of a limitation period, municipalities can consider themselves free of the threat of legal action, and continue with financial planning without hurting “the public taxpayer purse”. Municipalities are mandated to balance their budgets and must be able to plan accordingly. Thus, legacy claims can have a very adverse affect on municipal operations.

Here in Ontario, there is a uniform limitations period of two years. Municipalities also benefit from a 10-day notice period which is required for slip and fall cases. More recently, the applicability of this limitation deadline has become variable and subject to judicial discretion. Robertson’s paper notes that in Saskatchewan, courts have accepted the one-year limitations period. A further examination of limitations in Ontario may yield additional benefits and could include the one-year example in Saskatchewan and/or the applicability of the 10-day notice period for slip and fall cases.

### **Other Saskatchewan reforms**

Saskatchewan has also implemented other reforms which include greater protections for building inspections, good faith immunity, duty of repair, no fault insurance, permitting class actions, and limiting nuisance actions. Some of these reforms are specific to Saskatchewan and some of these currently apply in Ontario.

## Insurance Related Reforms

### Government Regulated Insurance Limits

The April 2019 provincial budget included a commitment to increase the catastrophic impairment default benefit limit to \$2 million. Public consultations were led by the Ministry of Finance in September 2019. AMO wrote to the Ministry in support of increasing the limit to \$2 million to ensure more adequate support those who suffer catastrophic impairment.

In 2016, the government lowered this limit as well as third-party liability coverage to \$200,000 from \$1 million. This minimum should also be increased to \$2 million to reflect current actual costs. This significant deficiency needs to be addressed.

### Insurance Industry Changes

In 1989 the Ontario Municipal Insurance Exchange (OMEX) was established as a non-profit reciprocal insurance provider for Ontario's municipalities. It ceased operations in 2016 citing, "[a] low pricing environment, combined with the impact of joint & several liability on municipal claim settlements has made it difficult to offer sustainable pricing while still addressing the municipalities' concern about retro assessments."<sup>3</sup> (Retro assessments meant paying additional premiums for retroactive coverage for "long-tail claims" which made municipal budgeting more challenging.)

The demise of OMEX has changed the municipal insurance landscape in Ontario. That joint and several liability is one of the key reasons listed for the collapse of a key municipal insurer should be a cause for significant concern. Fewer choices fuels cost. While there are other successful municipal insurance pools in Ontario, the bulk of the insurance market is dominated by for-profit insurance companies.

Reciprocal non-profit insurers are well represented in other areas across Canada. Municipalities in Saskatchewan, Alberta, British Columbia are all insured by non-profit reciprocals.

The questions for policy makers in Ontario:

Are there any provincial requirements or regulations which could better support the non-profit reciprocal municipal insurance market?

What actions could be taken to better protect municipalities in Ontario in sourcing their insurance needs?

How can we drive down insurance costs to better serve the needs of municipal property taxpayers?

<sup>3</sup> Canadian Underwriter, August 11, 2016 <https://www.canadianunderwriter.ca/insurance/ontario-municipal-insurance-exchange-suspends-underwriting-operations-1004098148/>



## Conclusion

This AMO paper has endeavoured to refresh municipal arguments on the need to find a balance to the issues and challenges presented by joint and several liability. It has endeavoured to illustrate that options exist and offer the reassurance that they can be successfully implemented as other jurisdictions have done.

Finding solutions that work will require provincial and municipal commitment. Working together, we can find a better way that is fair, reasonable, and responsible. It is time to find a reasonable balance.