

Department of Development and Environmental Services (DDES)

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Financial Guarantees

DDES Customer
Information Bulletin #**40****• FREQUENTLY ASKED QUESTIONS •**

*Visit the DDES Web site at
www.kingcounty.gov/permits
for more information*

King County DDES has created customer information bulletins to inform the general public about the effect of codes and regulations on their projects. These bulletins are not intended to be complete statements of all laws and rules and should not be used as substitutes for them. If conflicts and questions arise, current codes and regulations are final authority. Because the codes and regulations may be revised or amended at any time, consult King County staff to be sure you understand all requirements before beginning work. It is the applicant's responsibility to ensure that the project meets all requirements of applicable codes and regulations.

For alternate formats, call 206-296-6600.

What Are Financial Guarantees?

Financial guarantees are a form of financial security posted by the applicant to ensure timely and proper completion of project/site improvements to ensure compliance with the King County Code. Financial guarantees are also used to warranty materials, workmanship of improvements, and design. Financial guarantees include assignments of funds, cash deposits, surety bonds and/or other financial securities acceptable to the Director of the Department of Development and Environmental Services (DDES). They are required by Washington State statutes and certain sections of the King County Code on various types of projects, such as commercial or residential permits, subdivisions, grading permits, or code enforcement.

The Financial Guarantees Management Unit (FGMU) within the Department of Development and Environmental Services (DDES) provides information to applicants regarding the types of financial guarantees required for specific projects. There are two primary classifications of financial guarantees. These are as follows:

Performance Financial Guarantees

Performance financial guarantees are posted to ensure actual construction and installation of required improvements within two years after recording for final subdivision, two years after recording for short subdivision, one year after Right-of-Way Permit issuance, or six months after temporary building occupancy issued for a building permit. The time limit for performance guarantee compliance may be extended by six months at the Director's discretion if circumstances beyond the control of the applicant warrant an extension. The request for an extension shall be in writing and accompanied by a schedule for completion of the remaining work.

Maintenance and Defect Financial Guarantees

The department is authorized to require all applicants to post a maintenance guarantee and/or defect guarantee warranting the successful operation and maintenance of improvements, and guaranteeing the workmanship, materials, and design used in construction of improvements required by the conditions of any permits or approvals issued pursuant to Titles 9, 14, 16, 19, or 21A of the King County Code (KCC) (or their successors) and ensuring compliance with the King County Code.

Unless otherwise indicated in the King County Code, all maintenance guarantees and defect guarantees shall guarantee successful operation, workmanship, materials, and design of required facilities for a period of two years following final inspection and approval of improvements.

In addition to these primary classifications, performance financial guarantees are further categorized according to the purpose of the guarantee (e.g., plat improvements for subdivisions, site improvements for commercial building permits, critical areas improvements for all permits, grading improvements for a grading permit, etc.).

Why Are Financial Guarantees Necessary?

Financial guarantees are a precautionary measure to help King County avoid incurring public financial liability for an applicant's project. They ensure the following:

- All work performed complies with the provisions of King County Code and applicable laws and ordinances;
- Protective controls and/or required improvements are completed for the permit within the specified time limits;
- Corrections are made to any deficiencies that affect public health and safety or welfare;
- King County has a means of recovery in the case of developer/contractor default;
- Design, material, and workmanship of the facilities comply with applicable standards for a specified period of time; and
- Plantings or improved facilities are maintained by the developer/contractor for a specified period of time.

What Authorization Does King County Have To Require Financial Guarantees?

Title 27A of the King County Code (KCC) establishes the authority and procedures for accepting and enforcing financial guarantees, with the intent of ensuring that development projects are completed and maintained in accordance with King County approval conditions.

What Types of Financial Guarantees May Be Required For a Permit?

The following list identifies the financial guarantees required for various permits. Refer to the Appendix to this bulletin for brief descriptions of the permit requirements.

The PERFORMANCE FINANCIAL GUARANTEE, which ensures timely completion of work, is required for constructing improvements pursuant to any permits or approvals granted for the following:

- Grading;
- Subdivision improvements;
- Residential relocations;
- Preliminary Issuance Construction Approval (PICA), formerly known as Section 309 (for construction of certain building projects);

What Types of Financial Guarantees May Be Required For a Permit? (Continued)

- Site improvements for commercial building permits and binding site plans;
- Landscape for subdivisions, short subdivisions, commercial building permits, and binding site plans; and/or
- Critical areas mitigation.

The maintenance or a MAINTENANCE/DEFECT FINANCIAL GUARANTEE, which warranties the materials, design, and workmanship of improvements is required for the following scenarios:

- Two-year maintenance and defect (for public roads and drainage facilities, for subdivisions, commercial building permits, and binding site plans);
 - Two-year landscape and/or street tree maintenance for commercial building permits, binding site plans, and subdivisions; and
 - Maintenance/monitoring for a critical areas plan up to a five-year period for subdivisions, grading permits, commercial and residential building permits, and binding site plans
- The appendix to this bulletin also contains complete definitions of the types of guarantees listed above.

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If I Am Working in a Right-of-Way, Do I Still Need a Financial Guarantee?

The need for a financial guarantee depends on the type of work being done. If you need a permit, you probably also need a Right-of-Way/restoration financial guarantee. See the Appendix at the end of this bulletin, or review Bulletin 31, *Right-of-Way Use Permits*, for more information.

What Are My Options For Posting Financial Guarantees?

King County accepts the following forms of securities to satisfy the requirements of financial guarantees:

- **An Assignment of Funds (AOF)**
An AOF involves using a form prepared by DDES that is signed by a principal of the project and an officer of a banking institution licensed to do business in the State of Washington.

The form must be notarized. It stipulates that the bank is holding a set amount of money in a savings account, Certificate of Deposit, or loan account and that those funds will not be released without written authorization by the Financial Guarantees Management Unit (FGMU). If the applicant defaults, the bank is required to pay the funds to DDES upon receipt of a Notice of Default from the Director of DDES or his/her designee.
- **Cash**
Securing financial guarantees using cash requires that either cash or other instruments such as personal checks, cashier's checks, or money orders that can be converted into cash, be deposited into DDES' Bond Trust Fund. If the applicant defaults, DDES will notify the applicant. DDES will then transfer these funds to the DDES Bond Default Deposit account and use the funds to pay for any necessary corrective work. Amounts in excess of what is required to complete the work are returned to the applicant.

- **Surety Bond**

A surety bond is a third-party financial guarantee that is issued by an organization chartered by the State of Washington (i.e., a licensed insurance company). This organization, or surety, agrees to tender the penal sum of the bond (the bond amount) if the applicant defaults. In the event of a default claim, the surety has the option to either tender the amount of the bond or complete the work in lieu of tendering the bond amount.

Before making payment on a default claim, the surety will investigate the validity of the claim. The bond cannot be terminated, canceled, or released without written authorization from King County.

Does King County Issue the Financial Guarantee?

King County does not issue financial guarantees. You may obtain financial guarantees from the following sources:

- An Assignment of Funds (AOF) may be obtained from a bank that is FDIC insured or a credit union that is NCUA insured and licensed to do business in the State of Washington. Surety bonds are available from an insurance company or agent (look under Bonds, Surety, and Fidelity in the yellow pages of the telephone book or contact the Washington State Surety Association).

Does DDES Have Specific Financial Guarantee Forms or May I Obtain Them From My Bank or Surety?

You must obtain the specific financial guarantee forms and corresponding agreements from DDES by calling 206-296-6659. All financial guarantees must be submitted by the applicant/owner of the property on original King County forms. Forms can be mailed or the applicant may also elect to pick up the forms. DDES does not consider a faxed copy an original document. Only original forms prepared by the Financial Guarantees Management Unit (FGMU) with original, notarized signatures will be accepted.

When Must Customers Post a Financial Guarantee?

The time at which a financial guarantee must be posted depends on the type of permit or review involved (e.g., commercial, residential, grading, subdivision, or critical areas). For example, a restoration bond is required before any site construction can begin. When a financial guarantee is required, no work may be performed until the financial guarantee is received and accepted by DDES.

How Does King County Arrive At the Value For the Financial Guarantees?

The amounts of the financial guarantees are based on the schedules appropriate to the required work. The schedules are updated periodically and frequently to ensure that the guarantee amount fully captures likely costs. Financial guarantees shall also require a contingency in an amount to be determined by the Director.

King County uses current R.S. Means construction, landscaping, and environmental cost data, adjusted for the Northwest Region, to determine the required amount for the financial guarantee.

Who May Post a Financial Guarantee? May Anyone Post One For Me?

Only the applicant/owner of the property or persons with financial interest in completing this project may post a financial guarantee for any project. It is important to remember after you post the guarantee, it is your responsibility to complete the work. If you sell the project, you must have the financial guarantee replaced by the new owners. If you sell the project and do not have the purchaser replace your guarantee(s), then you are still responsible for completing the work.

Where Does a Cash Deposit Go?

All cash deposits are placed in the DDES Bond Trust Account held by the King County Office of Finance.

When and How is Money Returned?

The Department will not release performance guarantees until all the following conditions are met:

- Permit fees have been paid to date;
- Any applicable maintenance, maintenance/defect, or maintenance/monitoring guarantees have been posted;
- The development site has been inspected; and
- The Director has determined that the conditions and requirements of the permit/approval, as specified in the financial guarantee, have been met and final construction approval, if applicable, has been granted. The procedure for redeeming your financial guarantee depends on the type of project.

What is the Process For Releasing Financial Guarantees?

The appropriate DDES section will notify the Financial Guarantees Management Unit (FGMU) in writing when a financial guarantee may be released. The Financial Guarantees Management Unit will prepare the applicable release notification for the principal, surety company, financial institution, and/or King County Office of Finance. The original documents (surety bond or Assignment of Funds) will be returned to the surety company or financial institution.

May Someone Else Replace a Customer's Bonds, or May Customers Replace Them With a Different Type of Financial Guarantee?

Permit applicants may replace them with a different type of financial guarantee or a new owner (with legal proof of ownership) may replace your bonds. There is, however, a bond administrative processing fee is charged for each replacement of each financial guarantee. This charge for each replacement is based on the current King County DDES fee schedule. [Refer to Title 27 of the King County Code (KCC).]

Why am I Paying a Fee For Each Financial Guarantee?

The fee for replacing financial guarantees covers administrative costs (acceptance, monitoring, management, release of financial guarantees, etc.). Applicants are required by the King County Code to pay for each guarantee, not per project. Fees are subject to change by the King County Council and are usually adjusted yearly. Refer to Title 27 of the King County Code (KCC) for a list of specific amounts, or call DDES at 206-296-6659.

Can the Amount of a Financial Guarantee Be Reduced Before Release?

The Director may allow reductions in performance guarantee amounts in accordance with King County's cost estimate of the work remaining to be completed. The applicant must supply the inspector with a copy of the project's Bond Quantity Worksheet that indicates the percentage completed for each line item. The request for reduction shall be in writing, accompanied by a schedule for completion of the remaining work.

What About Default?

Default occurs when an inspection by DDES reveals that some or all of the permit requirements have not been met and the principal has indicated/shown (either in writing or by not complying) that he or she is unwilling/unable to accomplish the work in accordance with the conditions of the permit.

What Constitutes Default and What Notice Would I Receive?

Both the applicant/principal and guarantor would be notified in writing of the default. Terms of default could include any of the following failure(s):

- 1) Failure to comply with the permit/and/or financial guarantee conditions;
- 2) Failure to complete, in the specified time, the required improvements in accordance with the King County Code and with approved project plans and conditions;
- 3) Failure to maintain/monitor, for the specified period of time, the required improvements in accordance with the King County Code and with approved project plans and conditions; and/or
- 4) Failure to pay current fee balances due.

When Will the County Take Action Against My Financial Guarantee?

The Director will determine whether the permit or approval conditions have been satisfied in a timely manner, or whether the financial guarantee shall be collected to remedy the violation. If satisfactory assurance is not received by the Department within a time period determined by the Director that conditions will be appropriately corrected, the Department may order the applicant to perform all necessary corrective work, and/or demand payment of the financial guarantee.

What if Applicant Choose To Not Complete/Correct the Work and Request the County To Use Their Financial Guarantee To Complete the Work?

The guarantor is responsible, up to the limits of the financial guarantee, for payment of any and all necessary costs and expenses that have been or will be incurred or expended by King County in causing any and all such required work to be done. In the event that total costs associated with the required work exceed the guarantee amount, the applicant shall remain responsible to King County for the payment of any remaining amount. King County may contract with a third party to complete the work required by the financial guarantee and associated agreement.

Who May I Call With General Questions?

Financial Guarantees Management Unit (FGMU) staff are available to discuss specific questions about financial guarantees by calling 206-296-6659.

APPENDIX

Financial Guarantees and Associated Permits Administered by DDES

Performance Financial Guarantee

Grading Permit

Financial guarantees for restoration and reclamation activities, required pursuant to Titles 16 and 21A King County Code (K.C.C.), shall be sufficient to cover the cost of conformance with conditions of the permit. This includes corrective work necessary to provide drainage consistent with approved plans and conditions; to remove geologic hazards; and to protect water quality and public health, safety, and welfare.

A restoration and reclamation financial guarantee is required in an amount sufficient to cover the cost of conforming with the conditions of the permit, including corrective work necessary to provide drainage consistent with approved plans and conditions, to remove geological hazards, and to protect water quality and the public health, safety and welfare. This financial guarantee may be reduced proportionately for phased projects as work is completed and as subsequent reclamation and/or restoration on each phase is finished. The request for reduction shall be in writing. The amount of the guarantee is based on the area of clearing and for reclamation.

A cash operating financial guarantee is required so that King County may correct deficiencies affecting public health, safety, and welfare, including effects on water quality, if the work is not completed by the applicant in accordance with permit conditions. The amount of the cash guarantee shall be determined by the Director and shall be maintained at the full value established by the Director at all times during the life of the permit. The amount of this financial guarantee is based on the volume of materials extracted from the site.

Title 27A of the King County Code (KCC) requires that the grading operation financial guarantee be posted in cash. An assignment of funds through a bank on approved King County forms will also be acceptable.

Plat Improvements

Financial guarantees for plat improvements are intended to ensure completion of required improvements and compliance with King County Code. They are required when an applicant requests permission to record a subdivision before completion of required improvements. Final construction approval must be issued within two years from the date of recording. The time limit for performance guarantee compliance may be extended by six months at the Director's discretion, if circumstances beyond the control of the applicant warrant an extension. These financial guarantees are not released until after final construction approval is issued. These financial guarantees are accepted and released by the Financial Guarantees Management Unit (FGMU) and authorized by Titles 19 and 27A of the King County Code (KCC).

Relocation

A financial guarantee for relocation is intended to ensure that renovation of a moved or temporary building will be completed pursuant to the King County adoption of the current Uniform Building Code. (See Uniform Building Code, Section 104.)

Right-of-Way Restoration and/or Site Stabilization/Restoration

In accordance with DDES Public Rule Chapter 9-04, effective April 14, 1989, the financial guarantee for site stabilization/restoration may be combined with the financial guarantee for right-of-way/restoration. This financial guarantee is intended to cover the cost of any corrective work that may be required, on or off the site, to provide adequate drainage, and to stabilize or restore disturbed areas for commercial projects, subdivisions, short subdivisions, PUDs, and County Right-of-ways. These financial guarantees must be posted prior to plan approval and before beginning construction of the project. The first \$7,500 of the guarantee(s) must be posted in cash. The cash deposit provides immediate availability of the funds in the event of default. They are released after final construction approval. The guarantee is authorized by Chapters 9.04 and 14.28 of the King County Code (KCC), and DDES Public Rule Chapter 9-04.

Preliminary Issuance Construction Approval (PICA) SECTION 309

The PICA financial guarantee is intended to cover the cost to make the necessary corrections to bring the construction into conformance with the approved plans. It is also intended to meet conditions of the approved/issued permit or to demolish the structure and restore the site. The latter intent is applied when the applicant is allowed to begin construction before a building permit is issued, and the application for permit approval is subsequently denied or the applicant withdraws the application. A PICA financial guarantee is typically used for the construction of commercial projects, but has been requested for residential projects. This financial guarantee is accepted and released by the Financial Guarantees Management Unit (FGMU) and authorized by Titles 16 and 27A of the King County Code (KCC). A PICA financial guarantee may only be posted as a cash deposit to King County or an Assignment of Funds (AOF). Surety bonds are not acceptable for a PICA financial guarantee.

Site Improvements (Commercial)

Financial guarantees for improvements required pursuant to Titles 16, 19, or 21A of the King County Code (KCC) (or their successors) shall be sufficient to cover the cost of complying with conditions of the permit or approval. This includes any corrective work necessary to provide drainage consistent with approved plans and conditions, to remove geologic hazards, and to protect water quality and public health, safety and welfare. These financial guarantees shall include site restoration and stabilization requirements.

A performance guarantee may be posted for some of the site improvements for a temporary certificate of occupancy as long as no life safety hazard exists. The following improvements must be completed/functional before a performance amount will be determined: the drainage facility, required parking, and safe access. The applicant/principal must request calculation of the amount of the performance financial guarantee in writing. A Bond Quantity Worksheet, indicating the percentage of each item completed and accompanied by a schedule for completion of required improvements, must also be submitted to the inspector. This financial guarantee is prepared, received and released by the Financial Guarantees Management Unit (FGMU) and authorized by Titles 21A and 27A of the King County Code (KCC).

Critical Areas

A sensitive (critical) areas financial guarantee is required for mitigation in sensitive areas pursuant to Chapter 21A.24 of the King County Code (KCC), in an amount sufficient to guarantee that all required mitigation measures are completed within the time frame established by King County. A performance and maintenance guarantee shall also be required for restoration of a critical area or buffer not performed as part of a mitigation or maintenance plan, except that no financial guarantee shall be required for minor stream restoration carried out prior to issuance of the building permit. The financial guarantee for any critical area shall guarantee that all required mitigation measures will be completed no later than the time established by King County in accordance with Title 21A of the King County Code (KCC).

Landscape and/or Street Trees

Landscape financial guarantees are required on commercial sites to ensure the completion and improvement of required landscaping, in accordance with the approved site plan, within three months following issuance of any Certificate of Occupancy. The Director has the option of extending the time limit for compliance with the landscaping requirements for up to one year after issuance of the occupancy certificate, if circumstances beyond the control of the applicant warrant an extension.

If all the required landscaping has been installed and approved before the request for a temporary or permanent occupancy certificate, a performance financial guarantee will not be necessary. In such a case, a two-year landscape maintenance financial guarantee is required. The Director may extend the time period for the landscape maintenance financial guarantee for one year, if necessary, to cover a planting and growing season.

Subdivisions and urban planning developments are allowed two years from the date of recording to complete the landscape and/or street tree requirements. The landscaping and/or street tree performance guarantee includes a minimum two-year maintenance period following installation of landscaping and street trees to ensure that plantings survive or are replaced. These financial guarantees are accepted and released by Financial Guarantees Management Unit (FGMU).

Maintenance or Maintenance/Defect Financial Guarantees**Maintenance**

A maintenance financial guarantee is intended to warranty the workmanship and materials used for installation/construction of landscape improvements for the duration of two years following installation approval of the landscaping improvements. This financial guarantee is accepted before release of the landscape performance financial guarantee or before any certificate of occupancy is issued. It is released by Financial Guarantees Management Unit (FGMU) and authorized by Titles 9, 14, 19, and 27A of the King County Code (KCC).

Right-of-Way and Drainage Facility Two-Year Maintenance and Defect For Public Improvements

This financial guarantee warrants the successful operation and maintenance of improvement. It also guarantees the workmanship, materials, and design used in construction of all public maintained improvements required by the conditions of any permits or approvals issued pursuant to Titles 9, 14, 16, 19, or 21A of the King County Code (KCC). The principal is also responsible for maintenance of the public road and drainage facilities, including the roadway surface, for a minimum of two years beginning on the date of satisfactory construction approval or final plat approval, whichever is later. This financial guarantee is accepted by DDES before final construction approval and released by the King County Department of Transportation, King County Road Engineer, after the minimum two years have elapsed, and the public improvements have been inspected and found to be satisfactory. These requirements are authorized by Title 21A of the King County Code (KCC).

Other Bulletins and Telephone Numbers That May Be Helpful

- Bulletin 1 Building and Development Permit Telephone Numbers
- Bulletin 8 Commercial/Multi-Family Building Permits
- Bulletin 9 Obtaining a Residential Building Permit
- Bulletin 12 The Residential Building Permit Process
- Bulletin 17A Zoning Code: Overview and Summary
- Bulletin 21 Critical Areas Review
- Bulletin 22 Zoning Code: Landscaping Requirements
- Bulletin 25 Short Subdivisions
- Bulletin 28 Clearing and Grading Permits
- Bulletin 31 Right of Way Use Permits

These and other DDES bulletins are available via the department Web site at www.kingcounty.gov/permits.

- 206-296-6600 DDES Information
- 206-296-6659 DDES Financial Guarantees Management Unit (FGMU)

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King County complies with the Americans with Disabilities Act (ADA). If you require an accommodation to attend a meeting (two weeks' notice) or require this information in Braille, audiocassette, or large print, please call 206-296-6600 or TTY 206-296-7217.