

Title: Security on Subdivision and Development Agreements	
Resolution: 2024-0332, Dec 9/24	Revised:
Special Notes/Cross Reference:	Next Review Date:

POLICY STATEMENT : Developers wishing to subdivide and service land or undertake major developments in the Town of Westlock shall be required to enter into a Development Agreement with the Town of Westlock and post security to ensure infrastructure is completed in accordance with the Town of Westlock Procedures and Design Standards for Development and accepted engineering practices.

PURPOSE : To establish a fair and equitable method of determining the form and amount of security required of Developers in order to protect the Town and its ratepayers against costs that may be incurred due to failure on the part of the Developer to complete municipal infrastructure to the Town’s standards.

1. DEFINITIONS

- 1.1. *Administration* – means the CAO, Senior Management, or designated support staff of the Town of Westlock.
- 1.2. *Bond* – means an irrevocable Security issued by a surety company licensed to transact the business of suretyship in the Province of Alberta.
- 1.3. *Chief Administration Officer (CAO)* – means the individual appointed by Council to the position of Chief Administrative Officer as per the *Municipal Government Act*.
- 1.4. *Construction Completion Certificate (CCC)* – means the certificate issued by the Town indicating the completion of construction of installation of certain Municipal improvements in accordance with the Development Agreement, Procedures and Design Standards and shall be done to the satisfaction of the Town.
- 1.5. *Developer* – means the owner(s) or representative of the lands subject to a Development Agreement.
- 1.6. *Developer Category* – means the category in which a developer is categorized or recategorized (as applicable) pursuant to the guidelines set out in this policy.

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- 1.7. *Development* – means development as defined in the *Municipal Government Act*.
- 1.8. *Development Agreement* – means a legal contract between a Developer and the Town that defines the terms and conditions under which a subdivision or development must be carried out, including responsibility to construct Local Improvements and associated financial obligations.
- 1.9. *Development Permit* – means a document that is issued under the Town’s Land Use Bylaw which authorizes development.
- 1.10. *Engineering Professional* – means a professional engineer, professional licensee (engineering), or professional technologist (engineering) in accordance with the *Engineering and Geoscience Professions Act, RSA 2000, c E-11*.
- 1.11. *Final Acceptance Certificate (FAC)* – means the certificate issued by the Town indicating the completion of construction and municipal improvements, including the repair of any known defects and deficiencies in accordance with the Development Agreement to the satisfaction of the Town.
- 1.12. *Land Use Bylaw* – means the Town of Westlock Land Use Bylaw, as amended or replaced from time to time.
- 1.13. *Letter of Credit* – means an irrevocable letter of credit issued by a chartered bank, credit union, or any other financial institution.
- 1.14. *Major Breach* – means any breach of a Development Agreement, development or subdivision requirement, or related development activity by a Developer as outlined in Section 2.6
- 1.15. *Minor Breach* – means any breach of a Development Agreement, development or subdivision requirement, or related development activity by a Developer as outlined in Schedule 2.6
- 1.16. *Municipal Improvements* – means any infrastructure, feature, or upgrade required to support a proposed subdivision or development, which is the responsibility of the Developer and includes, but is not limited to: deep utilities, shallow utilities, roadways, lanes, trails, sidewalks, streets, lighting, and landscaping, and is to be owned and operated by the Town.
- 1.17. *Procedures and Design Standards* – means a document intended to provide specific guidelines to assist the Town and developers in the design, preparation, and submission of plans and specifications for construction of municipal improvements and systems that will meet the servicing requirements for commercial, industrial,

and residential subdivision development with the Town.

- 1.18. *Security* – means a financial commitment provided to the Town to ensure full compliance by the Developer with the Developer’s obligations contained within a development agreement.

2. GUIDING PRINCIPLES

- 2.1. The Town of Westlock will enter into a Development Agreement with a Developer and collect security to ensure infrastructure is completed in accordance with the Town of Westlock Procedures and Design Standards for Development and accepted Engineering Practices.
- 2.2. Development Agreements and security shall include consideration of the Developers past performance of obligations under Development Agreements with the Town of Westlock or similar municipalities.

3. ROLES AND RESPONSIBILITIES

3.1. COUNCIL

- a) Approve this policy and any amendments.
- b) Review requests for reduction of security where allowed under this policy.

3.2. CHIEF ADMINISTRATIVE OFFICER

- a) Ensure staff compliance with this Policy.
- b) Implement policy, ensure policy reviews occur as scheduled, and verify the implementation of policy.
- c) Review requests for reduction of security where allowed under this policy.
- d) Delegate authority to appropriate staff with Administration to administer the policy.

3.3. ADMINISTRATION

- a) Ensure this Policy meets legislative standards.
- b) Communicate the methodology outlined in the policy to Developers and educate them on the process for Development Agreements and Securities.

- c) Negotiate development agreements and ensure a signed Development Agreement is completed between the Town and the Developer and required security has been collected, prior to commencement of a project.
- d) Determine security amounts required as per the Developer and Security Criteria in "Schedule A" of this policy.
- e) Complete inspections of completed Local Improvements to ensure Developer obligations are completed in a satisfactory manner.
- f) Issue CCC and FAC certificates, release security at the appropriate stages and amounts, and draw on security when required.

4. PROCEDURE

4.1. TYPES OF SECURITY AND REQUIREMENTS

- a) Security shall be required when:
 - i. A Developer enters into a Development Agreement with the Town;
 - ii. A Development Permit is issued for a major development project that includes or impacts municipal infrastructure;
 - iii. A Developer receives approval for a Subdivision which requires improvements or additions to municipal infrastructure; or
 - iv. A Developer enters into any other agreement with the Town that requires security.
- b) The type and form of Security that will be accepted by the Town for a Development Agreement will be determined by and is at the sole discretion of the Town. The types of security that may be accepted are:
 - i. an irrevocable and unconditional line of credit issued by a chartered bank or treasury branch;
 - ii. a cash deposit, which could also be in the form of an electronic funds transfer, certified cheque or bank draft issued by a chartered bank or treasury branch; or
 - iii. a bond issued by a qualified surety company licensed to issue safety bonds in Alberta, with a rating of A+ or better.
- c) Security will be held in trust by the Town's Finance Department.

4.2 DEVELOPER CATEGORIZATION

- a) The Town shall place a Developer into a Developer Category based on past development performance within the Town of Westlock or other municipalities based on criteria listed in "Schedule A".
- b) The Town may recategorize a Developer into a different Developer Category at any time based on updated development performance, positive or negative experience, or any major or minor breaches in consideration of the criteria listed in "Schedule A" and the breach of information in accordance with Section 4.6 of this policy.

4.3 SECURITY AMOUNTS

- a) The security amount included in a Development Agreement is calculated based on a percentage of the estimated cost of the completion of the construction or installation of the Municipal Improvements that are the subject of the Development Agreement. Such estimated cost must be stamped or sealed by an Engineering Professional to the satisfaction of the Town. Such percentage of the estimated cost will vary depending on the development agreement and the Developer Category.
- b) The amount of security required by a developer for a Development Agreement shall be further impacted by the Developer Category they are placed in and the construction costs for the Municipal Improvements related to the Development Agreement.
- c) The minimum security amount of \$50,000 shall be required for all Developer Categories for any Development Agreement or Subdivision with the exception of:
 - i. The minimum security amount may be reduced to \$5,000 when related to a Development Agreement involving only a curb cut, commercial crossing, or access ramp; or
 - ii. The minimum security amount may be reduced by no more than 25% at the sole discretion of the CAO.
 - iii. Any request to reduce the minimum security amount over 25% are at the sole discretion of Council.
- d) The minimum security amount required under a Development Permit shall be at the discretion of the Development Authority.

- e) The amount of security may be increased or reduced depending on:
 - i. circumstances of the subdivision or development;
 - ii. completion of the required Municipal Improvements;
 - iii. a reclassification of the Developer to a different Developer Category;
 - iv. new or updated construction costs estimates or actual or tendered costs for Municipal Improvements; and
 - v. revisions to the percentage of the construction costs as listed in Schedule A based on the Developer Category and the minimum amount of Security.

4.4 SECURITY COLLECTION

- a) Prior to commencing construction of the Municipal Improvements, a Developer must provide the required amount of security to the Town as determined in Schedule A.
- b) Should a Developer amend the scope of their project and seek further approvals, a Developer may need to provide the additional security in accordance with Schedule A.

4.5 SECURITY REDUCTION AND RELEASE

- a) Upon request from a Developer, the Town will reduce the amount of Security at the following stages, in accordance with the signed Development Agreement:
 - i. the Developer receives an executed Construction Completion Certificate (CCC) for all Municipal Improvements; and
 - ii. the Developer receives an executed Final Acceptance Certificate (FAC) for both all Municipal Improvements.
- b) Upon request from a Developer and upon acceptance of the Final Acceptance Certificates, the Town will release the remaining amount of Security.
- c) Prior to the issuance of all executed Final Acceptance Certificates, the minimum amount of Security must be in accordance with "Schedule A".
- d) In the case of security required under a Development Permit, Security shall be fully released upon confirmation of successful completion of all relevant conditions of approval.

4.6 SECURITY FORFEITURE

- a) Security maybe forfeit, or drawn upon, by the Town under the following circumstances:
 - i. A non-performance, or failure to complete work to Town standards;
 - ii. A minor and/or major breach of a signed Development Agreement;
 - iii. A failure to comply with an order to repair deficiencies;
 - iv. Substantial project delays, where completion of work exceeds 5 years;
 - v. To address safety concerns related to work covered by a Development Agreement; or
 - vi. Any other default.

4.7 MINOR AND MAJOR BREACHES

- a) The following circumstances are considered a minor breach:
 - i. Failure to apply to the Town to extend any deadlines outlined in the Development agreement;
 - ii. Failure to apply for an extension for unmet deadlines or conditions as outlined within the stripping and grading permit;
 - iii. Failure to submit record drawings within the timelines set out in the Development Agreement;
 - iv. Failure to start construction and installation of municipal improvements within the timelines set out in the Development Agreement;
 - v. Failure to complete seasonal conditions of CCC.

- b) The following circumstances are considered a major breach:
 - i. Commencement of construction prior to the approval of the Engineered Drawings of without a signed Development Agreement;
 - ii. Commencement of stripping and grading activities prior to the approval of the Engineering Drawings or without a signed Development Permit;

- iii. Failure to complete upgrades to existing transportation infrastructure such as that it is open and operational to traffic within the timeline set out in the Development Agreement or as per approved extension;
- iv. Failure to complete improvements for underground services that do not meet the timelines set out in the Development Agreement or as per approved extension;
- v. Failure to complete deficiencies listed in CCC reports in accordance with the timelines set out in the Development Agreement or as per approved extension;
- vi. Failure to complete deficiencies listed in FAC reports in accordance with the timelines set out in the Development Agreement or as per approved extension.

4.8 DEVELOPER RECATEGORIZATION


- a) At any time and at the discretion of the Town, a Developer may be recategorized from a lower to a higher tier Category based on positive performance provided:
 - i. The Developer meets the criteria for categorization in the higher Category (as applicable); and
 - ii. The Developer has not been recategorized to a lower Category within the past five years based on negative performance.


- b) At any time and at the discretion of the Town a Developer may be recategorized based on negative performance as follows:
 - i. A Developer may be recategorized to a lower Category if the Developer fails to pay any applicable offsite development levies associated with any Development Agreement the Developer has entered into by the required date for payment;
 - ii. A developer may be recategorized to a lower Category for multiple or repeated Minor Breaches (regardless of whether such Minor Breaches are remedied to the satisfaction of the town in accordance with the terms of the Development Agreement); or
 - iii. A developer may be recategorized to a lower Category for one Major Breach.

5. GENERAL

- 5.1 This policy shall be regularly reviewed by Administration, with the first review being conducted no later than five (5) years of being adopted.

- 5.2 In the event that the provisions of this policy are inconsistent with the provisions of the *Municipal Government Act*, R.S.A. 2000, as amended, its regulations or any other act, the provisions of the act or regulation shall prevail.





Mayor Jon Kramer



CAO Simone Wiley

SCHEDULE A – DEVELOPER AND SECURITY CATEGORY CRITERIA

Category	Developer Criteria	Security Requirement
A	a) Has had two (2) or more Development Agreements with the Town of Westlock in the past five (5) years where all CCC and FACs were issued within the timelines set out in the agreements. b) No Minor or Major Breaches in the past two (2) years.	25% of all estimated construction costs.
B	a) Has had one (1) or more Development Agreements with the Town of Westlock in the past five (5) years where all CCC and FACs were issued within the timelines set out in the agreements; OR b) Can provide references from another municipality in Alberta certifying the completion of one (1) or more equivalent agreements in the past five (5) years. c) No Major Beaches and no more than two (2) Minor Breaches in the past two (2) years.	50% of all estimated construction costs.
C	a) Has no previous Development Agreements within the past five (5) years or is in the process of completing its first Development Agreement with the Town of Westlock; OR b) No references from another municipality in Alberta certifying the completion of one (1) or more equivalent agreements in the past five (5) years; OR c) Has entered into Development Agreements with the Town of Westlock in the past five (5) years where not all CCC or FACs have been issued within the timelines set out in the agreement: OR d) No Major Breaches and no more than two (2) Minor Breaches in the past two (2) years	100% of all estimated construction costs.
D	a) Has had one (1) or more resolved Major Breaches in the past two (2) years: OR b) Has had one (1) or more unresolved Major Breaches.	150% of all estimated construction costs.