




CITY OF HAMILTON
CORPORATE SERVICES DEPARTMENT
Financial Planning, Administration and Policy Division

TO:	Chair and Members Audit, Finance and Administration Committee
COMMITTEE DATE:	September 5, 2024
SUBJECT/REPORT NO:	Development Agreement Surety Bonds (FCS21056(b)) (City Wide) (Outstanding Business List Item)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Janeen Peters (905) 546-2424 Ext. 2132 Lindsay Gillies (905) 546-2424 Ext. 5491
SUBMITTED BY:	Kirk Weaver Acting Director, Financial Planning, Administration and Policy Corporate Services Department
SIGNATURE:	

RECOMMENDATION(S)

- (a) That the Development Agreement Surety Bond Policy (FPAP-DA-001) and the accompanied Development Agreement Surety Bond Language Template, attached as Appendix "A" to Report FCS21056(b), be amended as identified;
- (b) That staff be directed to allow developments which provided security prior to June 9, 2021, currently secured with a letter of credit or cash security, to replace the existing security with a surety bond, provided:
 - (i) The applicant submits an application form (Appendix "B") and a non-refundable application fee;
 - (ii) The applicant agrees to pay any third-party costs related to the approval of the application (e.g., legal fees, registration fee, title search);
 - (iii) The application is subject to joint approval by the General Manager of Planning and Economic Development (or designate) and the City Solicitor (or designate);

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OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

- (c) That the application fee applicable to allow developments currently secured with a letter of credit or cash security which provided security prior to June 9, 2021, to replace the existing security with a surety bond be:
- (i) Established as \$300 for the 2024 calendar year;
 - (ii) Referred to the annual user fee by-law for 2025 and future years;
 - (iii) Credited to the Development Engineering Administration (45408-812015).

EXECUTIVE SUMMARY

Report FCS21056 / LS21021, Development Agreement Surety Bonds, was approved at the June 9, 2021 Council meeting. The approval and application of this policy allowed developments to provide a surety bond as security and was restricted to new development agreements. The policy was adopted on a go-forward basis and, therefore, developments which had previously provided security in the form of a letter of credit or cash security were not permitted to replace that security with a surety bond.

Staff provided an update on the uptake of the use of surety bonds on August 17, 2023 through Report FCS21056(a). At that time, staff was directed by Council to report back to the Audit, Finance and Administration Committee on a full cost recovery approach as it relates to the replacement of letters of credit and cash securities to surety bonds and that such report includes an assessment of how this program will assist the City's housing pledge.

The purpose of Report FCS21056(b) is to provide the findings and rationale for recommending that development agreements dated prior to June 9, 2021 (existing development agreements) be allowed to replace previously provided letters of credit and cash security with surety bonds.

Staff is recommending a case-by-case application process and that a \$300 non-refundable application fee be established for 2024 to allow developments currently secured with a letter of credit or cash security to replace the existing security with a surety bond. This \$300 application fee will cover the staff time required to review files and ensure that a replacement of the existing security would not materially change the City's risk related to the development security.

As the City works towards addressing the housing crisis, internal and external stakeholders have agreed that allowing existing development agreements the option to transfer letters of credit and cash security to surety bonds would be beneficial to both the City and the development community. Even though the benefit to the City cannot be quantified (numerically), approving an amendment to the Development Agreement Surety Bond Policy (FPAP-DA-001) will signal to the development community that the City of Hamilton has been listening to developers' concerns and is committed and responsive to addressing the need for more financial flexibility to aid in increasing the housing supply.

Alternatives for Consideration – N/A

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: A non-refundable application fee of \$300 would be collected for each application and deposited to Development Engineering Administration (45408–812015), to offset staff time spent reviewing and processing applications. Developers may incur registration and out of pocket costs.

Staffing: It is anticipated that the volume of requests to replace letters of credit and cash security with surety bonds will peak shortly after approval of the amended policy. No additional staff is required. Requests will be prioritized among other tasks.

Legal: Applications will be approved or denied on a case-by-case basis to ensure that a replacement of the existing security would not materially change the City's risk related to the development security.

HISTORICAL BACKGROUND

Council adopted, through Report FCS21056 / LS21021 "Development Agreement Surety Bonds", presented at the June 3, 2021, Audit, Finance and Administration Committee meeting, the "Development Agreement Surety Bond Policy (FPAP-DA-001)" and the accompanied "Development Agreement Surety Bond Language Template".

The approved policy permitted the acceptance of surety bonds on a go-forward basis, where the language in development agreements were to include surety bonds as an acceptable security. However, existing development agreements were not permitted to substitute existing security with surety bonds.

Since the implementation of the “Development Agreement Surety Bond Policy (FPAP-DA-001)” in 2021, the development community has been advocating to allow existing development agreements the option to transfer letters of credit and cash security to surety bonds. The City currently holds a total of 31 surety bonds, with an aggregate value of \$14.2 M after releases and reductions.

The West End Home Builders Association (WEHBA) has identified that developers have shown a keen interest in replacing previously provided security with surety bonds.

At the August 17, 2023, Audit, Finance and Administration Committee meeting, through Report (FCS21056(a)), Development Agreement Surety Bonds, staff presented challenges to adopting a blanket policy allowing existing development agreements the option to replace letters of credit or cash security with surety bonds. At that meeting, staff was directed to examine the feasibility of a full cost recovery approach as it relates to the transference of letters of credit and cash securities to surety bonds.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Report FCS21056(b) will enable developers who provided security prior to June 9, 2021 to replace the previously provided letter of credit or cash security currently held by the City with a surety bond where an application is made and approved jointly by Planning and Economic Development (PED) and Legal Services.

To accommodate this replacement, the City of Hamilton’s surety bond policy “Development Agreement Surety Bond Policy (FPAP-DA-001)” and accompanying Development Agreement Surety Bond Language Template will need to be updated as identified in the attached as Appendix “A” to Report FCS21056(b).

RELEVANT CONSULTATION

Internal

- Planning and Economic Development Department
- Legal and Risk Management Services Division, Corporate Services Department

External

- Surety Providers
 - RAISE Underwriting
 - Marsh Inc.
 - Intact Insurance

- Development Community
 - T. Johns Consulting Group
 - West End Home Builders' Association (WEHBA)
- Municipalities
 - City of Pickering
 - Niagara Region

ANALYSIS AND RATIONALE FOR RECOMMENDATION(S)

Staff has established that a \$300 non-refundable application fee would offset the staff time needed to facilitate a program to allow developments which provided security prior to June 9, 2021, currently secured with a letter of credit or cash security, to replace the existing security with a surety bond.

Appendix “A” to Report FCS21056(b) details the changes recommended to the City’s Development Agreement Surety Bond Policy (FPAP-DA-001) and the accompanied Development Agreement Surety Bond Language Template. The changes can be summarized as:

- The addition of Section 8 in the Details: Usage and Limitation section of the Policy which adds the ability to permit the City to exchange another form of security for a surety bond.
- The insertion of Section 13 in the Development Agreement Surety Bond Language Template which addresses responsibility of the surety provided in the event the surety bond is a replacement for a previous security.
- Housekeeping changes.

The application form, attached as Appendix “B” to Report FCS21056(b) includes the criteria required for an approval. Including the criteria on the application allows developers to assess their development against the criteria the City will be looking which should limit the number of applications that the City ultimately needs to reject.

The criteria that will determine whether the City approves an application are as follows:

- The surety provider must be willing to accept all obligations under the development agreement even applying to breaches that precede its issuance, as well as, breaches the City knew about and failed to act on.
- No default of the related development agreement has occurred.
- The City is not currently engaged in litigation or otherwise involved in a dispute with the party that has posted the security.
- No third parties will be adversely affected (e.g., as mortgagees and guarantors)
- There has not been a change in the ownership of the land.

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An application will be rejected if the conditions are not met or the information required to satisfy the conditions is not readily available.

The Council direction provided at the August 17, 2023 meeting of the Audit, Finance and Administration Committee meeting requested an assessment of how this program will assist the City's housing pledge. A key difference between a letter of credit or cash and a surety bond is that a surety bond does not tie up the capital of the developer. This capital that would otherwise be tied up as security is then able to be used by the developer for other purposes, e.g, another development project.

While the general logic is that developers can do more projects when secured with surety bonds, the City cannot require that the freed up capital is used for other development projects within the City. In addition, the pace at which developments can progress is influenced by many factors such as the labour market and interest rates. Therefore, the impact of allowing development agreements dated prior to June 3, 2021 (existing development agreements) be allowed to replace previously provided letters of credit and cash security with surety bonds is one of many factors that impact on the pace the City achieves its housing pledge.

Even though the benefit to the City cannot be quantified (numerically), approving an amendment to the Development Agreement Surety Bond Policy (FPAP-DA-001) will signal to the development community that the City of Hamilton is committed and responsive to addressing the need for more financial flexibility to aid in increasing the housing supply.

ALTERNATIVES FOR CONSIDERATION

None

APPENDICES AND SCHEDULES ATTACHED

Appendix "A" to FCS21056(b) – Development Agreement Surety Bond Policy (FPAP- DA-001) and Development Agreement Surety Bond Language Template

Appendix "B" to FCS21056(b) – Development Agreement Security Replacement Application