

NO: R052

COUNCIL DATE: March 10, 2025

REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **March 6, 2025**

FROM: **City Solicitor**
General Manager, Engineering
General Manager, Finance
General Manager, Planning & Development
General Manager, Parks, Recreation & Culture

FILE: **3150-01**

SUBJECT: **Acceptance of Surety Bonds as Security for Development Cost Charge Instalments**

RECOMMENDATION

The Legal, Bylaw & Risk Services Department, the Engineering Department, the Finance Department, the Planning & Development Department and the Parks, Recreation & Culture Department recommend that Council:

1. Receive this report for information; and
2. Approve a Pilot Program in accordance with this report, endorsing the use of surety bonds from acceptable surety companies and in a form as determined by the General Manager, Finance (“GM, Finance”) as an alternate form of security to Letters of Credit for Development Cost Charges (“DCC” / “DCCs”) paid by instalments.

INTENT

The purpose of this report is to seek Council’s approval for the implementation of the Pilot Program, the aim of which is to accept surety bonds (“Surety Bond”) as security for DCCs paid by instalments and accordingly provide guidance on the acceptability thereof. The Pilot Program is necessary because its subject is new, and staff have not yet tested or reviewed its acceptability in the industry or its success.

BACKGROUND

Legislative Background

The *Local Government Act*, RSBC 2015, c 1 (the “Local Government Act”) defines and regulates DCCs including their imposition and collection. In accordance with the Local Government Act, municipalities may impose DCCs through the implementation of a bylaw. Accordingly, the City has enacted the *Surrey Development Cost Charge Bylaw, 2024*, No. 21174 which provides for the imposition and calculation of DCCs for developments within the City.

Under BC Reg 166/84 (the “Regulation”), developers who owe DCCs of \$50,000.00 or more may choose to pay in instalments. Under the *Surrey Development Cost Charge Instalment Payments Bylaw, 1984, No. 7957* (the “Instalment Bylaw”), developers who owe less than \$50,000.00 may also choose instalment payments. If developers opt for instalments, they must meet the Regulation’s requirements, including providing security “that ensures to the satisfaction of the treasurer that upon default the balance of the unpaid charge will be recoverable” (BC Reg 166/84, s. 7).

According to the Regulation and the Instalment Bylaw, the City’s General Manager, Finance decides whether the Surety Bonds are acceptable. Because of this, the legislation allows the City some flexibility in determining what forms of security it will accept for DCC instalments.

Current Regime

The current regime, guided by legislation, requires developers to pay DCCs in full within two years after the date that the subdivision is approved, or the building permit is granted by paying not less than:

- 1/3 at the time of the approval of the subdivision or granting of the permit;
- 1/2 of the balance within one year after the date of the subdivision approval or granting of the permit; and
- the remainder within two years after the date of the subdivision approval or granting of the permit.

Moreover, developers are permitted to pay DCCs in three separate payments: the initial payment being cash, and subsequent payment(s) deferred no later than in accordance with the *BC Reg 166/84*, such instalments to be accompanied by adequate security.

Currently, the City accepts Letters of Credit as an acceptable form of security for instalments in accordance with section 7 of the *BC Reg 166/84*.

Surety Bonds

A Surety Bond protects an obligee against losses up to the limit of the Surety Bond. The Surety Bond itself can be understood as a contract between three parties, namely:

1. The Obligee;
2. The Principal; and
3. The Surety.

In the context of using Surety Bonds as security for payment of DCC instalments, the Obligee is the City; the Principal is the developer; and the Surety is the surety company that assumes the obligation that is the subject of the Surety Bond.

While Surety Bonds are a listed form of acceptable security pursuant to the *BC Reg 166/84*, they are widely considered to carry more risk than Letters of Credit primarily because they involve increased potential for dispute and delay including but not limited to additional steps to realize on them. Notwithstanding these risks as summarized in general terms, staff recommend proceeding with a Program to accept Surety Bonds as doing so may alleviate some of the financial burden that developers are currently facing and correspondingly encourage development within the City.

DISCUSSION

Rationale

Given the financial challenges developers are presently facing, staff recommend implementing a Program to accept Surety Bonds as a means of encouraging development and ultimately increase housing in the City. The current acceptance of Letters of Credit would remain available; however, Surety Bonds permitted as an option available to developers as security for DCCS in lieu of Letters of Credit.

Proposed Program

It is recommended that the Program have a deadline of three years following the date of Council's endorsement of this report, at which time Council may elect to:

- (a) terminate the Program;
- (b) extend the Program;
- (c) modify the Program; or
- (d) make permanent the Program.

The rationale for setting a deadline relates primarily to the absence of data or precedent available for a Pilot Program of this nature. Given that developers are permitted to defer payment of DCCs for up to two years pursuant to the *BC Reg 166/84*, an end date to the Program that is within two years of the implementation of the Program will not provide the City with the data necessary to evaluate the performance of the Program.

Implementation of the Pilot Program

If the Program is endorsed by Council, the GM, Finance will implement a policy setting out the criteria for acceptable Surety Bonds and associated conditions including, but not limited to, the provision of a draft Surety Bond contract, of which the policy and related criteria and conditions will be subject to change from time-to-time at the discretion of the GM, Finance.

Following the implementation of the Pilot Program, Staff will monitor its progress including, but not limited to, tracking relative costs of implementation and assessing the use of Surety Bonds as compared to Letters of Credit, and periodically return to Council to provide updates or further suggestions on the duration of the Program, early termination, or recommended revisions to the Program in the event that the Province amends the Local Government Act or its regulations or as more data on the operationalization of the Program comes to fruition.

CONCLUSION

It is recommended that Council approve the Program as generally documented in this report.

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