



Meeting 2009 Feb 02

COUNCIL REPORT

COMMUNITY DEVELOPMENT COMMITTEE

*HIS WORSHIP, THE MAYOR
AND COUNCILLORS*

**SUBJECT: COMMUNITY BEFEFIT BONUS HOUSING FUNDS
COVENANT TERMS**

RECOMMENDATION:

1. THAT Council adopt the covenant terms to secure City Community Benefit Bonus Funds, as outlined in this report.

REPORT

The Community Development Committee, at its meeting held on 2009 January 20, received and adopted the attached report establishing covenant terms to secure City Community Benefit Bonus housing funds.

This report presents a balanced and reasonable approach for the City to secure repayment of issued grant funds if a project does not proceed or the project reverts to an alternate purpose within the first 10 years of occupancy.

Respectfully submitted,

Councillor C. Jordan
Chair

Councillor D. Johnston
Vice Chair

Councillor P. Calendino
Member

Copied to: City Manager Director Planning & Building Direct Finance City Solicitor

TO: CHAIR AND MEMBERS
COMMUNITY DEVELOPMENT
COMMITTEE

DATE: 2009 January 15

FROM: DIRECTOR PLANNING AND BUILDING

FILE: 71000 01
Reference: Community Benefits

**SUBJECT: COMMUNITY BENEFIT BONUS HOUSING FUNDS
COVENANT TERMS**

PURPOSE: To establish covenant terms to secure City Community Benefit Bonus housing funds.

RECOMMENDATION:

1. **THAT** The Committee recommend to Council the adoption of the covenant terms to secure City Community Benefit Bonus Funds, as outlined in this report.

REPORT

1.0 BACKGROUND

On 2008 January 7, Council endorsed an approach for the use of housing funds obtained through the Community Benefit Bonus policy to assist non-profit housing providers in the development of affordable housing projects. Since, Council has approved allocations of Community Benefit Bonus Funds for two projects: 1) \$227,000 for the Royal Canadian Legion seniors supportive housing project; and 2) \$100,000 for the Marguerite Dixon Transition Society second stage housing project.

Arising from the process for release of grant funds for these projects, several issues have arisen relating to the registration of a covenant to secure repayment of grant funds should a project not proceed to completion, or should the units convert to an alternate purpose in future. The purpose of this report is to clarify and establish the terms of the necessary covenant.

2.0 DISCUSSION

2.1 Repayment Provisions

As established by Council, the City requires registration of a Section 219 Covenant to secure repayment of public Community Benefit Bonus Funds issued to non-market housing providers in support of affordable housing projects in the event that a project does not proceed to completion within a 5 year period or reverts to an alternate housing type or purpose in future.

The release of approved Community Benefit Bonus funds for the Royal Canadian Legion and Marguerite Dixon projects is currently pending completion of the required covenant documents related to securing repayment. As part of current discussions with both project applicants, a number of detailed issues have been raised regard the wording and requirements of draft covenant documents. BC Housing has provided some information to staff as to standard approaches used. Staff have also reviewed the intent of the repayment requirements to clarify the City's interests.

Arising from the results of this review and discussion, it is proposed that the following be established as terms for the repayment covenant:

- if a project does not proceed to completion within a five year period following issuance of the grant, repayment with accrued interest from the date of issuance is required.
- if a project operates for a period of 10 years for the approved purpose, the grant would be forgiven and no repayment would be required should the project revert to an alternate type or purpose in future.
- if a project reverts from the approved affordable housing type within the first 10 years of occupancy, the grant repayment amount would be reduced by 1/10th for each year that the project operated for the approved purpose, with accrued interest due on the outstanding balance calculated from the date of issuance.
- if grant repayment is required, any outstanding balance of funds not repaid to the City at the end of the year in which they are payable, will be added to the property taxes of the facility.
- the rate for accrued interest will be equivalent to the rate set two times per year, by the Province, for taxes in arrears in accordance with Sections 245 and 246 of the *Community Charter* and Section 417(3)(d) of the *Local Government Act*.

In application, this proposed approach would ensure repayment to the City of grant funds should a project fail to advance to completion, through issuance of occupancy permit, within 5 years of receipt of grant funds. It is noted that Council would also be able to reconsider an extension to this term should a project be in progress but had yet to be completed within this period. In recognition of the purpose of the grant funds, the approach also forgives repayment should the project operate for a 10 year period for the approved purpose. After a 10 year period, staff would consider that the project had

provided for the intended community benefit to be derived from issuance of the grant funds. The grant amount for repayment would also be reduced on a pro-rated basis for each year that the project operated for the approved purpose within the first 10 years of occupancy. As an example, under this scenario, a project that received a \$100,000 grant which ceased to provide for the approved housing type after 5 years, would be required to repay \$50,000 (1/2 of the grant) plus accrued interest on the \$50,000 for the five years. The application of the specified interest rate would ensure that the current present value of the City's grant funds is maintained.

Staff would note that this approach would protect the City's interests in issuance of the grant funds, and recognize that the City would achieve the benefit of the grant contribution within the first 10 years of a project. It is also noted, the application of the repayment covenant is not expected to be a common occurrence as the typical experience is that the vast majority of purpose built projects that achieve Building Permit advance through to completion and operate successfully for the intended purpose. The proposed approach does recognize that, should a project not proceed or need to change its housing focus, reasonable provision would have to be made to secure repayment of the public funds extended to the project.

2.2 Priority Registration

A second issue relates to the registration of the repayment covenant in priority over others interests. The purpose of priority registration is to ensure that interests in financial liability receive priority over other interests that may also be registered on the title. For example, if the City's covenant was to be registered in priority over a mortgage, the City would be able to pursue its financial interest in the covenant before others in the case of default or legal action.

Given that senior governments typically provide primary funding for non-market projects, they have a primary interest to receive priority on title with regard to financial interests. It is, therefore proposed that the City not seek to secure priority registration on the repayment covenant given the limited exposure, in relative financial terms, for the City. It is, however, important to note that should, in the unlikely event, a project default, the City may forgo repayment of housing funds as other interests on the title, such as mortgages, would take priority over the City's repayment covenant.

It is, however, important to note that should the project go into default on the mortgage, the covenant could be foreclosed from title to the land. This would not discharge the organization that received the grant from its contractual liability to repay the grant if the use changed, but the foreclosing mortgagee and any buyer in the foreclosure process would take title free of the covenant.


It is further noted that the provision to add any outstanding balance to property taxes would provide a further avenue for recovery.

To: Community Development Committee
From: DIRECTOR PLANNING AND BUILDING
Re: Community Benefit Bonus Housing Funds – Covenant Terms
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3.0 CONCLUSION

On 2008 January 7, Council endorsed an approach for the use of housing funds obtained through the Community Benefit Bonus policy to assist non-profit housing providers in the development of affordable housing projects. The City is currently concluding the release of two allocations of funds to the Royal Canadian Legion and the Marguerite Dixon Transition Society. This report presents a balanced and reasonable approach for the City to secure repayment of issued grant funds if a project does not proceed or the project reverts to an alternate purpose within the first 10 years of occupancy.

It is recommended that Council endorse the terms for the repayment covenant, as outlined in Section 2.0 above.


B. Luksun, Director
PLANNING AND BUILDING

SF/LP/sa

Copied to: City Manager
Director Finance
City Solicitor

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