

NO: R257

COUNCIL DATE: December 5, 2016

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## REGULAR COUNCIL

**TO: Mayor & Council** **DATE: November 30, 2016**

**FROM: General Manager, Engineering** **FILE: 5250-01**  
**General Manager, Finance & Technology**  
**City Solicitor**

**SUBJECT: Pilot Program for Use of Surety Bonds as Alternate Form of Security for Servicing Agreements**

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## RECOMMENDATION

The Engineering Department, the Finance & Technology Department and the Legal Services Division recommend that Council:

1. Receive this report as information; and
2. Approve a pilot program, for up to three land development projects on a first-in-first-selected basis, for the use of a Surety Bond, from acceptable Surety companies with a minimum of A+ level from A.M. Best Rating Services, in a form acceptable to the City as an alternate form of security to Cash or Letter of Credit for Servicing Agreements in which the Developers have been qualified by an acceptable Surety Bond Insurer.

## INTENT

The purpose of this report is to seek Council's approval for a pilot program, for up to three land development projects, for the use of Surety Bonds as an alternate form of security for Servicing Agreements.

## BACKGROUND

The *Surrey Subdivision and Development Bylaw, 1986, No. 8830*, as amended, identifies only Cash or an irrevocable Letter of Credit in favour of the City as the only acceptable forms of securities for Servicing Agreements.

## DISCUSSION

City staff have developed a Nexus approach to land development which envisions:

- A partnership between the Developer's team and City staff to expedite processing of key strategic applications/projects, e.g., developments along LRT corridors, City Centre enhancements, significant economic benefits, etc.; and
- Areas for continuous improvements, e.g., piloting the use of project schedules on several projects to establish realistic expectations of timelines, piloting the use of Surety Bonds as an alternate form of security for Servicing Agreements, etc.

Currently, security for engineering works and services (“Works”) required to be constructed by the Developer in order to develop a property in accordance with the *Surrey Subdivision and Development Bylaw, 1986, No. 8830* is to be in the form of Cash or Letter of Credit only. These forms of security allow the City to immediately access and utilize these monies, if required, to complete outstanding or deficient Works should the Developer not fulfill the Servicing Agreement obligations which are required to support the development, e.g., subdivided lots which must have frontage works completed when houses are built and ready for occupancy. In a similar way, a Surety Bond, which is a three-party agreement between the Developer, Surety Bond Insurer (“Surety”) and the City, obligates the Surety to pay the City for the debt or default of the Developer.

The City will qualify acceptable Surety companies with a minimum of A+ level from A.M. Best Rating Services. In turn, the Surety will qualify Developers after a review of their current and historical financial results to verify financial stability and capability to ensure completion of the development.

The City’s Legal Services staff will provide the Surety with the form of the Surety Bond to ensure all terms and conditions are acceptable to the City. The proposed Surety Bond will have different and simplified terms and conditions from the standard bonds to be consistent with current terms and conditions of Letter of Credit. If the Surety and the City cannot agree to the form of the Surety Bond, then a Surety Bond will not be permitted.

The following is a summary of the pros and cons to the Developer and the City with using Surety Bonds:

**Pros**

Developer	<ul style="list-style-type: none"> <li>The Developer’s working capital will be freed for greater liquidity that can then be encouraged for reinvestment into the City.</li> <li>The Surety will have qualified the Developers as financially stable and capable of completing the development after a review of their current and historical financial results.</li> </ul>
City	<ul style="list-style-type: none"> <li>The City may be viewed as more open for business with a new practice to facilitate development.</li> <li>The City may benefit from the Developer’s freed-up working capital for reinvestment into the City.</li> </ul>

**Cons**

Developer	<ul style="list-style-type: none"> <li>In order to effect the use of Surety Bond as an alternate form of security for a Servicing Agreement, the Developer will have to apply for a Development Variance Permit requesting Council’s approval to vary the definition of “Bond” in the <i>Surrey Subdivision and Development Bylaw, 1986, No. 8830</i> to include the use of Surety Bond for that specific Servicing Agreement.</li> </ul>
City	<ul style="list-style-type: none"> <li>The City’s Legal Services staff will need to prepare the form of the Surety Bond to ensure all terms and conditions are acceptable to the City.</li> <li>If the Developer defaults in resolving a construction issue in a timely manner, the City traditionally holds the Cash or Letter of Credit security to ensure the defaulted work is completed by the Developer but, with a Surety Bond, the City will then have to take on the role of project manager and contract administrator to remedy the defaulted work.</li> <li>The success of the pilot program can only be evaluated when an issue arises.</li> </ul>

Staff will report back to Council on the results of the project(s) and with recommendations regarding its continuation.

## SUSTAINABILITY CONSIDERATIONS

This pilot program supports the goals of the Sustainability Charter 2.0 to increase housing options and affordability by allowing improved utilization of Developer's capital funds for reinvestment. In particular, the pilot program supports the theme of Inclusion, specifically the following Desired Outcomes and Strategic Directions:

- Housing DO12: Everyone in Surrey has a place to call home;
- Housing DO13: Appropriate and affordable housing is available to meet the needs of all households in Surrey;
- Housing SD10: Increase and maintain the supply of affordable and appropriate rental housing across all Surrey communities; and
- Housing SD11: Ensure development of a variety of housing types to support people at all stages of life.

## CONCLUSION

Based on the above discussion, it is recommended that Council:

- Receive this report as information; and
- Approve a pilot program, for up to three land development projects on a first-in-first-selected basis, for the use of a Surety Bond, from acceptable Surety companies with a minimum of A+ level from A.M. Best Rating Services, in a form acceptable to the City as an alternate form of security to Cash or Letter of Credit for Servicing Agreements in which the Developers have been qualified by an acceptable Surety Bond Insurer.

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