



**City of Kingston  
Administrative Policies Committee  
Meeting Number 03-2024  
Agenda**

**Thursday, February 8, 2024 at 6:00 p.m.  
Hosted at City Hall in Council Chamber**

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Please provide regrets to Christine O'Connor, Committee Clerk at 613-546-4291, extension 1219 or [cloconnor@cityofkingston.ca](mailto:cloconnor@cityofkingston.ca)

**Committee Composition**

Councillor Ridge, Chair  
Councillor Amos  
Councillor Chaves  
Councillor Glenn  
Councillor Hassan  
Councillor McLaren

- 1. Meeting to Order**
- 2. Approval of the Agenda**
- 3. Confirmation of Minutes**
  - a) That** the minutes of Special Administrative Policies Committee Meeting Number 04-2023, held on Thursday, November 9, 2023 and the minutes of Administrative Policies Committee Meeting Number 01-2024, held on Thursday December 14, 2023 be approved.
- 4. Disclosure of Pecuniary Interest**
- 5. Delegations**
- 6. Briefings**

## 7. Business

### a) Rideaucrest Home Board of Management

**That** the Administrative Policies Committee resolve itself into the Board of Management for Rideaucrest Home.

#### i. Rideaucrest Home Report for November 2023 – January 2024

The Report of the Commissioner of Community Services (AP-24-008) is attached.

Schedule Pages 1 – 5

Recommendation:

This report is for information only.

**That** the Administrative Policies Committee rise from the Board of Management for Rideaucrest Home.

### b) 2024 Tax Ratios

The Report of the Chief Financial Officer & City Treasurer (AP-24-007) is attached.

Schedule Pages 6 – 18

Recommendation:

**That** the Administrative Policies Committee recommend as follows:

**That** Council approve the 2024 tax ratios as follows:

- a) the residential property class be set at 1.00;
- b) the new multi-residential property class be set at 1.00;
- c) the multi-residential property class be set at 1.70;
- d) the commercial property class be set at 1.98;
- e) the industrial property class be set at 2.63;
- f) the pipeline property class be set at 1.1728;
- g) the farm property class be set at 0.20; and
- h) the managed forests property class be set at 0.25.

**That** the by-law, attached as Exhibit A to Report Number AP-24-007, be presented to Council in order to establish the 2024 tax ratios.

**c) Administrative Monetary Penalties – Business Licensing**

The Report of the Commissioner of Growth & Development Services (AP-24-009) is attached.

Schedule Pages 19 –31

Recommendation:

**That** the Administrative Policies Committee recommends to Council:

**That** By-Law Number 2020-69, “A By-Law to Establish a Process for Administrative Penalties”, as amended, be further amended, as per Exhibit A to Report Number AP-24-009; and

**That** By-Law Number 2006-213, “A By-Law to License, Regulate and Govern Certain Businesses”, be amended as per Exhibit B to Report Number AP-24-009.

**d) Surety Bond and Front Ending Policies**

The Report of the Commissioner of Growth & Development Services (AP-24-010) is attached.

Schedule Pages 32 - 49

Recommendation:

**That** the Administrative Policies Committee recommends to Council:

**That** Council adopt the Surety Bond Policy, attached as Exhibit A to Report Number AP-24-010, to allow City staff to accept surety bonds as securities; and

**That** Council authorize the Chief Financial Officer & City Treasurer to make any amendments required to the Surety Bond Policy to comply with the provisions of the *Planning Act*.

**8. Motions**

**9. Notices of Motion**

**10. Other Business**

**11. Correspondence**

**12. Date of Next Meeting**

The next meeting of the Administrative Policies Committee is a Special Meeting scheduled for Thursday, February 29, 2024 at 6:00 p.m.

**13. Adjournment**



**City of Kingston**  
**Information Report to Administrative Policies Committee**  
**Report Number AP-24-008**

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<b>To:</b>	<b>Chair and Members of the Administrative Policies Committee</b>
<b>From:</b>	<b>Jennifer Campbell, Commissioner, Community Services</b>
<b>Resource Staff:</b>	<b>Casie Keyes, Administrator, Rideaucrest Home</b>
<b>Date of Meeting:</b>	<b>February 8, 2024</b>
<b>Subject:</b>	<b>Rideaucrest Home Report for November 2023 – January 2024</b>

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**Council Strategic Plan Alignment:**

Theme: Corporate business

Goal: See above

**Executive Summary:**

The Administrative Policies Committee serves as the Board of Management for Rideaucrest Home. This report, the first received by the committee for 2024, includes statistical information on key indicators that are being reported to the Ministry of Health and Long-Term Care (MOHLTC) as well as information on operations of the Home between November 16, 2023 – January 15, 2024.

**Recommendation:**

This report is for information only.

February 8, 2024

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**Authorizing Signatures:**

ORIGINAL SIGNED BY COMMISSIONER

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**Jennifer Campbell,**  
**Commissioner, Community**  
**Services**

ORIGINAL SIGNED BY CHIEF ADMINISTRATIVE OFFICER

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**Lanie Hurdle, Chief**  
**Administrative Officer**

**Consultation with the following Members of the Corporate Management Team:**

Paige Agnew, Commissioner, Growth & Development Services	Not required
Neil Carbone, Commissioner, Corporate Services	Not required
David Fell, President & CEO, Utilities Kingston	Not required
Peter Huigenbos, Commissioner, Major Projects & Strategic Initiatives	Not required
Brad Joyce, Commissioner, Infrastructure, Transportation & Emergency Services	Not required
Desirée Kennedy, Chief Financial Officer & City Treasurer	Not required

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**Options/Discussion:**

Rideaucrest Home has maintained an overall occupancy rate of 97.19% through December 31, 2023. Increasing occupancy through the latter half of 2023 was a significant effort of collaboration between staff and the Placement Coordinator at Home and Community Care Support Services (HCCSS), ensuring the Home achieved the provincial target of 97% for the fiscal year. The Home's application to the Ministry of Health and Long-Term Care (MOHLTC) for two beds in abeyance to support the resident bathroom construction project remains active and in place until December 31, 2025, adjusting the total bed occupancy for the Home to 168 beds from 170 beds.

Rideaucrest Home had eight incidents reportable to the MOHLTC from November 16, 2023 through January 15, 2024. Two incidents of staff to resident interactions, three incidents of resident to resident interactions, one incident of financial abuse by an external party, and two disease outbreaks; one of COVID-19 impacting twenty-seven residents and seven staff, the second unknown respiratory outbreak impacting six residents and no staff.

There were no visits to the Home by MOHLTC Inspectors in the reporting period; however, there was one phone call to clarify details in a critical incident submitted online.

As of December 29, 2023, there were 498 people on the waiting list for Rideaucrest Home. Of those waiting, 458 are a 4A priority; who are actively seeking/requiring admission to Long-Term Care, of which 40 are in crisis awaiting immediate placement.

**Quality Initiatives:**

On November 22<sup>nd</sup>, the Home completed its Annual Fire Inspection and Annual Fire Egress Exercise. Both of these events have been completed virtually or by tabletop exercises for the last three years due to the COVID-19 Pandemic; therefore, this was the first in person review in several years. Both exercises were completed with Kingston Fire & Rescue present. The Inspector had very positive feedback for the staff and residents and the Home successfully passed both reviews.

Staff received the Accreditation Canada report on December 21<sup>st</sup>, as a result of the November 8<sup>th</sup> mid-term virtual survey, outlining that the Accreditation Decision Committee confirms that the Home has satisfied the requirement outlined in the recent virtual survey. The Committee congratulated staff in their ongoing commitment to providing safe, high-quality health services. The Home will now continue preparation for the full Accreditation Survey in the Fall of 2025.

The Home created an Admission Survey and an End of Stay Survey in 2023, with five and eighteen completed respectively. In 2024 the Home will continue to encourage those newly coming to the Home and those leaving the Home to provide feedback in support of driving quality improvement initiatives and service standards in the future.

Staff are actively working with Corporate IS&T Services as well as GoldCare, the Home's scheduling software provider, to implement a shift broadcasting system whereby vacant staff

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shifts are sent out via text message to staff, allowing a defined timeframe for response and resolution. This operational efficiency will greatly support the staffing office as numbers of staff increase with the Hours of Care Funding and scheduling complexity remains high.

**COVID-19/Outbreak:**

As the cold weather is here, there is an annual rise in respiratory illness within the community and this rise in illness is also seen within the long-term care sector, with Rideaucrest Home being no exception. The Home has seen two separate instances of disease outbreak this reporting period, including one instance of COVID-19. Additional communications and precautions continue to be put in place in an attempt to limit the spread and keep residents and staff healthy. Outbreak precautions continue to include:

- General visitation not permitted, a limit of two Essential Caregivers allowed for each resident. All visits to occur within the resident's room.
- The Home attempts to cohort staff, including staff breaking in designated locations.
- Resident leaves of absence advised not to occur, unless for medically necessary appointments.
- All Essential Caregivers to wear full personal protective equipment (PPE) (gown, glove, mask, eye protection) upon entry to the outbreak Terrace.
- Physiotherapy and resident activities provided at a ratio of 1:1.
- Universal masking for the entire Home.

Hand hygiene and PPE audits continue on a regular basis throughout the Home, ensuring that on the spot education is completed for those who are not observed to complete either task correctly. In December, seventy-two hand hygiene audits were observed with a 97% compliance rate; fifty-nine PPE audits were completed with a 94% compliance rate. This ongoing observation and education supports limited spread of outbreaks occurring in the Home.

The Home completed an RSV vaccine clinic on November 29<sup>th</sup>, 34 residents received the vaccine on this date. On December 5<sup>th</sup> more vaccines were made available to the Home and an additional 94 residents received the vaccine on this date.

Staff continue to encourage everyone visiting the Home to remain up to date with their COVID-19 booster doses and receive the 2023-2024 seasonal influenza vaccine.

**Financials:**

The approved 2023 operating budget for Rideaucrest Home contains \$6,550,963 in municipal contribution. As of October 31, 2023, Rideaucrest Home has spent 73.48% (excluding commitments) of its municipal contribution, which is \$645,000 under budget. As staff work diligently on year-end financial entries, the Home anticipates a 2023 surplus of approximately \$500K. The Home saw additional unbudgeted provincial revenue of \$359K in 2023 which is a significant contributor to the variance, as well as ongoing day to day staffing vacancies.



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Renovation project plans continue in collaboration with the Facilities Management & Construction Services (FMCS) Department. Resident washroom renovations on the 4<sup>th</sup> floor are complete and staff are planning for 3<sup>rd</sup> floor resident washroom renovations to commence in the first quarter of this year. The centre core area renovations are complete on the 4<sup>th</sup> floor, including all flooring and removal of the dining room walls. The residents, families and staff are all very happy to see this bright open space finally complete. The 3<sup>rd</sup> floor centre core renovations are actively underway; phase one and two are complete with the removal of the current medication rooms, staff office, chart room and report room; the dining room and servery are currently under renovation.

Replacement of the fire suppression system throughout the Home is underway in conjunction with the FMCS team as well as Kingston Fire & Rescue. The system will be entirely replaced in 2024.

**Existing Policy/By-Law:**

None

**Notice Provisions:**

None

**Financial Considerations:**

None

**Contacts:**

Casie Keyes, Administrator, Rideaucrest Home, 613-530-2818 extension 4283

**Other City of Kingston Staff Consulted:**

Laura Rabbie, Administration Manager, Rideaucrest Home

**Exhibits Attached:**

None



**City of Kingston  
Report to Administrative Policies Committee  
Report Number AP-24-007**

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**To:** Chair and Members of the Administrative Policies Committee  
**From:** Desirée Kennedy, Chief Financial Officer & City Treasurer  
**Resource Staff:** Lana Foulds, Director, Financial Services  
Jeff Walker, Manager, Taxation and Revenue  
**Date of Meeting:** February 8, 2024  
**Subject:** 2024 Tax Ratios

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**Council Strategic Plan Alignment:**

Theme: Regulatory & compliance

Goal: See above

**Executive Summary:**

The purpose of this report is to present Council with recommendations for setting the property class tax ratios for 2024. The [Municipal Act, 2001](#) requires that Council pass a by-law each year to set the property class tax ratios. These tax ratios are applied to the residential tax rates in order to distribute the tax burden among property classes.

This report provides information on past policy decisions and recommends 2024 tax ratios that comply with Council direction, policy measures and legislative requirements, as outlined in the report. As there are no reassessment related tax burden shifts in 2024, the 2024 recommended tax ratios are consistent with those that were established for 2023.

February 8, 2024

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**Recommendation:**

**That** the Administrative Policies Committee recommend as follows:

**That** Council approve the 2024 tax ratios as follows:

- a) the residential property class be set at 1.00;
- b) the new multi-residential property class be set at 1.00;
- c) the multi-residential property class be set at 1.70;
- d) the commercial property class be set at 1.98;
- e) the industrial property class be set at 2.63;
- f) the pipeline property class be set at 1.1728;
- g) the farm property class be set at 0.20; and
- h) the managed forests property class be set at 0.25.

**That** the by-law, attached as Exhibit A to Report Number AP-24-007, be presented to Council in order to establish the 2024 tax ratios.

February 8, 2024

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**Authorizing Signatures:**

ORIGINAL SIGNED BY CHIEF FINANCIAL OFFICER & CITY TREASURER

Desiree Kennedy, Chief  
Financial Officer & City  
Treasurer

ORIGINAL SIGNED BY CHIEF ADMINISTRATIVE OFFICER

Lanie Hurdle, Chief  
Administrative Officer

**Consultation with the following Members of the Corporate Management Team:**

Paige Agnew, Commissioner, Growth & Development Services	Not required
Jennifer Campbell, Commissioner, Community Services	Not required
Neil Carbone, Commissioner, Corporate Services	Not required
David Fell, President & CEO, Utilities Kingston	Not required
Peter Huigenbos, Commissioner, Major Projects & Strategic Initiatives	Not required
Brad Joyce, Commissioner, Infrastructure, Transportation & Emergency Services	Not required

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**Options/Discussion:****Background**

The [Municipal Act, 2001](#) requires that municipal councils establish tax ratios by passing a by-law each year. Tax ratios effectively distribute the tax burden among property classes and are set in comparison to the residential rate which always has a tax ratio of 1.00. Changes in tax ratios affect the relative tax burden between classes of properties. Tax ratios can be used to prevent large shifts of the tax burden caused by relative changes in assessment among property classes as well as to lower the tax rates on a particular class or classes. Once set, the tax ratio for a class is multiplied by the residential tax rate to determine the tax rate for that class.

**Reassessment Update**

The Municipal Property Assessment Corporation (MPAC) is responsible for assessing and classifying properties in Ontario. Every four years, MPAC conducts a province-wide assessment update. In 2016, MPAC updated the assessed values of every property in Ontario to the legislated valuation date of January 1, 2016. Increases in the assessed value were phased-in over four years (for taxation years 2017 through 2020); however, properties that decreased in value went directly to the decreased value in 2017.

The province initially postponed the new assessment cycle (2021 - 2024) by one year to provide much needed stability and certainty to residents and businesses and to enable municipalities to focus on responding to the challenges posed by the COVID-19 pandemic. This postponement was then extended, as announced in the 2021 Ontario Economic Outlook and Fiscal Review, to include the 2022 and 2023 taxation years. In August 2023, the Ontario government announced its intention to further postpone the reassessment while it conducts a review of the property taxation and assessment system. The announcement was silent on any specific timing for a new assessment cycle, leaving uncertainty regarding property assessment for the 2025 tax year and beyond. Both the Association of Municipalities of Ontario (AMO) and the Association of Municipal Managers, Clerks and Treasurers of Ontario (AMCTO) have expressed strong support for a timely return to the reassessment cycle.

Property assessment values for the 2024 tax year will continue to be based on January 1, 2016 current values. Unless there have been changes to a property, property assessments for the 2024 tax year will be the same as the 2023 tax year and the tax burden across property classes will remain consistent. MPAC continues to update assessment rolls to reflect new construction.

**Analysis****Property Class Tax Ratios**

When reforms to property tax were introduced in the late 1990s, the Province prescribed ranges of fairness for tax ratios in each property class. The ranges of fairness are summarized in [Table 1](#) below. Currently, municipalities are only permitted to adjust tax ratios closer to the provincially prescribed ranges of fairness.

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Also noted in Table 1, the Province also set transition ratios as provincial levy restriction thresholds for each municipality. These transition ratios are based on the effective tax rates that were in effect in the year immediately prior to the introduction of the reforms. Where established tax ratios are above a provincial levy restriction threshold for any class, only 50% of a tax levy increase can be passed on to the property class. With respect to existing policy, Council has directed that any revised ratios being established not exceed the provincial levy restriction threshold for any class to ensure that any municipal budget increase can be passed through to all property classes.

Further information and history on the City's use of tax ratios, including previous adjustments to tax ratios for the multi-residential and farm tax property classes, can be found in [Report Number AP-23-004](#), 2023 Tax Ratios, Tax Capping Parameters and Other Property Tax Policy.

### **Tax Ratios / Tax Burden – Tax ratios since the reassessment postponement**

As Ontario's planned reassessment has been postponed, there have been no reassessment related tax burden shifts since 2020 and the property tax burden across property classes has remained consistent. Recommended tax ratios are currently in line with provincial averages and continue to comply with Council's direction to not exceed provincial levy restriction thresholds for any class. As a result, the tax ratios recommended for 2024 remain at the same level as those established for the 2021, 2022 and 2023 tax years.

Table 1 below summarizes the recommended 2024 tax ratios and resulting tax burden percentage by property class. Once the ratios have been established, the tax levy by-law will be presented to Council, which will set the tax rates to be applied to raise the taxes required for the 2024 approved operating budget.

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**Table 1: 2024 Tax Ratio, and Burden by Property Class**

Property Class	Ranges of Fairness	Provincial Levy Restriction Threshold	2023 Tax Ratio	2023 Class Burden %*	2024 Class Burden %*
Commercial	0.60 - 1.10	1.980000	1.980000	21.84	21.74
Industrial	0.60 - 1.10	2.630000	2.630000	2.80	2.96
Multi-Residential	1.00 - 1.10	2.000000	1.700000	8.00	7.97
New Multi-Res	1.00 - 1.10		1.000000	3.48	3.53
Residential	1.00		1.000000	63.50	63.42
Pipeline	0.60 - 0.70		1.172800	0.29	0.29
Farmland	Up to 0.25		0.200000	0.08	0.08
Forest	0.25		0.250000	0.01	0.01
<b>Total</b>				100.00	100.00

\*General Municipal Tax Rates not including education rates.

### Other Property Tax Policy

#### Vacant and Excess Land Subclass Discounts

In [Report Number 23-193](#), Council directed staff to eliminate the discounted property tax rates previously provided to properties in vacant and excess land property tax subclasses, beginning with the 2024 taxation year. The intent of eliminating the discounts was to encourage the development of vacant, privately-owned lands to help offset the City's declining supply of vacant serviced lots in our business parks. Commercial and industrial properties assessed in a vacant and excess land property tax subclass were previously taxed at a fixed percentage rate below the tax rate of the broader class. Commercial properties were discounted at 30 percent of the full commercial rate and industrial properties were discounted at 35 percent of the full Industrial rate. The Ministry of Finance had previously phased out subclass discounts on education tax rates.

Eliminating subclass discounts does not change the overall amount of revenue raised through taxation; it will only change the distribution of taxes between all property classes by redistributing approximately \$1.1M of taxes from other property classes onto the commercial

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and industrial vacant and excess land properties. Further information on the effects of the elimination of subclass discounts on tax rates will be included in the 2024 final tax levy and tax rates report coming to Council later this spring.

**Public Engagement**

None

**Indigenization, Inclusion, Diversity, Equity & Accessibility (IIDEA) Considerations**

None

**Existing Policy/By-Law**

[Municipal Act, 2001](#), as amended. Part VIII of the Municipal Act, 2001 legislates Municipal Taxation.

[Ontario Regulation 73/03](#), as amended (Tax Matters – Special Tax Rates and Limits)

[Ontario Regulation 385/98](#), as amended (Tax Matters – Transition Ratios and Average Transition Ratios)

**Notice Provisions**

None

**Financial Considerations**

Total taxation revenue is established as part of the operating budget estimates and does not change as a result of adjusting tax ratios. Tax ratios distribute the tax burden among property classes by applying the ratios against the residential tax rate to determine the tax rate for each class.

**Contacts:**

Lana Foulds, Director, Financial Services, 613-546-4291 extension 2209

Jeff Walker, Manager, Taxation and Revenue, 613-546-4291 extension 2484

**Other City of Kingston Staff Consulted:**

None

**Exhibits Attached:**

Exhibit A – Draft by-law, being “2024 Tax Ratios By-Law”



# City of Kingston By-Law Number 2024–XX

## *2024 Tax Ratios By-Law*

1<sup>st</sup> Reading                      date

2<sup>nd</sup> Reading                     date

3<sup>rd</sup> Reading                     date

Passed                            date

# City of Kingston By-Law Number 2024–XX

## *2024 Tax Ratios By-Law*

<b>1.</b>	<b>Interpretation</b>	<b>4</b>
<b>2.</b>	<b>General</b>	<b>5</b>
<b>3.</b>	<b>Miscellaneous</b>	<b>5</b>

# City of Kingston By-Law Number 2024–XX

## 2024 Tax Ratios By-Law

### Whereas:

The *City* is a single-tier municipality incorporated pursuant to an order made under section 25.2 of the *Municipal Act*, R.S.O. 1990, c. M.45.

The powers of a municipality must be exercised by its council (*Municipal Act, 2001*, S.O. 2001, c. 25 (the “***Municipal Act, 2001***”), s. 5 (1)).

A municipal power must be exercised by by-law unless the municipality is specifically authorized to do otherwise (*Municipal Act, 2001*, s. 5 (3)).

The Minister of Finance has prescribed the following classes of real property for the purposes of the *Assessment Act*, R.S.O. 1990, c. A.31 (the “***Assessment Act***”) as required under subsection 7 (1) of the *Assessment Act*.

1. the residential property class;
2. the multi-residential property class;
3. the commercial property class;
4. the industrial property class;
5. the pipe line property class;
6. the farm property class.
7. the managed forests property class.

The Minister of Finance has also prescribed *optional property classes* for the purposes of the *Assessment Act*, including the new multi-residential property class.

*Council* wishes to have the new multi-residential property class apply within the municipality in accordance with the *Assessment Act*.

*Council* does not wish to have any other *optional property class* apply within the municipality in accordance with the *Assessment Act*.

## 2024 Tax Ratios By-Law

A single tier municipality must pass a by-law in each year to establish the *tax ratios* for that year for the municipality (*Municipal Act, 2001, 308 (4)*).

Therefore, *council* enacts:

### 1. Interpretation

1.1 This by-law may be cited as the *2024 Tax Ratios By-Law*.

1.2 In this by-law:

**“commercial classes”** means the commercial property class prescribed under the *Assessment Act* and *optional property classes* that contain property that, if *council* did not opt to have the *optional property class* apply, would be in the commercial property class, and includes the office building property class, the shopping centre property class and the parking lots and vacant land property class;

**“industrial classes”** means the industrial property class prescribed under the *Assessment Act* and *optional property classes* that contain property that, if *council* did not opt to have the *optional property class* apply, would be in the industrial property class, and includes the large industrial property class;

**“optional property class”** means a property class that *council* may opt to have apply within the municipality under regulations made under the *Assessment Act*; and

**“tax ratio”** means the ratio that the tax rate for a property class must be to the tax rate for the residential property class where the residential property class tax ratio is 1.0.

1.3 For the purposes of interpreting this by-law:

- (a) a reference to any legislation, regulation, or by-law or to a provision thereof includes a reference to any legislation, regulation or by-law enacted, made or passed in substitution thereof or amendment thereof;
- (b) any reference to legislation includes all of the regulations made thereunder;
- (c) “include”, “includes” and “including” indicate that the subsequent list is not exhaustive.

## 2. Established Tax Ratios

2.1 For the 2024 taxation year:

- (a) the *tax ratio* for the residential property class is 1.0;
- (b) the *tax ratio* for the multi-residential property class is 1.7;
- (c) the *tax ratio* for the *commercial property classes* is 1.98;
- (d) the *tax ratio* for the *industrial property classes* is 2.63;
- (e) the *tax ratio* for the pipe line property class is 1.1728;
- (f) the *tax ratio* for the farm property class is 0.2;
- (g) the *tax ratio* for the managed forests property class is 0.25; and
- (h) the *tax ratio* for the new multi-residential property class is 1.0.

## 3. Miscellaneous

3.1 If a court of competent jurisdiction declares any provision, or any part of a provision, of this by-law to be invalid, or to be of no force and effect, it is the intention of *council* in enacting this by-law that each and every provision of this by-law authorized by law be applied and enforced in accordance with its terms to the extent possible according to law.

3.2 This by-law will come into force and take effect on the date it is passed.

*2024 Tax Ratios By-Law*

1 <sup>st</sup> Reading	date
2 <sup>nd</sup> Reading	date
3 <sup>rd</sup> Reading	date
Passed	date

Janet Jaynes  
City Clerk

Bryan Paterson  
Mayor



**City of Kingston**  
**Report to Administrative Policies Committee**  
**Report Number AP-24-009**

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**To:** Chair and Members of the Administrative Policies Committee  
**From:** Paige Agnew, Commissioner, Growth & Development Services  
**Resource Staff:** Curtis Smith, Director, Licensing & Enforcement Services  
**Date of Meeting:** February 8, 2024  
**Subject:** Administrative Monetary Penalties – Business Licensing

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**Council Strategic Plan Alignment:**

Theme: Policies & by-laws

Goal: See above

**Executive Summary:**

The *Municipal Act* provides a municipality the authority to require a person to pay an administrative monetary penalty (AMP) if the municipality is satisfied that the person has failed to comply with a by-law. AMPs are an effective tool for responding to nuisance behaviour and are a tangible intermediate response to by-law violations.

In this report, staff are recommending that the application of AMPs be extended to By-Law Number 2006-213, “A By-Law to License, Regulate and Govern Certain Businesses” (the “Business Licensing” By-Law). The expanded use of AMPs will promote consumer protection, the health and safety of residents and compliance with the City’s Business Licensing By-Law and give Licensing Agents/By-Law Enforcement officers an additional, intermediate level response to non-complaint behaviour. No amendments to existing by-laws outside of those required for the addition or administration of AMPs are recommended as part of this report.

February 8, 2024

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**Recommendation:**

**That** the Administrative Policies Committee recommends to Council:

**That** By-Law Number 2020-69, “A By-Law to Establish a Process for Administrative Penalties”, as amended, be further amended, as per Exhibit A to Report Number AP-24-009; and

**That** By-Law Number 2006-213, “A By-Law to License, Regulate and Govern Certain Businesses”, be amended as per Exhibit B to Report Number AP-24-009.



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**Authorizing Signatures:**

ORIGINAL SIGNED BY COMMISSIONER

Paige Agnew, Commissioner,  
Growth & Development Services

ORIGINAL SIGNED BY CHIEF ADMINISTRATIVE OFFICER

Lanie Hurdle, Chief  
Administrative Officer

**Consultation with the following Members of the Corporate Management Team:**

Jennifer Campbell, Commissioner, Community Services	Not required
Neil Carbone, Commissioner, Corporate Services	Not required
David Fell, President & CEO, Utilities Kingston	Not required
Peter Huigenbos, Commissioner, Major Projects & Strategic Initiatives	Not required
Brad Joyce, Commissioner, Infrastructure, Transportation & Emergency Services	Not required
Desirée Kennedy, Chief Financial Officer & City Treasurer	Not required

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**Options/Discussion:**

In 2017, the *Municipal Act* was further amended by the *Modernizing Ontario's Municipal Legislation Act, 2017*, which, among other things, expanded the authority of a municipality to establish a system of Administrative Monetary Penalties (AMPs) that assist the municipality in promoting compliance with its by-laws. Subsection 434.1 (1) of the *Municipal Act, 2001* provides municipalities with the authority to require a person to pay an AMP if the municipality is satisfied that the person has failed to comply with a by-law.

AMPs are an alternative to commencing proceedings under the *Provincial Offences Act* (POA) to enforce by-laws. AMPs differ significantly from POA proceedings as they operate using sequential processes, and strict deadlines for payments and reviews, to ensure that decisions are made in a timely manner.

Under the City's AMP system, by-law officers can give a penalty notice if the officer has reasonable grounds to believe that the person has contravened a provision of a designated by-law. The penalty notice advises the person of the contravention and requires payment of a monetary penalty. The person to whom the penalty notice is given then has the choice of paying the penalty or requesting a review of the penalty notice, which is conducted by the Screening Officer, a role currently fulfilled by a law clerk in the City's Legal Services Department. The Screening Officer's decision can be appealed to a Hearings Officer, an impartial third party contracted by the City. Both the Screening Officer and the Hearings Officer have the power to cancel, reduce or extend the time for payment of an AMP. The decision of the Hearings Officer is final.

**Expanding the Use of Administrative Monetary Penalties**

There are currently 12 by-laws to which AMPs are applied. Staff are recommending that Council designate one additional by-law to which the Administrative Penalties By-Law applies.

A full list of the recommended AMPs and their associated penalty amounts can be found in Exhibit C - Recommended Administrative Monetary Penalties.

**By-Law Number 2006-213, A By-Law to License, Regulate and Govern Certain Businesses**

Recommended AMPs include:

- Carrying on a business without a license
- Obstructing, hindering or interfering with an inspection

The proposed recommended AMPs are to promote consumer protection, the health and safety of residents and compliance with the City's Business Licenses By-Law. As there are already POA Set Fines established for these offences (Exhibit C), the creation of AMPs provides an additional, less time-consuming and invasive mechanism to resolve compliance issues. AMPs

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and Set Fines for this By-Law will be further reviewed when the revised Business Licenses By-Law is presented for consideration by Council in 2024.

The range of penalties for the recommended AMPs is \$150-\$500 (Exhibit C).

### **Benefits**

There are a number of reasons that the City should expand its AMPs to additional by-law and licensing matters:

1. AMPs provide a fair, efficient and convenient alternative to the traditional court process of administering and adjudicating minor by-law violations for AMP recipients. Rather than having to attend a court date, with multiple cases scheduled for the same time period, AMP recipients are provided with specific appointments. Given the still-existing court backlogs post-COVID, AMP reviews will also likely take place significantly faster than a court case.
2. Officer time required to prepare court documents and appear in court is significantly reduced because hearings are held on an appointment basis and several hearings for the same Officer can be scheduled sequentially.
3. AMPs are set at a level that is intended to promote compliance with the by-law. In that way, they provide an additional enforcement tool for promoting voluntary compliance with by-law standards through monetary penalties that serve as both specific and general deterrents. As the AMPs system often provides an expedited resolution, the deterrent nature of penalties has a more immediate impact. By-law infractions that are dealt with through the POA court system are governed by court procedures and are subject to court and counsel availability. This difference in the approach can be more effective, particularly when the violation is minor in nature and where delayed adjudication might encourage continued non-compliance.
4. Expansion of the AMPs system to address minor offences frees court time and allows the courts to focus on, and deal effectively with, more complex and serious matters.
5. The AMPs system does not require the significant capital and operating investments of the traditional court system. The AMPs system operates with fewer staff and significantly less administrative overhead. The AMPs system also includes a fee structure that facilitates recovery of a portion of operating costs.

It is important to note that the expansion of the AMPs system does not replace the option of commencing proceedings under the POA as an enforcement tactic, but rather will complement the existing enforcement continuum. Beginning with education and warnings for by-law violations, increased punitive action such as the giving of AMPs or commencing POA proceedings can be pursued in cases of persistent non-compliance. It should also be noted that a person in contravention of a by-law cannot be issued both an AMP and a POA summons for the same offence/violation.

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**Penalty structure**

For by-law offences that have a set fine approved by the provincial government, AMPs are generally recommended at approximately 75 per cent of the set fine amount. In this instance, staff are basing the recommended penalty amounts on a review of (a) similar AMPs under our existing by-laws, (b) similar AMPs in other municipalities and (c) the general severity of the by-law violation. As per the *Municipal Act, 2001*, the penalty amount of an AMP may not be punitive in nature and shall not exceed the amount reasonably required to promote compliance with a by-law.

**Conclusion**

AMPs provide the City an alternative to the POA proceedings to promote compliance with its by-laws. This model has proven effective in allowing staff to provide enhanced response to disputes and increase customer service through established AMP review processes. Expansion of the City’s AMPs system is recommended to improve compliance, expediency, fiscal efficiency, and convenience in promotion of compliance with the City’s by-laws.

Further review of the entire Business Licensing By-Law will be completed in 2024.

**Existing Policy/By-Law:**

[By-Law Number 2020-69, A By-Law to Establish a Process for Administrative Penalties](#)

[By-Law Number 2006-213, A By-Law to License, Regulate and Govern Certain Businesses](#)

**Notice Provisions:**

None

**Financial Considerations**

None

**Contacts:**

Curtis Smith, Director, Licensing and Enforcement, 613-546-4291 extension 1109

**Other City of Kingston Staff Consulted:**

Laird Leggo, Manager, Licensing, Parking Operations and Policy

Heather Woodland, Supervisor, Policy and Licensing

Andrew Reeson, Senior Legal Counsel

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**Exhibits Attached:**

- Exhibit A     A By-Law to Amend By-Law Number 2020-69, A By-Law to Establish a Process for Administrative Penalties
- Exhibit B     A By-Law to Amend By-Law Number 2006-213, A By-Law to License, Regulate and Govern Certain Businesses
- Exhibit C     Recommended Administrative Monetary Penalties

# City of Kingston By-Law Number 2024–...

## ***By-Law to Amend City of Kingston By-Law Number 2020–69, A By-Law to Establish a Process for Administrative Penalties***

### **Whereas:**

The Corporation of the City of Kingston (the “**City**”) is a single-tier municipality incorporated pursuant to an order made under section 25.2 of the *Municipal Act*, R.S.O. 1990, c. M.45.

The powers of a municipality must be exercised by its council (*Municipal Act*, 2001, S.O. 2001, c. 25 (the “**Municipal Act, 2001**”), s. 5 (1)).

A municipal power must be exercised by by-law unless the municipality is specifically authorized to do otherwise (*Municipal Act*, 2001, s. 5 (3)).

A single tier municipality may provide any service or thing that the municipality considers necessary or desirable for the public (*Municipal Act*, 2001, s. 10 (1)).

A municipality may require a person, subject to such conditions as the municipality considers appropriate, to pay an administrative penalty if the municipality is satisfied that the person has failed to comply with a by-law of the municipality passed under the *Municipal Act*, 2001 (*Municipal Act*, 2001, s. 434.1 (1)).

On April 7, 2020, council for the *City* passed *City of Kingston By-Law Number 2020–69*, “*A By-Law to Establish a Process for Administrative Penalties*”.

Council for the *City* (“**council**”) considers it necessary and desirable for the public to amend *City of Kingston By-Law Number 2020–69*.

**Therefore**, *council* enacts:

### **1. Amendment**

1.1 *City of Kingston By-Law Number 2020–69* is amended as follows:

- (a) Schedule A is amended by adding the following short form wording and penalty amounts in numeric order:

*By-Law to Amend By-Law ...-..*

<b>By-Law Number 2006-213, "Business Licensing By-Law"</b>		
<b>By-Law Section</b>	<b>Short Form Wording</b>	<b>Penalty Amount</b>
4.1	Carrying on a trade, business or occupation without a license	\$150.00
4.22	Obstructing, hindering or interfering with an investigation, inquiries or an inspection	\$500.00

**2. Coming into Force**

2.1 This by-law will come into force and take effect on the day it is passed.

1<sup>st</sup> Reading            date

2<sup>nd</sup> Reading            date

3<sup>rd</sup> Reading            date

Passed                date

Janet Jaynes  
City Clerk

Bryan Paterson  
Mayor

# City of Kingston By-Law Number 2024–...

## ***By-Law to Amend City of Kingston By-Law Number 2006–213, A By-Law to License, Regulate And Govern Certain Businesses***

### **Whereas:**

The Corporation of the City of Kingston (the “**City**”) is a single-tier municipality incorporated pursuant to an order made under section 25.2 of the *Municipal Act*, R.S.O. 1990, c. M.45.

The powers of a municipality must be exercised by its council (*Municipal Act, 2001*, S.O. 2001, c. 25 (the “**Municipal Act, 2001**”), s. 5 (1)).

A municipal power must be exercised by by-law unless the municipality is specifically authorized to do otherwise (*Municipal Act, 2001*, s. 5 (3)).

A single tier municipality may provide any service or thing that the municipality considers necessary or desirable for the public (*Municipal Act, 2001*, s. 10 (1)).

A municipality may provide for a system of licenses with respect to a business (*Municipal Act, 2001*, s. 151 (1)).

On September 19, 2006, council for the *City* passed *City of Kingston By-Law Number 2006–213, “A By-Law to License, Regulate And Govern Certain Businesses”*.

Council for the *City* (“**council**”) considers it necessary and desirable for the public to amend *City of Kingston By-Law Number 2006–213*.

**Therefore**, *council* enacts:

### **1. Amendment**

1.1 *City of Kingston By-Law Number 2020–69* is amended as follows:

- (a) the recitals are amended by adding the following recital at the end of the recitals:

**And Whereas** subsection 434.1 (1) of the *Municipal Act, 2001* authorizes a municipality to require a person, subject to such conditions



*By-Law to Amend By-Law ...–.*

as the municipality considers appropriate, to pay an administrative penalty if the municipality is satisfied that the person has failed to comply with a by-law of the municipality passed under the *Municipal Act, 2001*.

- (b) section 1 is amended by adding the following definitions in alphabetical order:

**“Administrative Penalty”** means an administrative penalty established by *City of Kingston By-Law Number 2020–69, “A By-Law to Establish a Process for Administrative Penalties”*;

**“Administrative Penalties By-Law”** means *City of Kingston By-Law Number 2020–69, “A By-Law to Establish a Process for Administrative Penalties”*;

**“Penalty Notice”** means a notice given pursuant to sections 2.2 and 2.4 of the *Administrative Penalties By-Law*;

- (c) section 7.4 is added to state:

Every Person who contravenes any provision of this by-law shall, upon issuance of a Penalty Notice in accordance with the *Administrative Penalties By-Law*, be liable to pay to the City an Administrative Penalty in accordance with Schedule B to the *Administrative Penalties By-Law* for each day or part of a day that the contravention continues, and the *Administrative Penalties By-Law* applies to each Administrative Penalty imposed pursuant to this by-law.

- (d) section 7.5 is added to state:

If a Person is required to pay an Administrative Penalty under section 7.4 in respect of a contravention of this by-law, the Person shall not be charged with an offence in respect of the same contravention;

- (e) section 7.6 is added to state:

An Administrative Penalty imposed on a Person under this by-law constitutes a debt of the Person to the City.

- (f) section 7.7 is added to state:

*By-Law to Amend By-Law ...--..*

If an Administrative Penalty imposed under this by-law is not paid within 15 days after the day that it becomes due and payable, the treasurer of the City may add the Administrative Penalty to the tax roll for any property in the City of Kingston for which all of the owners are responsible for paying the Administrative Penalty, and collect it in the same manner as municipal taxes.

**2. Coming into Force**

2.1 This by-law will come into force and take effect on the day it is passed.

1 <sup>st</sup> Reading	date
2 <sup>nd</sup> Reading	date
3 <sup>rd</sup> Reading	date
Passed	date

Janet Jaynes  
City Clerk

Bryan Paterson  
Mayor

## Recommended Administrative Monetary Penalties

<b>By-Law Number 2006-213, "Business Licensing By-Law"</b>			
<b>By-Law Section</b>	<b>Short Form Wording</b>	<b>Penalty Amount</b>	<b>Current Set Fine</b>
4.1	Carrying on a business without a license	\$150.00	\$200.00
4.22	Obstructing, hindering or interfering with an inspection	\$500.00	\$375.00



**City of Kingston**  
**Report to Administrative Policies Committee**  
**Report Number AP-24-010**

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**To:** Chair and Members of the Administrative Policies Committee  
**From:** Paige Agnew, Commissioner, Growth & Development Services  
**Resource Staff:** Tim Park, Director of Planning Services  
**Date of Meeting:** February 8, 2024  
**Subject:** Surety Bond Policy

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**Council Strategic Plan Alignment:**

Theme: Policies & by-laws

Goal: 1.1 Promote increased supply and affordability of housing.

**Executive Summary:**

The following is a report to the Administrative Policies Committee seeking approval to implement a Surety Bond Policy in connection with development agreements entered into under the *Planning Act*. In order to secure performance of an owner's obligations under the development agreement (such as a Site Plan Control agreement or subdivision agreement), the City collects financial securities from the owner. The City currently accepts securities in two forms: letters of credit and certified cheque (cash securities). Prompted by the desire to incentivize housing, by feedback provided by applicants, as well as anticipated changes to the *Planning Act*, City staff have proactively developed a policy for the acceptance of surety bonds as a third option for the submission of securities.

With the introduction of Bill 109, the *Planning Act* has been amended, allowing the Minister of Municipal Affairs and Housing to make regulations that prescribe and define the use of surety bonds. As of the date of this report, no regulations have been posted; however, in recognition of the need to facilitate expeditious housing development in the City, staff are proposing to implement a policy to accept surety bonds in advance of any mandated requirements under the *Planning Act*.

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**Recommendation:**

**That** the Administrative Policies Committee recommends to Council:

**That** Council adopt the Surety Bond Policy, attached as Exhibit A to Report Number AP-24-010, to allow City staff to accept surety bonds as securities; and

**That** Council authorize the Chief Financial Officer & City Treasurer to make any amendments required to the Surety Bond Policy to comply with the provisions of the *Planning Act*.

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**Authorizing Signatures:**

ORIGINAL SIGNED BY COMMISSIONER

Paige Agnew, Commissioner,  
Growth & Development Services

ORIGINAL SIGNED BY CHIEF ADMINISTRATIVE OFFICER

Lanie Hurdle, Chief  
Administrative Officer

**Consultation with the following Members of the Corporate Management Team:**

Jennifer Campbell, Commissioner, Community Services	Not required
Neil Carbone, Commissioner, Corporate Services	Not required
David Fell, President & CEO, Utilities Kingston	Not required
Peter Huigenbos, Commissioner, Major Projects & Strategic Initiatives	Not required
Brad Joyce, Commissioner, Infrastructure, Transportation & Emergency Services	Not required
Desirée Kennedy, Chief Financial Officer & City Treasurer	<input checked="" type="checkbox"/>

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**Options/Discussion:****Existing Securities Options**

When a property owner enters into a development agreement with the City under the *Planning Act*, the owner is required to deliver financial securities to the City to guarantee performance of the owner's obligations under the development agreement. The two forms of financial securities that are currently accepted by the City are letters of credit and cash securities. The dollar amount of securities required varies significantly between projects but can be expected to be anywhere from tens of thousands of dollars to millions of dollars.

Cash securities are financial securities that are provided in the form of certified cheque to the City to hold until certain milestones under the development agreement are met. Cash securities are generally used for smaller projects and letters of credit are often the preferred option for developers for large-scale projects.

Letters of credit are guarantees by a bank that the funds are set aside and available if the owner defaults in its obligations under the development agreement. Should the City be required to undertake work to remedy the default, the letter of credit can be drawn on to provide the capital necessary to undertake the work at no cost to the City.

Cash securities and letters of credit are the most secure forms of payment and provide the greatest level of protection for the City; however, they do require developers to set aside large sums of money and can limit the developer's financial capability to undertake multiple development projects at once.

**Surety Bonds Background**

A surety bond is a form of financial guarantee and is an agreement between three parties: the principal (the developer), the obligee (the City), and the surety. In the current context, the surety, which is either a provincially licensed bond company, would provide a promise to the City that it will be liable for the debt, default or failure of the developer under a development agreement. In most cases, the surety will rigorously vet the financial means, expertise, resources, and operational controls of the principal to bring a development project to completion prior to issuing the surety bond.

The surety bond that is purchased will be in an amount that meets the financial security requirements of the City under the development agreement. Should, at any point, the developer fail to meet their obligations under the development agreement, the City can make a demand to the surety in an amount commensurate with the default.

Surety bonds were commonly accepted by municipalities until the 1980's and have been a common form of Home Buyer Warranty since the establishment of the Tarion Warranty Corporation ('Tarion') in 1976. An analysis of securities held by Tarion in 2020 showed that approximately 89% of Home Buyer Warranty securities held were in the form of surety bonds.

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In the 1980's, municipalities began moving away from surety bonds towards letters of credit and cash securities. At the time, municipalities were required to meet a burden of proof in order to access the available funds through a surety bond. While these securities were rarely used, the risk of not meeting the requirements of the surety imposed too great a risk for the municipality. Letters of credit mitigated this risk by allowing the municipality access to funds set aside by the developer without requiring the municipality to meet any burden of proof. To compete with the shifting market, modern surety bonds have become much more flexible and are able to be drafted to afford municipalities the same level of protection and access to funds as a letter of credit.

With the increasing flexibility of surety bonds, they are starting to once again be accepted by municipalities as a form of security under development agreements. The flexibility provided to municipalities in drafting the terms of the bond, including the ability to add a 'cashable on demand' provision is an important change in addressing the previous risk inherent in a surety bond over a letter of credit. The success of this change in practice is yet to be tested, as it was difficult to find any examples to date where a demand for payment was required by a municipality for non-performance under a surety bond. This could also be as a result of the extensive prequalification process that is undertaken by the sureties prior to a bond issuance, as detailed below.

Municipalities that are accepting surety bonds include Sault Ste. Marie, Bracebridge, Innisfil, Hamilton, and Pickering. Due to this increased use, several applicants have approached the City about the use of surety bonds as they do not unnecessarily tie up funds and instead allow applicants to commit more finances towards the development of properties within the City.

### **Bill 109, More Homes for Everyone Act, 2022**

Through amendments made in Bill 109 the following section has been added to the *Planning Act*.

**70.3.1** (1) The Minister may make regulations,

- (a) prescribing and defining surety bonds and prescribing and further defining other instruments or the purpose of this section;
- (b) authorizing owners of land, and applicants for approvals in respect of land use planning matters, to stipulate the specified types of surety bond or other instrument to be used to secure an obligation imposed by the municipality, if the municipality requires the obligation to be secured as a condition to an approval in connection with land use planning, and specifying any particular circumstances in which the authority can be exercised.

This section, while not yet in force, will compel municipalities to accept surety bonds as a form of financial securities and allow the Minister to prescribe and define their use. By proactively implementing the use of surety bonds now, it allows the City to incentivize the building and completion of housing developments faster by freeing up capital for use by the applicant that would otherwise be unavailable to them (letter of credit or cash). The surety bond option also



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takes a more proactive and less reactive stance on their use and gives City staff the opportunity to become comfortable with their use before provincial regulations are enacted.

### **Benefits of Surety Bonds**

Research has been undertaken by City staff to ensure that the benefits and risks of allowing surety bonds were thoroughly reviewed before a recommendation was made. Surety bonds offer the following benefits to both the developer and the City:

- Sureties generally undertake a more comprehensive prequalification process for surety bonds than letters of credit. This pre-qualification process often includes:
  - An assessment of the developer's working capital;
  - A review of the developer's credit history;
  - Examination of the developer's track record and work in progress; and
  - An assessment of the developer's expertise, resources, and operational capacity to complete the project;
- The use of surety bonds will make available additional bank financing, giving the developer access to more funds;
- A surety bond gives the developer access to idle cash that would otherwise be used to secure a letter of credit;
- The security reduction process for surety bonds is handled the same as with letters of credit where partial reductions and multiple draws are permitted; and
- Modern surety bonds can be drafted as "Pay on Demand", which provide similar benefits and security to a letter of credit with no right for the surety to question the legitimacy of the payment demand.

At this time, the language of the proposed provincial legislation is unclear in terms of whether or not the municipality will be able to dictate the structure of the surety bond to provide the same benefits as a letter of credit, as outlined in the proposed policy attached as Exhibit A. As such, staff are recommending that the Treasurer be authorized to make required amendments to the policy to comply with any future amendments to the *Planning Act*.

### **Municipalities Allowing Surety Bonds**

The use of surety bond policies in Pickering, Sault Ste. Marie, Hamilton, Bracebridge, and Innisfil were reviewed, and the following lessons learned were noted and implemented in the draft policy attached as Exhibit A:

- The surety bond must reference the specific agreement for which it provides security;
- The surety bond should act as standby security. It is only anticipated to be cashed in the event of a default;
- The surety bond should be cashable by the municipality on demand, without cause or regard for the equities. This means that while the municipality would be required to provide notice to the surety that it considers the developer to be in default, the municipality is not required to justify or provide evidence of the default in order to cash

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the bond and the surety has no right to dispute the determination of default by the municipality. The terms of the bond should be adjusted to allow as much control as possible for the municipality in order to minimize any risk of loss;

- The surety bond should be irrevocable, meaning it can't be cancelled or modified in any way without the consent of the parties;
- The surety bond should not expire or should provide for automatic renewals;
- Partial draws should be permitted by the municipality where the cost of remedying a default is less than the value of the bond;
- In its bond policy, municipalities should be permitted to require a replacement security if the credit rating of the issuer falls below what is considered acceptable. This is intended to ensure that the security provided by the developer remains suitable throughout the life of the obligations under the agreement; and
- A surety must be a a licensed bond company that
  - Has a minimum credit rating of A- or higher, as assessed by Standard and Poor's or an equivalent rating from Dominion Bond Rating Service Limited (A (low)), Fitch Ratings (A-) or Moody's Investors Service Inc (A3); and
  - Is regulated by the Office of the Supetintendent of Financial Institutions ("OFSI") and is required to comply with OFSI's minimum capital requirements.

**Public Engagement**

While there has not been official or legislated public consultation, City staff have continually been approached by applicants with regard to the acceptance of surety bonds. The feedback received has been that letters of credit tie up capital and, in some cases, the applicant can only afford to finance one housing project at a time because of the financial contribution required for the letters of credit. Applicants also believe that due to the changes in modern surety bonds, they should afford the municipality the protection that is required without undercutting the financial capacity of the developer to bring multiple projects and housing supply forward at the same time.

It is expected that coordination with the applicants on surety bonds will continue as further provincial regulations are released.

**Existing Policy/By-Law:**

None

**Notice Provisions:**

None

**Financial Considerations:**

None

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**Contacts:**

Garret Hoegi, Manager, Development Engineering, 613-546-4291 extension 3294

**Other City of Kingston Staff Consulted:**

Jenna Morley, Director, Legal Services & City Solicitor

Lana Foulds, Director, Financial Services and Deputy Treasurer

James Bar, Manager, Development Approvals

**Exhibits Attached:**

Exhibit A Surety Bond Policy

## Surety Bond Policy

<b>Policy #</b>	[To be assigned]
<b>Effective Date</b>	[Insert date]
<b>Final Approver</b>	City Council

### 1.0 Interpretation

1.1 In this policy, unless the context requires otherwise:

**"City"** means The Corporation of the City of Kingston;

**"City Solicitor"** means the person appointed as the city solicitor for the *City* or their designate;

**"City Treasurer"** means the person appointed as the Treasurer of the *City* or their designate;

**"development agreement"** means an agreement entered into between the *City* and an *owner* pursuant to the *Planning Act* in which the *owner* is required to provide *security* to the *City*, and includes a site plan control agreement, a condominium agreement, a development agreement, a subdivision agreement, an off-site works (construction) agreement, an off-site works and cost recovery agreement, or a pre-servicing agreement;

**"owner"** means the registered owner or developer of lands to be developed in accordance with the *Planning Act*, and may include an individual, an association, a partnership or corporation;

**"Planning Act"** means the *Planning Act*, R.S.O. 1990, c. P.13;

**"security"** means an amount to be paid by an *owner* to the *City* to guarantee performance of the *owner's* obligations under a *development agreement*;

**"surety bond"** means a bond issued by a *surety provider* in connection with a contract, which secures the performance and fulfillment of the undertakings, covenants, terms, conditions and agreements contained in the contract; and

**"surety provider"** means a company licensed, either federally or by a provincial insurance regulatory body, to issue *surety bonds* in the Province of Ontario.

1.2 In this policy, "include", "includes" and "including" indicate that the subsequent list is not exhaustive.

- 1.3 A reference to any legislation, regulation, by-law, rule, policy or provision thereof includes a reference to any legislation, regulation, by-law, rule or provision thereof enacted in substitution thereof or amendment thereof.
- 1.4 A reference to legislation includes all of the regulations made thereunder.
- 1.5 A reference to the position or title of any *City employee* includes a reference to any position or title created in substitution thereof.

## **2.0 Policy Statement & Purpose**

- 2.1 It is the policy of the *City* to require the provision of *security* to ensure the satisfactory performance and completion of works under a *development agreement*.
- 2.2 The purpose of this policy is to establish the *City's* minimum standards for the acceptance of *surety bonds* as a form of *security* for *development agreements*.

## **3.0 Application**

- 3.1 This policy applies to all *surety bonds* received by the *City* as a form of *security* for *development agreements*.

## **4.0 Surety Provider Requirements**

- 4.1 All *surety bonds* delivered to the *City* must be issued by a *surety provider* that:
  - (a) has a minimum credit rating of:
    - (i) A- or higher, as assessed by Standard and Poor's;
    - (ii) A- or higher, as assessed by Fitch Ratings;
    - (iii) A (low) or higher, as assessed by Dominion Bond Rating Service Limited; or
    - (iv) A3 or higher, as assessed by Moody's Investors Services Inc.; and
  - (b) is regulated by the Office of the Superintendent of Financial Institutions ("**OSFI**") and is required to comply with *OSFI's* minimum capital requirements.
- 4.2 The *owner* is responsible, at its cost, for providing all information or documentation required by the *City* to demonstrate that the minimum requirements set out in subsection 4.1 above have been met, which information or documentation must be in a form satisfactory to the *City Treasurer*.

4.3 If, at any time, the *surety provider* fails to maintain the minimum requirements set out in subsection 4.1 above, the *City* may require the *owner* to provide a replacement *surety bond* that meets the minimum requirements set out in this policy or other *security* that is satisfactory to the *City Treasurer*. If a replacement *surety bond* or other *security* satisfactory to the *City Treasurer* is not provided within 30 days after demand by the *City*, the *City* reserves the right to demand payment of the full amount of the original *surety bond* and hold the non-interest bearing cash *security* in the same manner as the *surety bond*.

## **5.0 Surety Bond Requirements**

5.1 All *surety bonds* delivered to the *City* must be prepared on the *City's* standard template set out in Appendix 10.1 of this policy.

5.2 Despite subsection 5.1, the *City* may, in its sole discretion, accept a *surety bond* that is not on the *City's* standard template, provided that the *surety bond*:

- (a) is printed on letterhead from the *surety provider*;
- (b) states the date of issuance;
- (c) is issued in Canadian dollars in the amount required by the *City*;
- (d) references the specific *development agreement* for which it provides *security*;
- (e) confirms that it is cashable by the *City* on demand, without cause, regard for the equities, or the requirement for further documentary evidence of obligation;
- (f) states that it is irrevocable by the *surety provider*, such that it may not be revoked or amended without the mutual consent of the *City*, the *owner* and the *surety provider*;
- (g) does not contain an expiry date, or provides for automatic renewals, whereby the *surety bond* will be automatically renewed without formal amendment for a specified period beyond the stated expiry date;
- (h) indicates that:
  - (i) the *City* will be given at least 60 days' notice by registered mail or courier if the *surety bond* is to be terminated;
  - (ii) the *surety bond* will only terminate upon the expiry of such 60-day period if the *owner* has provided *security* to the *City* in at least the

same amount as the *surety bond*, in a form acceptable to the *City*; and

(iii) if the *owner* does not provide such *security* to replace the *surety bond*, then the *surety bond* will remain in full force; and

(i) permits partial reductions and multiple demands,

and provided further that the form of *surety bond* is otherwise acceptable to the *City Treasurer*.

5.3 At any time upon the written request of an *owner*, the *City* may exchange a *surety bond* or other allowable form of *security*, provided that the replacement *surety bond* conforms to this policy or the other form of replacement *security* is to the satisfaction of the *City Treasurer*. The *owner* must provide the replacement *security* to the *City* prior to the release of the previous *security*.

## **6.0 Responsibilities of City Employees**

6.1 The *City Treasurer* is responsible for:

- (a) administering this policy and approving any departmental operating procedures and processes under this policy;
- (b) holding and maintaining all *surety bonds* provided to the *City* pursuant to this policy; and
- (c) reviewing requests for deviations or exceptions to this policy, including *surety bonds* issued by *surety providers* that do not meet the minimum requirements of this policy, and approving and/or denying such requests, as the case may be.

In exercising its authority under this policy, the *City Treasurer* may, in their sole discretion, decline a *surety bond* for any reason.

6.2 At the request of the *City Treasurer*, the *City Solicitor* is responsible for providing advice related to this policy and the acceptance, collection, substitution or release of any *surety bond* delivered pursuant to this policy.

6.3 All *City* employees who receive *surety bonds* on behalf of the *City* are responsible for:

- (a) reading and abiding by the requirements set out in this policy; and
- (b) forwarding the *surety bonds* to the *City Treasurer* for evaluation and administration.

## **7.0 Administration**

7.1 All requests for reduction or release of a *surety bond* will be administered in accordance with the *development agreement* and the *City's* standard practices and procedures.

## **8.0 Approval Authority**

Role	Position	Date Approved
Quality Review	City Treasurer.	
Subject Matter Expert	Director, Financial Services.	
Legal Review	City Solicitor.	
Management Review	CMT.	
Final Approval	City Council.	

## **9.0 Revision History**

Effective Date	Revision	Description of Change
[Insert date]	1	New Policy

## **10.0 Appendix**

10.1 City of Kingston Development Agreement Surety Bond Template



**DEVELOPMENT AGREEMENT SURETY BOND**

**BOND NUMBER:** Click or tap here to enter text.

**AMOUNT: \$** Click or tap here to enter text.

**KNOW ALL PERSONS BY THESE PRESENTS THAT**

Click or tap here to enter text.  
as principal (the “**Principal**”)

-and-

Click or tap here to enter text.  
(the “**Surety**”)

are held and firmly bound unto The Corporation of the City of Kingston, as obligee (the “**Obligee**”), in the amount of Click or tap here to enter text. Dollars (\$Click or tap here to enter text.), in lawful money of Canada, for the payment of which sum, well and truly to be made, the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS** the Principal has or will be entering into a(n) Choose an item. agreement with the Obligee in respect of those lands municipally known as Click or tap here to enter text. in the City of Kingston (City of Kingston File Number Click or tap here to enter text.) (said agreement is by reference made a part hereof and is hereinafter referred to as the “**Development Agreement**”).

**NOW THEREFORE**, the condition of this obligation is such that if the Principal, in the opinion of the Obligee, fully performs all of the obligations set forth in the Development Agreement in accordance with its terms and fully indemnifies the Obligee from all costs and expenses which the Obligee may suffer by reason of the Principal’s failure to do so, then this obligation shall be void and of no effect; otherwise, it shall remain in full force and effect.

**PROVIDED**, however, the foregoing obligation is subject to the following terms and conditions:

1. Whenever the Principal is declared in writing by the Obligee to be in default under the Development Agreement, and the Obligee intends to make a claim under this bond, the Obligee will notify the Principal and the Surety in writing of such default and make a written demand for payment, in the form attached to this bond as Schedule “A” (the “**Demand**”).
2. Within fifteen (15) days after receiving a Demand from the Obligee, the Surety will make payments to the Obligee in the amount of the Demand.
3. Except as otherwise set out herein, this bond is irrevocable and payment will be made despite any objection by the Principal. The Demand shall be accepted by the Surety as conclusive

evidence of its obligation to make payment to the Obligee, and the Surety will not assert any defence or grounds of any nature or description for not making payment to the Obligee, in whole or in part, pursuant to such Demand, including, but not limited to any of the following reasons: that a default has not occurred under the Development Agreement; that the Principal committed any fraud or misrepresentation in its application for the bond; or that the amount set out in the Demand is not appropriate, warranted or otherwise in accordance with the Development Agreement.

4. The Surety's liability under this bond is unconditional and will not be discharged or released or affected by any arrangements made between the Obligee and the Principal or by any dispute between the Surety and the Principal, or the taking or receiving of security by the Obligee from the Principal, or by any alteration, change, addition, modification or variation in the Principal's obligation under the Development Agreement, or by the exercise of the Obligee or any of the rights or remedies reserved to it under the Development Agreement or by any forbearance to exercise any such rights or remedies whether as to payment, time, performance or otherwise (whether or not any arrangement, alteration or forbearance is made without the Surety's knowledge or consent).
5. All payments by the Surety will be made free and clear, without deduction, set-off or withholding.
6. The Obligee may make multiple Demands under this bond.
7. The amount of this bond may be reduced from time to time as advised by notice in writing by the Obligee to the Surety.
8. Each payment made by the Surety under this bond will reduce the amount of this bond by the amount of such payment.
9. In no event will the Surety be liable for a greater sum than the amount specified in this bond.
10. No right of action will accrue upon or by reason hereof to or for the use or benefit of any person other than the Obligee.
11. Upon (i) completion by the Principal of all works required by the Development Agreement to the Obligee's satisfaction, (ii) the expiry of all maintenance and rectification periods contained within the Development Agreement, and (iii) the issuance by or on behalf of the Obligee of any final certificates of approval contemplated in the Development Agreement, where applicable, the Obligee will return this bond to the Surety for termination or advise the Surety in writing that this bond is terminated.
12. If the Surety at any time delivers at least 60 days' prior written notice to the Obligee and to the Principal of its intention to terminate this bond, the Principal will deliver to the Obligee, not less than 30 days prior to the termination of this bond, financial security in the amount of this bond in a form acceptable to the Obligee. If the replacement financial security is not provided by the Principal or is not accepted by the Obligee, this bond shall remain in full force and effect.

13. Nothing in this bond shall limit the Principal's liability to the Obligee under the Development Agreement.
14. This bond shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable thereto and shall be treated, in all respects, as a contract entered into in the Province of Ontario without regard to conflict of laws principles. The Principal and the Surety hereby irrevocably and unconditionally attorn to the jurisdiction of the courts of the Province of Ontario.
15. All Demands and notices under this bond shall be delivered by hand, registered mail, or courier to the Surety, with a copy to the Principal at the addresses set out below, subject to any change of address in accordance with this section. All other correspondence may be delivered by regular mail, courier, or email. A change of address for the Surety is publicly available on the Financial Services Regulatory Authority of Ontario website. The address for the Principal may be changed by giving written notice of the new address to the other parties in accordance with this section.

<b>To the Surety:</b>	<b>To the Principal:</b>	<b>To the Obligee:</b>
Click or tap here to enter text.	Click or tap here to enter text.	The Corporation of the City of Kingston 216 Ontario Street Kingston, ON K7L 2Z3 Attention: Director, Financial Services Email: <a href="mailto:FinanceDivision@cityofkingston.ca">FinanceDivision@cityofkingston.ca</a>

**IN TESTIMONY WHEREOF**, the Principal has hereto set its hand and affixed its seal, and the Surety has caused these presents to be sealed with its corporate seal duly attested by the signature of its authorized signing authority.

**SIGNED AND SEALED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in the presence of:

CLICK OR TAP HERE TO ENTER TEXT.

**(Principal)**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the corporation.

CLICK OR TAP HERE TO ENTER TEXT.

**(Surety)**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the corporation.

**Schedule "A"**

**DEMAND – NOTICE OF DEFAULT**

**Date:** Click or tap here to enter text.  
**Name of Surety:** Click or tap here to enter text.  
**Address:** Click or tap here to enter text.  
**Attention:** Click or tap here to enter text.

**Re: Development Agreement Bond No.: Click or tap here to enter text. ("Bond")**  
**Principal: Click or tap here to enter text. ("Principal")**  
**Obligee: The Corporation of the City of Kingston ("Obligee")**  
**Agreement: Click or tap here to enter text. ("Development Agreement")**

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To the above named Surety:

The Obligee hereby certifies to the Surety, with reference to the Bond, that the Principal is in default under the Development Agreement.

The Obligee hereby demands payment in the amount of Click or tap here to enter text. under the terms of the Bond.

Please pay the required amount in accordance with the following payment instructions no later than 15 days after your receipt of this Demand:

Payment Instructions: Click or tap here to enter text.

Yours truly,

**THE CORPORATION OF THE CITY OF KINGSTON**