

LETTERS OF ASSURANCE
PLANNING & DEVELOPMENT DEPARTMENT

Adoption Date: February 8, 2021

Reason for Policy

The current standard for securing or guaranteeing works related to subdivision, development servicing and other conditions of a permit, is cash, a letter of credit or a subdivision bond, as detailed in *Subdivision and Development Servicing Bylaw No. 3558, 2003* and *Development Procedures Bylaw No. 4068, 2009*. Letters of assurance have emerged as another potential option to guarantee these works and conditions where a project is backed financially by a public agency, examples being an affordable housing project, a public school and a public hospital. A letter of assurance as an alternative to cash, a letter of credit or a subdivision bond would help reduce the cost of projects that provide a public good. This policy provides the procedure for evaluating and processing a request to utilize letters of assurance to guarantee works related to these types of development applications where a public good is provided and the project is backed financially by a public agency.

Policy

The policy outlines how letters of assurance (i.e., letters of agreement, letters of guarantee, letters of understanding) may be utilized as an alternative to cash, a letter of credit or a subdivision bond, and the process and procedure for determining eligible development applications and the process for the administration of these letters.

Procedure

1.0 Purpose

This procedure provides documentation of the City's approach for evaluating and processing requests to consider the acceptance of letters of assurance to guarantee the required works and conditions related to rezoning, development permit, subdivision or development servicing.

2.0 Background

Developers are required to provide works and services directly attributable to a development in accordance with current City standards when a property is rezoned, subdivided or developed. The *Subdivision and Development Servicing Bylaw No. 3558, 2003* and the *Development Procedures Bylaw No. 4068, 2009* sets out these standards and conditions, and stipulates that those works and services are to be constructed and installed, or secured financially, at the expense of the developer before the application moves forward to Council for consideration of Fourth and Final Reading, subdivision plan is signed or a building permit is issued.

As noted, to enable an applicant to progress through the development process, the actual construction of the works and services can be deferred if they are secured by cash or a letter of credit or guaranteed by a subdivision bond. This approach also allows the City to easily access and utilize the required funds to complete all or parts of any outstanding works and services should the developer default on its obligations.

Affordable housing projects financed by public agencies such as BC Housing have been recently identified as an example of a situation where a letter of assurance from the agency as an

alternative means to guarantee these works and services in place of cash, a letter of credit or a subdivision bond would help reduce project costs. These letters are an unsecured contractual guarantee or indemnity from a third party (a public agency) that are intended to ensure completion of the required works and services should the developer not do so. The risk to the City of the works and services not being completed is low since only public agencies have the opportunity under this policy and procedure to provide letters of assurance, subject to City approval.

The letter of assurance is limited to replacing cash, a letter of credit or a subdivision bond required in connection with works and services and conditions required under the *Subdivision and Development Servicing Bylaw No. 3558, 2003* and the *Development Procedures Bylaw No. 4068, 2009* (i.e., required works and services and other conditions of the permit). It does not apply to other permits that the City may collect security for such as tree cutting permits.

3.0 Eligibility and Criteria for Letters of Assurance

Staff will take the following into consideration when evaluating requests to utilize letters of assurance:

- The letter of assurance provider must be a federal, provincial or regional public agency.
- Even if the letter of assurance is proposed to be provided by a public agency, the City is under no obligation to approve it, depending on the circumstances of the application.
- Other considerations may include, for example, the applicant's development history and performance, the degree to which the proposed project aligns with the City's strategic goals, and the community benefits of the proposed project.

In addition, and as with traditional forms for securing or guaranteeing works, the following requirements will also apply:

- The letter of assurance provider must accept the City's terms and conditions as outlined in servicing agreement templates;
- The terms of the letter of assurance must be satisfactory to the City Solicitor or designate;
- The letter of assurance must be absolute, unconditional and irrevocable and remain valid until 100% of the works are completed and accepted by the City;
- If the letter of assurance is limited by a dollar amount, City staff must be satisfied that the limit corresponds to the work being guaranteed; and
- Covenants and other site charges may be used in combination with a letter of assurance and/or a subdivision bond and/or cash and/or a letter of credit.

4.0 Procedure

The following is an outline of the procedure for evaluating and processing a request for a letter of assurance.

Letter of Assurance Approval

- The applicant indicates to their Development Planning File Manager that they want to provide a letter of assurance, as an alternative to cash, a letter of credit or a subdivision bond, and must provide the required information about the letter of assurance provider.
- Using the criteria above, staff will evaluate the request and eligibility of the development application and letter of assurance provider. The General Manager Planning and Development, along with the General Manager Finance, Lands and Police, will approve or deny the request¹.
- If the request is approved, staff will proceed as outlined below. If the request is denied, staff will collect securities through cash or a letter of credit or obtain a subdivision bond.

Establishing the Letter of Assurance

- The Development Planning File Manager will notify Legal Services that the applicant will be providing a letter of assurance for the works and services, and will provide Legal Services with the relevant information.
- Legal Services will draft the letter of assurance and any necessary supporting agreements for the applicant to provide to their letter of assurance provider.
- Once the applicant and the letter of assurance provider have executed the necessary agreement(s), copies will be returned to the Development Planning File Manager, Legal Services and Finance.

Confirmation that Construction is Completed

- The File Manager (Development Servicing or Planning depending upon the specific security requirement) will review and confirm completion of construction requirements.
- Reduction, processing and return of the Letter of Assurance follows the Subdivision and Development Servicing Bylaw, Schedule D.

City Claim under the Letter of Assurance

- If the committed works and services are incomplete or deficient, City staff will submit a claim form to the letter of assurance provider.
- The letter of assurance provider will provide the required payment to the City within the time frame as prescribed in the letter of assurance to enable the satisfactory completion of the works and services.
- If the City does not receive satisfactory payment from the letter of assurance provider, the City will need to commence litigation to secure its rights.

¹ Section 6.6 of the *Development Procedures Bylaw No. 4068, 2009*, specifies that the General Manager Planning and Development in conjunction with the General Manager Finance, Lands and Police can determine the form of acceptable security.

Appeal Process

- Should an applicant be denied their request to utilize a letter of assurance, they may submit their concerns through the Development Application Issue Resolution Process for reconsideration.

Policy Review

- This policy will be reviewed in the next two years or as needed to ensure it is performing satisfactorily and as anticipated.