

NO: R197

COUNCIL DATE: November 20, 2023

REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **November 16, 2023**

FROM: **Acting General Manager, Corporate Services**

FILE: **3900-20-15912**

SUBJECT: **Proposed Amendments to the *Surrey Officer and Indemnification By-law, 2006, No. 15912***

RECOMMENDATION

The Corporate Services Department recommends that Council:

1. Receive this report for information;
2. Approve the proposed amendments to *Surrey Officer and Indemnification By-law, 2006, No 15912*, as summarized in Appendix “I” and reflected within *Surrey Officer and Indemnification By-law, 2006 No. 15912*, as documented in Appendix “II” of this report (the “Amendments”); and
3. Authorize the City Clerk to bring forward the related amendment bylaw for the required readings.

INTENT

The purpose of this report is to obtain Council’s approval to adopt the Amendments to *Surrey Officer and Indemnification By-law, 2006, No. 15912* (the “Bylaw”).

BACKGROUND

On February 20, 2006, in accordance with the *Local Government Act*, Council adopted provisions of the Bylaw to provide that the City will indemnify its officers, employees, and Council Members against claims for damages and other proceedings arising out of the performance of their duties and, in addition, pay the legal costs for such proceedings.

Challenges have emerged over the course of administering the indemnification provisions of the Bylaw, including questions about the process for administering the program, the extent of the City’s involvement in the defense of indemnified claims, and what would be reasonable legal and other costs to be paid by the City as part of the indemnification.

Under the current Bylaw, the City provides funding for the legal defence of a municipal official and pays for any judgments and settlements, but the Bylaw is silent on whether it is the municipal official or the City who retains and instructs legal counsel and controls the conduct of the defense.

Staff have worked with outside legal counsel on a model of indemnification that clarifies that the City controls the defense of claims and other proceedings, including whether and how they are settled. Such a model is similar to how insurance companies handle claims against the insured, and is the approach adopted by many local governments, including Vancouver, Coquitlam, North Vancouver, and North Cowichan.

DISCUSSION

Amendments to the Bylaw

The Amendments reflect an “insurance model” of indemnification and include the following features:

- Prompt Notice and Agreement to Terms: The municipal official being indemnified must provide prompt notification to the City of the claim or proceeding. They must also “opt in” by agreeing to the terms of the bylaw as a precondition to indemnification.
- City Control: If the City provides indemnification, then the City will assume control of the defence. The City will have sole discretion to appoint and instruct legal counsel, conduct all necessary investigations, and negotiate and settle the claim or proceeding. The municipal official must not admit or assume liability, enter into a settlement, or enter a guilty plea, except with approval of the Manager, Risk Services. The municipal official must cooperate with the City and appointed legal counsel to secure information, evidence, and witnesses, and defend the action, prosecution, or claim.
- City Funding: The City will only fund reasonable fees and settlements. Staff will have authority to settle claims for up to \$500,000. Settlements of claims over \$500,000 will require the approval of Council.

Administrative Policy

Should Council approve the Amendments, Staff will prepare for Council’s approval a complimentary policy detailing the administration of the indemnification. The policy may address, among other things, the following:

- Guidelines to municipal officers regarding process for working with legal counsel and the Risk Manager;
- Guidelines in relation to reasonable legal fees and reasonable settlements;
- Recognition of unique matters affecting elected officials whereby due deference to the elected official regarding instructing legal counsel and settlement of claims may be warranted;
- concerning the manner of billing by external legal counsel; and
- Template form of notice to the Risk Manager regarding new claims or proceedings in which indemnification is requested.

Legal Services Review

Legal Services has reviewed this report.

CONCLUSION

Based on the above discussion, Staff recommend that Council authorize the City Clerk to bring forward the Amendments for the required readings.

Joey Brar
Acting General Manager, Corporate Services

Appendix "I": Summary of Proposed Amendments to *Surrey Officer and Indemnification By-law, 2006 No. 15912*

Appendix "II": Proposed *Surrey Officer and Indemnification By-law, 2006 No. 15912* Amendments as shown in the *Surrey Officer and Indemnification By-law, 2006 No. 15912*

**Proposed Amendments to
*Surrey Officer and Indemnification By-law, 2006, No. 15912***

The following amendments are proposed to *Surrey Officer and Indemnification By-law, 2006, No. 15912*, as amended:

1. In Section 2, “Definitions”, amend the following:
 - a. Subsection (r) “Surrey Police Board Employee” insert the words “or former employee” between the words “employee” and “of” and insert the words “or former member” between the words “member” and “of”; and
 - b. Subsection (s) “Surrey Police Officer” insert the words “or former employee” between the words “employee” and “of”.
2. In Section 7.1, amend the following:
 - a. insert the word “reasonable” between the words “of” and “amounts”;
 - b. delete the word “or” and replace it with “,” between the words “award” and “penalty”;
 - c. delete the word “imposed” and replace it with the words “, or reasonable settlement” between the words “penalty” and “in”; and
 - d. insert the word “reasonable” between the words “against” and “amounts”.
3. In Section 7.1A, amend the following:
 - a. insert the word “reasonable” between the words “of” and “amounts”;
 - b. delete the words “payment of the settlement of the action or claim, or” and replace with the word “the” between the words “including” and “satisfaction”; and
 - c. delete the word “or” and replace it with “,” between the words “award” and “penalty”;
 - d. delete the word “imposed” and replace it with the words “, or reasonable settlement” between the words “penalty” and “in”; and
 - e. insert the words “or former member” between the words “member” and “of”.
4. Insert the following new Sections 7.1B, 7.1C and 7.1D as follows:

“7.1B The indemnification for judgments, awards and penalties under sections 7.1 and 7.1A does not apply in any case where an adjudicator of competent jurisdiction has explicitly determined in a final decision that the Municipal Official, Surrey Police Officer, or Surrey Police Board Employee has been grossly negligent or dishonest, or engaged in wilful or malicious misconduct.

7.1C Where this bylaw authorizes indemnification of a Municipal Official, Surrey Police Officer, or Surrey Police Board Employee, any person claiming indemnification must comply with all of the following as a condition of indemnification:

- (a) Submit a request for indemnification to the Manager, Risk Services. The request for indemnification must be in writing and submitted within 7 days of the prospective indemnitee receiving notice of a claim, action, prosecution, or proceeding for which they may be entitled to indemnification.
- (b) Not admit or assume liability, enter into a settlement, or enter a guilty plea except with the approval of the Manager, Risk Services.
- (c) Consent in writing to the City having sole discretion to appoint and instruct legal counsel, conduct all necessary investigations, negotiate and settle the action, prosecution, or claim.
- (d) Cooperate with the City and appointed legal counsel to secure information, evidence and witnesses, and defend the action, prosecution, or claim.

Notwithstanding the foregoing, the Manager, Risk Services may approve a request for indemnification under this bylaw where notice was provided more than 7 days of receipt of notice of a claim, action, prosecution or proceeding where there is a reasonable excuse for the delay in providing the required notice and the delay has not resulted in prejudice to the defense of the matter.

7.1D The Manager, Risk Services shall make all determinations as to whether a Municipal Official, Surrey Police Officer or Surrey Police Board Employee is entitled to indemnification pursuant to this bylaw.”

- 5. In Section 7.2 insert the word “further” between the words “a” and “limit”.
- 6. In Section 7.3, amend the following:
 - a. insert the words “an adjudicator of competent jurisdiction has explicitly determined in a final decision that” between the words “unless” and “the”; and
 - b. delete the word “wilful” and replace it with the word “willfull”.
- 7. Insert the following new Section 7.4 as follows:

“7.4 The City will not fund any settlement pursuant to the bylaw unless it has been approved as follows:

- (a) Council must approve any settlement funded pursuant to this bylaw that requires the City to fund \$500,000.00 or more of the settlement amount.

- (b) The City Manager may approve any settlement funded pursuant to this bylaw that requires the City to fund less than \$500,000.00 of the settlement amount.
- (c) The Manager, Risk Services may approve any settlement funded pursuant to this bylaw that requires the City to fund up to \$200,000.00 of the settlement amount.”

CITY OF SURREY

BY-LAW NO. 15912

A by-law to establish Officer positions and to provide
for the indemnification of the Officers, Employees
and members of the Council of the City of Surrey.

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As amended by By-law No. 16614, 04/14/08; 19309, 07/24/17; 20458, 11/08/21

THIS IS A CONSOLIDATED BYLAW PREPARED BY THE CITY OF SURREY FOR CONVENIENCE ONLY. THE CITY DOES NOT WARRANT THAT THE INFORMATION CONTAINED IN THIS CONSOLIDATION IS CURRENT. IT IS THE RESPONSIBILITY OF THE PERSON USING THIS CONSOLIDATION TO ENSURE THAT IT ACCURATELY REFLECTS CURRENT BYLAW PROVISIONS.

WHEREAS the City Council, pursuant to Section 146 of the Community Charter must by by-law establish officer positions in relation to the duties prescribed under Sections 147, 148 and 149;

AND WHEREAS the City Council, pursuant to Section 187 of the Community Charter may provide for the indemnification of Municipal Officials referred to in Section 740(1) of the Local Government Act;

AND WHEREAS the City Council, pursuant to Section 740(2) of the Local Government Act may, by by-law, provide that the City will indemnify its officers, employees and members of Council against any claim for damages against an officer, an employee or a member of Council, arising out of the performance of their duties and, in addition, pay legal costs incurred in a court proceeding arising out of such claims;

AND WHEREAS the City Council, pursuant to Section 740(5) of the Local Government Act may, by by-law, provide that the City will not seek indemnity against its officers, employees and members of Council where the actions of those officers, employees, and members of Council result in a claim for damages against the City by a third party;

Under its statutory powers, including Section 146 of the Community Charter and Section 740 of the Local Government Act, the Council of the City of Surrey enacts the following provisions:

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1. TITLE

This By-law may be cited as the "Surrey Officer and Indemnification By-law, 2006, No. 15912."

2. DEFINITIONS

In this By-law:

- (a) "City" means the City of Surrey;
- (b) "City Manager" means the Officer position of the city manager;
- (c) "City Solicitor" means the Officer position of the city solicitor;
- (d) "Clerk" means the Officer position of the city clerk;
- (e) "Community Charter" means the *Community Charter*, S.B.C. 2003, c. 26, as amended;
- (f) "Council" means the elected Council of the City;
- (g) "Employee" means an exempt or union employee of the City other than an Officer;
- (h) "Fire Chief" means the Officer position as chief of the Surrey Fire Services Department;
- (i) "General Manager, Engineering" means the Officer position of the engineering department;
- (j) "General Manager, Finance and Technology" means the Officer position of the City financial administration officer;

- (k) "General Manager, Parks, Recreation and Culture" means the Officer position of the parks, recreation and culture department;
- (l) "General Manager, Planning & Development" means the Officer position of the planning and development department;
- (m) "Indemnification" has the meaning set out in Section 740(1) of the Local Government Act;
- (n) "Local Government Act" means the *Local Government Act*, R.S.B.C. 2015, c. 1, as amended;
- (o) "Municipal Official" has the meaning set out in Section 740(1) of the Local Government Act and includes Employees, Officers and members of Council;
- (p) "Officer" means a person holding a position set out in Section 3.1;
- (q) "Surrey Police Board" means the municipal police board established to serve the City of Surrey pursuant to the *Police Act*, R.S.B.C. 1996, c. 367, as amended;
- (r) "Surrey Police Board Employee" means an employee **or former employee** of the Surrey Police Board that is not a Surrey Police Officer, and for the purposes of this By-law, a member **or former member** of the Surrey Police Board is not a Surrey Police Board Employee by virtue of the membership;
- (s) "Surrey Police Officer" means an employee **or former employee** of the Surrey Police Board that is a municipal constable, special municipal constable, designated constable, or enforcement officer as these terms are defined in the *Police Act*, R.S.B.C. 1996, c. 367, as amended; and
- (t) "Surrey Police Service" means the municipal police department which has been established by the Surrey Police Board.

3. OFFICERS

3.1 Pursuant to Section 146 of the Community Charter, the Officers of the City of Surrey shall be those persons holding the following positions:

- City Manager (Chief Administrative Officer),
- Acting City Manager (Acting Chief Administrative Officer),
- City Clerk (Corporate Officer),
- Fire Chief,
- General Manager – Finance (Financial Officer),
- General Manager – Engineering,
- General Manager – Parks, Recreation and Culture,
- General Manager – Planning & Development, and
- Manager - Legal Services (City Solicitor).

- 3.2 Selection of the City Manager may be made by Council and the selection of all other Officers of the City may be made by the City Manager, subject to Council approval.
- 3.3 Selection of the Acting City Manager may be made by the City Manager, subject to Council approval.
- 3.4 In the event of incapacitation of the City Manager or vacancy in that position, the selection of the Acting City Manager may be made by the Mayor and Council.

4. POWERS AND DUTIES

City Manager (Chief Administrative Officer):

- 4.1 The City Manager shall have, in addition to the powers and duties prescribed by by-law or resolution, the Community Charter, the Local Government Act or any provincial statute, the following powers, duties and functions:
 - (a) To provide overall management of the operations of the municipality;
 - (b) To coordinate, direct and broadly supervise the implementation of policies and programs approved by Council;
 - (c) To plan, coordinate, direct, supervise and control the day-to-day business affairs of the City in accordance with the policies and plans approved and established by Council;
 - (d) To develop, establish and maintain comprehensive policies to direct the activities of all departments of the municipal service;
 - (e) To receive, compile, consider, and present to Council recommendations arising from departmental operations which require Council approval, and to propose by-laws or resolutions arising from such recommendations;
 - (f) To direct the preparation of, and to present to Council for consideration and approval, the annual budget and five year financial plan; and
 - (g) To select department heads and Officers and to coordinate, motivate, direct and supervise these key officials and prescribe their duties and responsibilities.

Acting City Manager (Acting Chief Administrative Officer):

- 4.2 In the absence of the City Manager, the Acting City Manager shall have, in addition to the powers and duties prescribed by by-law or resolution, the Community Charter, the Local Government Act or any provincial statute, the following powers, duties and functions:

- (a) To provide overall management of the operations of the municipality;
- (b) To coordinate, direct and broadly supervise the implementation of policies and programs approved by Council;
- (c) To plan, coordinate, direct, supervise and control the day-to-day business affairs of the City in accordance with the policies and plans approved and established by Council;
- (d) To develop, establish and maintain comprehensive policies to direct the activities of all departments of the municipal service;
- (e) To receive, compile, consider, and present to Council recommendations arising from departmental operations which require Council approval, and to propose by-laws or resolutions arising from such recommendations;
- (f) To direct the preparation of, and to present to Council for consideration and approval, the annual budget and five year financial plan; and
- (g) To select department heads and Officers and to coordinate, motivate, direct and supervise these key officials and prescribe their duties and responsibilities.

City Clerk (Corporate Officer):

4.3 The City Clerk (Corporate Officer) shall have, in addition to the powers and duties prescribed by the City Manager, by by-law or resolution, the Community Charter, the Local Government Act or any other provincial statute, the following powers, duties and functions:

- (a) To ensure that accurate minutes of the meetings of the City and its committees are prepared and that the minutes, by-laws and other records of the business of the City and its committees are maintained and kept safe;
- (b) To ensure that access is provided to records of the City and its committees as required by law or authorized by the local government;
- (c) To certify copies of by-laws and other documents, as required or requested;
- (d) To administer oaths and take affirmations, declarations and affidavits required to be taken under the Community Charter or any other Act in relation to City matters;
- (e) To accept, on behalf of the City, notices and documents that are required or permitted to be given, served on, filed with or otherwise provided to the City; and
- (f) To keep the corporate seal, if any, and have it affixed to documents as required.

Fire Chief:

- 4.4 The Fire Chief shall have powers and duties prescribed by the City Manager in addition to those powers, duties and responsibilities which may be specifically assigned to the Officer by by-law or resolution, the Community Charter, the Local Government Act or any other provincial statute.

General Manager – Finance (Financial Officer):

- 4.5 The General Manager – Finance (Financial Officer) shall have, in addition to the powers and duties prescribed by the City Manager, by by-law or resolution, the Community Charter, the Local Government Act or any other provincial statute, the following powers, duties and functions:
- (a) To receive all money paid to the City;
 - (b) To ensure the keeping of all funds and securities of the City;
 - (c) To expend and disburse money in the manner referred to in Section 173 of the Community Charter;
 - (d) To invest funds, until required, in investments referred to in Section 183 of the Community Charter;
 - (e) To ensure that accurate records and full accounts of the financial affairs of the City are prepared, maintained and kept; and
 - (f) To exercise control and supervision over all other financial affairs of the City.

General Manager – Engineering:

- 4.6 The General Manager – Engineering shall have powers and duties prescribed by the City Manager in addition to those powers, duties and responsibilities which may be specifically assigned to the Officer by by-law or resolution, the Community Charter, the Local Government Act or any other provincial statute.

General Manager – Parks, Recreation and Culture:

- 4.7 The General Manager – Parks, Recreation and Culture shall have powers and duties prescribed by the City Manager in addition to those powers, duties and responsibilities which may be specifically assigned to the Officer by by-law or resolution, the Community Charter, the Local Government Act or any other provincial statute.

General Manager – Planning & Development:

- 4.8 The General Manager – Planning & Development shall have powers and duties prescribed by the City Manager in addition to those powers, duties and responsibilities which may be specifically assigned to the Officer by by-law or resolution, the Community Charter, the Local Government Act or any other provincial statute.

City Solicitor:

- 4.9 The City Solicitor shall have powers and duties prescribed by the City Manager in addition to those powers, duties and responsibilities which may be specifically assigned to the Officer by by-law or resolution, the Local Government Act or any other provincial statute.

5. SUSPENSION OF OFFICERS

Suspension of an Officer shall be in accordance with Section 151 of the Community Charter.

6. TERMINATION

Termination of employment of any Officer shall be in accordance with Section 152 of the Community Charter.

7. INDEMNIFICATION

- 7.1 The City will indemnify its Municipal Officials against payment of **reasonable** amounts required or incurred to defend an action, prosecution or claim brought against a Municipal Official in connection with the exercise or intended exercise of the person's powers or the performance or intended performance of the person's duties or functions including satisfaction of a judgment, award ~~or~~, penalty ~~imposed~~, **or reasonable settlement** in relation to the foregoing. The City will indemnify its Municipal Officials against **reasonable** amounts required or incurred in relation to an inquiry under Part 2 of the *Inquiry Act*, R.S.B.C. 1996, c. 224 or to any other proceeding that involves the administration of the municipality or the conduct of municipal business.

- 7.1A Pursuant to Section 20 of the *Police Act*, R.S.B.C. 1996, c. 367, as amended, the City will indemnify Surrey Police Officers and Surrey Police Board Employees against payment of **reasonable** amounts required or incurred to defend a tort action or claim brought against that person in connection with the performance of their duties for the Surrey Police Service or Surrey Police Board, including ~~payment of the settlement of the action or claim, or the~~ satisfaction of a judgment, award ~~or~~, penalty ~~imposed~~, **or reasonable settlement** in relation to the foregoing. The City will not indemnify a member **or former member** of the Surrey Police Board in relation to the foregoing.

- 7.1B The indemnification for judgments, awards and penalties under sections 7.1 and 7.1A does not apply in any case where an adjudicator of competent jurisdiction has explicitly determined in a final decision that the Municipal Official, Surrey Police Officer, or Surrey Police Board Employee has been grossly negligent or dishonest, or engaged in wilful or malicious misconduct.**

- 7.1C Where this bylaw authorizes indemnification of a Municipal Official, Surrey Police Officer, or Surrey Police Board Employee, any person claiming indemnification must comply with all of the following as a condition of indemnification:**

- (a) **Submit a request for indemnification to the Manager, Risk Services. The request for indemnification must be in writing and submitted within 7 days of the prospective indemnitee receiving notice of a claim, action, prosecution, or proceeding for which they may be entitled to indemnification.**
- (b) **Not admit or assume liability, enter into a settlement, or enter a guilty plea except with the approval of the Manager, Risk Services.**
- (c) **Consent in writing to the City having sole discretion to appoint and instruct legal counsel, conduct all necessary investigations, negotiate and settle the action, prosecution, or claim.**
- (d) **Cooperate with the City and appointed legal counsel to secure information, evidence and witnesses, and defend the action, prosecution, or claim.**

Notwithstanding the foregoing, the Manager, Risk Services may approve a request for indemnification under this bylaw where notice was provided more than 7 days of receipt of notice of a claim, action, prosecution or proceeding where there is a reasonable excuse for the delay in providing the required notice and the delay has not resulted in prejudice to the defense of the matter.

- 7.1D The Manager, Risk Services shall make all determinations as to whether a Municipal Official, Surrey Police Officer or Surrey Police Board Employee is entitled to indemnification pursuant to this bylaw.**
- 7.2 As a **further** limit on Indemnification under Section 7.1, no fine shall be paid by the City that is imposed as a result of a Municipal Official's conviction for an offence that is not a strict or absolute liability offence.
- 7.3 The City will not seek indemnity against its Municipal Officials, or against Surrey Police Officers or Surrey Police Board Employees, where the actions or conduct of those Municipal Officials or Surrey Police Officers or Surrey Police Board Employees result in a claim for damages against the City by a third party, unless **an adjudicator of competent jurisdiction has explicitly determined in a final decision that** the Municipal Official or Surrey Police Officer or Surrey Police Board Employee has been guilty of dishonesty, gross negligence, or malicious or ~~wilful~~**willful** misconduct.
- 7.4 The City will not fund any settlement pursuant to the bylaw unless it has been approved as follows:**
 - (a) **Council must approve any settlement funded pursuant to this bylaw that requires the City to fund \$500,000.00 or more of the settlement amount.**
 - (b) **The City Manager may approve any settlement funded pursuant to this bylaw that requires the City to fund less than \$500,000.00 of the settlement amount.**

(c) **The Manager, Risk Services may approve any settlement funded pursuant to this bylaw that requires the City to fund up to \$200,000.00 of the settlement amount.**

8. EFFECTIVE DATE

This by-law shall come in force on the date of final adoption thereof.

9. REPEAL

The following By-law is hereby repealed:

"Surrey Establishment of Officer Positions and Officer and Employee Indemnification By-law, 2001, No. 14381".

PASSED FIRST AND SECOND READING on the 16th day of January, 2006.

PASSED THIRD READING, AS AMENDED on the 13th day of February, 2006.

RECONSIDERED AND FINALLY ADOPTED, signed by the Mayor and Clerk, and sealed with the Corporate Seal on the 20th day of February, 2006.

_____MAYOR

_____CLERK