

Policy SER-008-027 Establishing Security in Developer Agreements (proposed)**Report Purpose**

To request that Council make a decision on proposed Policy SER-008-027, Establishing Security in Developer Agreements, which outlines a framework for establishing developer security requirements associated with Developer Agreements.

Recommendation

THAT Policy SER-008-027, Establishing Security in Developer Agreements, as set out in Enclosure 1 of the October 27, 2020 Planning and Development Services report, be approved.

Our Prioritized Strategic Goals

Goal 1 - Build strong communities to support the diverse needs of residents

Goal 2 - Manage, invest and plan for sustainable municipal infrastructure

Report*Background:*

On January 19, 2016, Council approved motion 2016/6 "THAT administration work with the Urban Development Institute (UDI) and Canadian Home Builders Association (CHBA) to create guidelines for establishing security in the County's standard development agreement." The purpose of the motion was to direct administration to work with the development industry to establish guidelines to be included in development agreements based on developer's past performance to reduce security requirements for developers who have a positive track record.

As a result of the January 19, 2016 motion, a working committee was established consisting of representatives from Planning and Development Services (PDS) and UDI to work towards establishing security guidelines. As builders generally do not enter into Developer Agreements for construction, CHBA advised that they have no need to be involved on the draft security guidelines. The working committee conversations materialized into draft security guidelines in 2016, which were based on a developer categorization system according to their past performance in the Edmonton region, to try to balance developer needs with County risk. The resultant security amount required to be posted would then be defined within the associated development agreement.

The draft security guidelines were subsequently put on hold for finalization of a policy surrounding offsite development levies, which was anticipated to amend timing for levy payments and increase the scope of applicable agreements to accommodate developer construction of leviable infrastructure, influencing the overall impact and risk conversation surrounding securities. Following approval of Policy SER-009-044 Offsite Development Levies for New Growth Areas in 2019, the draft guidelines were formalized as proposed Policy SER-008-027 (Enclosure 1).

The draft Policy SER-008-027 was presented to Priorities Committee September 15, 2020. Overall formatting of the policy occurred for clarity subsequent to the presentation, however no substantive changes were made and the intent of proposed Policy SER-008-027 remains the same as was presented to Priorities Committee September 15, 2020.

Current practice:

The County's current developer security practice is the same for all developers regardless of a developer's past performance history. For Subdivision Agreements, the initial security requires that 10% of all construction costs to be secured prior to the start of construction, which is then increased to include 115% of the cost to complete any outstanding infrastructure construction at the time of registration of the associated subdivision. For Infrastructure and Development Agreements (i.e. not associated with subdivision), the initial amount of security is 115% of all construction costs. This increase in security amount following, or in absence of subdivision registration, is to protect the full cost of completing outstanding obligations under the associated Developer Agreement as the infrastructure is thereafter located within municipal lands, and lots would subsequently be available for transfer to a third party with a public expectation of completed roads and servicing. Once the infrastructure has received a construction completion certificate (CCC), the amount of security is eligible to be reduced back down to a minimum of 10% of the original cost until final acceptance certificate (FAC) is issued and all development obligations have been met. This practice aligns with the security requirements for Category B developers under the proposed policy.

Proposed practice:

Implementation of the proposed policy utilizing a category system would expose the County to some additional risk for Category A developer projects. We would not hold the entire cost to complete outstanding deficiencies if a Category A developer did not complete their obligations under a Developer Agreement. Rather than holding 115% of the cost to complete, we would only be holding 50% of the cost to complete under this category. Allowance of some additional calculated risk based on a developer's positive track record is consistent with other municipalities in the Edmonton region, and promotes competitive development opportunities within the County.

For developers within Category C, the County would be holding additional security from signing the agreement until final acceptance of the infrastructure. This is to provide assurance of financial ability prior to the start of construction; as well, we would hold additional landscaping securities until the end of warranty period.

Industry support:

UDI has provided a letter of support (Enclosure 2) for the draft policy, with an additional request for consideration of even further security requirement reduction, for developer-built leviable infrastructure that has funding available. While administration does not support a blanket reduction to developer-built leviable infrastructure, flexibility exists in Policy SER-009-044 to address special consideration of reduced liability situations on a case-specific basis for opportunity to balance developer financial impact and County liability and changes have not been made to the proposed policy to accommodate this request.

Next Steps:

The current security requirements are outlined in the County's master Development Agreement template, which was most recently approved by the Chief Commissioner July 18, 2017. If proposed Policy SER-008-027 is approved by Council, our existing master Development Agreement and other similar templates will be required to be revised to reflect the proposed policy. The required legal review would be comprehensive and not limited to changes only resulting from approval of the proposed policy.

Developers are required to pay approval and inspection fees to the County, to cover costs and expenses associated with drafting of Developer Agreements, checking of the associated plans and testing and inspection of the municipal infrastructure they propose to construct. The current approval and inspection fee rate was established in the 2009 Fees, Rates and Charges Bylaw. This rate will be reviewed in 2020/2021 for potential changes to reflect current day values and the required legal review(s) of Developer Agreements.

Council and Committee History

September 15, 2020	Draft Policy SER-008-027 Establishing Security in Developer Agreements was presented to Priorities Committee
July 23, 2019	Council approved Policy SER-009-044 Offsite Development Levies for New Growth Areas
November 22, 2016	Draft Guidelines for Establishing Security in Development Agreements was presented to Priorities Committee
January 19, 2016	Council approved THAT administration work with the Urban Development Institute and Canadian Home Builders Association to create guidelines for establishing security in the County's standard development agreement and bring back a report by the end of Q3 2016

Other Impacts

Policy: Reference to Policy SER-009-044 Offsite Development Levies for New Growth Areas. GOV-002-021 Mandatory Review of Bylaws and Policies require that policies are reviewed on a three-year cycle.

Legislative/Legal: The *Municipal Government Act (MGA)*, Part 17, Division 7, Section 655 (1)(b)(vi) states that a subdivision authority may impose by the subdivision and development regulations on a subdivision approval issued by it, a condition that the applicant enter in an agreement with the municipality to give security to ensure the terms of the agreement under this section are carried out, and; The *MGA*, Part 1, Section 5 sets out that a municipality has the duties that are imposed on it by enactments and those that the municipality imposes on itself as a matter of policy.

Interdepartmental: Planning and Development Services, Corporate Finance and Legislative and Legal Services

Master Plan/Framework: n/a

Communication Plan

Consultation occurred with UDI, Corporate Finance and Legislative and Legal Services in development of proposed Policy SER-008-027.

Enclosures

- 1 Policy SER-008-027 Establishing Security in Developer Agreements (proposed)
- 2 UDI letter of support for draft Policy SER-008-027