




**CITY OF HAMILTON**  
**CORPORATE SERVICES DEPARTMENT**  
**Financial Services and Taxation Division**

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| <b>TO:</b>                | Chair and Members<br>Audit, Finance and Administration Committee   |
| <b>COMMITTEE DATE:</b>    | November 7, 2024   |
| <b>SUBJECT/REPORT NO:</b> | Consultation on Province-wide Enabling of the Use of Pay-on-Demand Surety Bonds to Secure Land-Use Planning Obligations under Section 70.3.1 of the <i>Planning Act</i> (FCS24058) (City Wide) |
| <b>WARD(S) AFFECTED:</b>  | City Wide  |
| <b>PREPARED BY:</b>       | Lindsay Gillies (905) 546-6875 Ext.5491  |
| <b>SUBMITTED BY:</b>      | Kirk Weaver<br>Acting Director, Financial Planning, Administration and Policy<br>Corporate Services Department   |
| <b>SIGNATURE:</b>         |    |

**RECOMMENDATION(S)**

- (a) That Council adopts the submissions and recommendations as provided in Appendix "A" to Report FCS24058 regarding ERO 019-9198: Enabling the Use of Pay-on-Demand Surety Bonds to Secure Land-Use Planning Obligations under Section 70.3.1 of the *Planning Act*;
- (b) That the General Manager, Finance and Corporate Services, be authorized and directed to confirm the submissions made to the Province regarding ERO 019-9198: Enabling the Use of Pay-on-Demand Surety Bonds to Secure Land-Use Planning Obligations under Section 70.3.1 of the *Planning Act*, attached as Appendix "A" to Report FCS22085; and
- (c) That the General Manager, Finance and Corporate Services and the City Solicitor be authorized to make submissions pertaining to ERO 019-9198: Enabling the Use of Pay-on-Demand Surety Bonds to Secure Land-Use Planning Obligations under Section 70.3.1 of the *Planning Act* and any associated future opportunities for consultation, consistent with the comments and concerns raised in Report FCS24058.

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OUR Vision: To be the best place to raise a child and age successfully.

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.

## **EXECUTIVE SUMMARY**

On September 16, 2024, the Province released ERO 019-9198: Enabling the Use of Pay-on-Demand Surety Bonds to Secure Land-Use Planning Obligations under Section 70.3.1 of the *Planning Act* (“Surety Bond Regulation”). The Surety Bond Regulation sets out proposed terms that, if included in a surety bond, would be required to be accepted by a municipality should a developer submit a complying surety bond as security for a land-use planning agreement (development agreement).

The stated objective of the proposed Surety Bond Regulation is to help developers free up funds for housing projects through the use of an alternative financial tool. This objective can theoretically be achieved through the use of surety bonds because, unlike a cash security or a letter of credit, surety bonds do not require dollar for dollar capital from the developer for the issuer to provide a surety bond.

The purpose of Report FCS24058 is to provide information and obtain endorsement of staff comments on the proposed Surety Bond Regulation.

The City of Hamilton has been accepting pay-on-demand surety bonds since the summer of 2021. Given the Province’s expressed desire to mandate this financial tool to all municipalities, staff generally supports the requirements proposed by the Province. However, staff remains concerned about the Province mandating the use and terms, without leaving municipalities with the ability to customize the financial tool for their own needs.

The Province provided for consultation on the Surety Bond Regulation. The consultation deadline was October 16, 2024. In order to meet the Provincial deadline, staff comments have been submitted to the Province and are contained in the attached Appendix “A” to Report FCS24058. If the recommendations in Report FCS24058 are approved by Council, the General Manager, Finance and Corporate Services, will notify the Province that the submissions that were made have been adopted by Council for the City of Hamilton.

**Alternatives for Consideration – Not Applicable**

## **FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

**Financial:** The Surety Bond Regulation, as drafted, is expected to have minimal to no financial impact to the City. This is because there are few variations from the City’s existing Development Agreement Surety Bond Policy (FPAP-DA-001) as summarized in Table 1 and the frequency of the City needing to draw on securities has historically been low.

**SUBJECT: Consultation on Province-wide Enabling of the Use of Pay-on-Demand Surety Bonds to Secure Land-Use Planning Obligations under Section 70.3.1 of the *Planning Act* (FCS24058) (City Wide) – Page 3 of 6**

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Staffing: None.

Legal: There are no legal implications related to adopting the recommendations in Report FCS24058. Once a Surety Bond Regulation is in force, Legal staff will need to support the review and evaluation of surety bonds provided, alongside the legislation and support the update of the City's existing Development Agreement Surety Bond Policy (FPAP-DA-001).

## **HISTORICAL BACKGROUND**

- December 9, 2020      The General Issues Committee, received as Item 8.1, a presentation and report from the Mayor's Task Force on Economic Recovery. The presentation included a request to review the use of surety bonds as financial security for development projects to secure municipal agreements.
- June 3, 2021      Audit, Finance and Administration Committee, through Report FCS21056 / LS21021, approved a Development Agreement Surety Bond Policy (FPAP-DA-001) and requested staff to bring a report back to committee after 24 months of accepting the first Surety Bond. This policy was adopted on a go-forward basis only.
- March 30, 2022      Bill 109, the *More Homes for Everyone Act, 2022* completes its first reading. Schedule 5, *Planning Act*, includes a provision that would provide the Minister with authority to make certain regulations respecting surety bonds and other instruments in connection with approvals with respect to land use planning.
- April 8, 2022      City Council, through Report PED22112, received information regarding Bill 109, the *More Homes for Everyone Act, 2022* and approved the comments which the Mayor submitted to the Province.
- April 14, 2022      Bill 109, the *More Homes for Everyone Act, 2022* received Royal Assent. Schedule 5, *Planning Act*, includes a provision that provides the Minister with authority to make certain regulations respecting surety bonds and other instruments in connection with approvals with respect to land use planning.

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| August 17, 2023    | An update on the City’s use of “Development Agreement Surety Bond Policy (FPAP-DA-001)” is provided through Report FCS21056(a) “Development Agreement Surety Bonds”. Staff was directed to explore a full cost recovery model to permit replacements of previously provided letters of credit or cash securities with a surety bond. |
| September 5, 2024  | Audit, Finance and Administration Committee, through Report FCS21056(b), approved a process for permitting developments to replace previously provided letters of credit or cash securities with a surety bond. Development Agreement Surety Bond Policy (FPAP-DA-001) is updated.   |
| September 16, 2024 | The Surety Bond Regulation is released by the Province with a 30-day consultation period.  |
| October 9, 2024    | Staff level comments on the Surety Bond Regulation were submitted to the Province and attached as Appendix “A” to Report FCS24058.   |
| October 16, 2024   | The deadline for submitting comments on the Surety Bond Regulation.  |

**POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

There are no policy implications or legislated requirements related to adopting the Recommendations in Report FCS24058. Once a Surety Bond Regulation is formalized, the City will need to update its practices to reflect the requirements of the Regulation and update its Development Agreement Surety Bond Policy (FPAP-DA-001) to ensure compliance with the Regulation. A summary of the differences between the City’s Policy and the proposed Surety Bond Regulation can be found in Table 1.

**RELEVANT CONSULTATION**

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

**ANALYSIS AND RATIONALE FOR RECOMMENDATION(S)**

Staff has reviewed the Surety Bond Regulation and provided staff level comments to the Province, attached as Appendix “A” to Report FCS24058.

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The Surety Bond Proposal has been presented as the elements which will be contained in the Regulation. As with any piece of legislation, the detail and language choices matter. Generally, given that the Province intends to mandate the use of surety bonds, staff is supportive of the elements proposed by the Province. Table 1 summarizes the key terms in the City’s Surety Bond Policy against the proposed Surety Bond Regulation.

**Table 1  
Summary of City’s Development Agreement Surety Bond Policy (FPAP-DA-001)  
compared to the proposed Surety Bond Regulation**

| <b>Item</b>        | <b>City’s Policy</b>  | <b>Proposed Surety Bond Regulation</b>  |
|--------------------|---|---|
| Licensing          | An active institution monitored by the Office of the Superintendent of Financial Institutions (OSFI).<br>[Note 1]   | Licensed under the <i>Insurance Act</i> to write surety insurance. Includes issuers overseen by Financial Services Regulatory Authority of Ontario (FSRA). [Note 1]   |
| Years of Operation | Incorporated in Canada for no less than 10 years  | N/A   |
| Credit Rating      | Dominion Bond Rating “A” or higher;<br>Fitch Ratings “A-” or higher;<br>Moody’s Investors Services Inc. “A3” or higher; or<br>Standard and Poor’s “A-” or higher. | Dominion Bond Rating “A” or higher;<br>Fitch Ratings “A-” or higher;<br>Moody’s Investors Service Inc. as “A3” or higher;<br>Standard and Poor’s “A-” or higher;<br>A.M. Best Company, Inc. as “A” or higher. |
| Guaranteed Payment | Yes   | Yes   |
| Timely Payment     | 10 business days  | 15 business days  |
| Partial Drawdowns  | Yes   | Yes   |
| Cancellation       | 90 days’ notice<br>Replacement required 30 days prior to termination<br>Otherwise, bond remains in force  | 90 days’ notice<br>Replacement required within 60 days of notice<br>Otherwise, bond remains in force  |

Note 1: OSFI provides oversight to federally regulated institutions as well as foreign institutions, FSRA provides oversight at the provincial level.

As can be seen, there are few differences between the City’s current policy and the proposed Surety Bond Regulation.

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The following summarizes the change requests that staff has raised to the Province in the staff level comments attached as Appendix “A” to Report FCS24058:

- Staff has requested guidelines versus requirements be included in the final regulation.
- Staff has requested an opportunity to be consulted on the specific language of the regulation.
- Staff has requested that municipalities be permitted to include additional terms as they deem necessary. For example, the existing City requirement that the issuer be incorporated in Canada for no less than 10 years.
- Staff has requested that municipalities be provided with the discretion to reject surety bonds where there is evidence of negative experiences with an issuer.
- Staff has requested that the Province issue a public list of all eligible issuers and their credit ratings to ease the administrative burden to municipalities.
- Staff has requested a consideration of a 10-day payout requirement versus the 15 days proposed in the Surety Bond Regulation.
- Staff has requested discretion on the part of the municipality regarding an option to draw on the bond versus the bond remaining in place, should an issuer provide an intention to terminate a bond.

**ALTERNATIVES FOR CONSIDERATION**

Not Applicable

**APPENDICES AND SCHEDULES ATTACHED**

Appendix “A” to Report FCS24058 – City of Hamilton Staff Submission on ERO 019-9198: Enabling the Use of Pay-on-Demand Surety Bonds to Secure Land-Use Planning Obligations under Section 70.3.1 of the *Planning Act*

LG/dt