

NO: R023

COUNCIL DATE: February 8, 2021

REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **February 4, 2021**

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

FILE: **0625-01**

SUBJECT: **Payment of Reasonable Legal Fees to Respond to Complaints Under Council
Code of Conduct**

RECOMMENDATION

The Corporate Services Department and the Finance Department recommend that Council:

1. Receive this report for information; and
2. Adopt the proposed Policy No. D-42 entitled “Payment of Reasonable Legal Fees to Respond to Complaints Under Council Code of Conduct”, which is attached to this report as Appendix “I”.

INTENT

The purpose of this report is to obtain Council approval for a policy setting out governance and direction on the payment of legal fees that a Council Member incurs as a result of responding to a complaint made against the Council Member under the Council Code of Conduct Bylaw, 2020, No. 20020 (the “Code of Conduct” or the “Code”).

BACKGROUND

Payment of Legal Fees Under the Code of Conduct

On May 4, 2020, Council adopted the Code of Conduct, which establishes a code of ethical conduct for Council Members and the administration of the Code of Conduct by the Ethics Commissioner and by Council.

The Ethics Commissioner is responsible for conducting investigations of complaints made under the Code of Conduct. The office of the Ethics Commissioner was established pursuant to the *Ethics Commissioner Establishment Bylaw, 2020, No. 20018*, which was adopted by Council on February 24, 2020. The Ethics Commissioner was appointed by Council on July 13, 2020.

Under the Code, any person may make a complaint to the Ethics Commissioner if they have witnessed or experienced conduct by a Council Member which they believe to be in contravention of the Code. The Ethics Commissioner may commence an investigation of the complaint, and a Council Member subject to the complaint may seek legal representation.

Under section 89 of the Code, the City will pay the reasonably incurred legal fees of a Council Member who is subject to a complaint under the Code, provided that:

- (a) the Commissioner ultimately does not determine that the Council Member acted with dishonesty, gross negligence, or malicious or willful misconduct; or
- (b) in any event, if Council so resolves after considering all the circumstances.

The purpose of section 89 of the Code is to provide Council Members the means to obtain legal assistance for a Code proceeding with reasonable protection against incurring personal financial loss or expenses while they were acting or intending to act within the scope of their duties. Such payments are in accordance with the *Local Government Act* and *Community Charter*, and the City's practice to provide indemnification to its municipal officials under the *Surrey Officer and Indemnification By-law, 2006, No. 15912*.

The attached policy is intended to provide definition to what are "reasonably incurred legal fees" that the City will pay under section 89 of the Code, and to set out the conditions for payment of these fees.

What are "reasonably incurred legal fees" will depend on the circumstances, including the nature and complexity of the complaint and the work required to ultimately resolve it. The policy reflects principles that would commonly apply, including that the lawyer retained should be based locally and charges fees within local industry standards, that they do not unnecessarily and excessively raise costs when responding to the complaint, and that the City should not pay for costs where the Council Member has been found to have engaged in dishonesty, gross negligence, or malicious or willful misconduct.

DISCUSSION

Retaining Legal Counsel

The Council Member must consult with the City's Risk Manager before retaining a lawyer to assist them with responding to a complaint under the Code. Although Council Members have the discretion to retain legal counsel of their choice, the City will not pay their legal fees unless staff confirms that the lawyer's rates are reasonable based on the nature of the complaint and the following guidelines:

- The lawyer must be based in British Columbia and be a member of good standing with the Law Society of British Columbia;
- The hourly rate of the lawyer should not exceed \$400/hour. The Council Member may obtain an opinion from the City's Risk Manager concerning whether a particular situation justifies retaining legal counsel at a rate in excess of \$400/hour;
- Fees will only be paid in relation to responding to (i.e., defending) a complaint under the Code of Conduct. Fees will not be paid for pursuing a complaint or if the advice is otherwise unrelated to responding to the complaint;
- If in the opinion of the Ethics Commissioner, the Council Member's lawyer acts in a manner which has unnecessarily and excessively raised the costs for the proceedings, the

Ethics Commissioner may recommend that a portion of the fees not be paid. Staff will withhold payment in accordance with the recommendation of the Ethics Commissioner; and

- If the Ethics Commissioner makes a finding that the Council Member acted with dishonesty, gross negligence, or malicious or willful conduct, then the Council Member will reimburse the City for the legal fees already paid by the City, and the City Council Member will not have their legal fees relating to the complaint paid on a going-forward basis by the City (unless Council resolves to waive such repayments by the Councillor and/or to continue such payments for legal fees). Before the City makes any payment under this Policy, the Council Member must provide to the City a written agreement in a form satisfactory to the Risk Manager which acknowledges their agreement with this Policy and their obligation to reimburse the City if these circumstances arise.

Payment of Reasonable Fees and Reimbursement by Council Member

To assist in managing costs and administration, the external counsel shall follow the City of Surrey External Legal Counsel Guidelines (Council) (the “Guidelines”) as provided by the Risk Management Division and which forms part of the Policy. The Guidelines set out the billing protocols and restrictions that are standard for all external legal counsel retained by the City.

Finally, travel expenses for legal counsel retained outside the lower mainland must be pre-approved by the City’s Risk Manager.

SUSTAINABILITY CONSIDERATIONS

The contents of this report support the objectives of the City’s Sustainability Charter 2.0. In particular, this report supports the Sustainability Charter Corporate Sustainability Objective #8: Work towards corporate financial sustainability.

CONCLUSION

This report seeks to obtain Council’s approval of the proposed Policy No. D-42 entitled “Payment of Reasonable Legal Fees to Respond to Complaints Under Council Code of Conduct”.

Rob Costanzo
General Manager, Corporate Services

Kam Grewal
General Manager, Finance

Appendix “1”: Policy No. D-42 Payment of Reasonable Legal Fees to Respond to Complaints Under Council Code of Conduct

Policy Title:	PAYMENT OF REASONABLE LEGAL FEES TO RESPOND TO COMPLAINTS UNDER COUNCIL CODE OF CONDUCT
Approval Date:	_____
History:	_____
Department:	FINANCE and CORPORATE SERVICES

Policy Statement

This Policy provides governance and direction for the payment of legal fees for Council Members responding to complaints under the Council Code of Conduct Bylaw, 2020, No. 20020 (the “Code”).

1. Reason for Policy

Under the Code, any person may make a complaint to the Ethics Commissioner if they have witnessed or experienced conduct by a Council Member which they believe to be in contravention of the Code. The Ethics Commissioner may commence an investigation of the complaint, and a Council Member subject to the complaint may seek legal representation.

Under section 89 of the Code, the City will pay the reasonably incurred legal fees of a Council Member who is subject to a complaint under the Code, provided that:

- (a) the Commissioner ultimately does not determine that the Council Member acted with dishonesty, gross negligence, or malicious or willful misconduct; or
- (b) in any event, if Council so resolves after considering all the circumstances.

The following policy is intended to provide requirements on retaining legal counsel, definition to what are “reasonably incurred legal fees” that the City will pay under section 89 of the Code, and to set out a process for payment of these fees.

2. Retaining Legal Counsel

The Council Member must consult with the City’s Risk Manager before retaining a lawyer to assist them with responding to a complaint under the Code. Although Council Members have the discretion to retain a legal counsel of their choice, staff must confirm that the lawyer’s rates are reasonable based on the nature of the complaint before the Council Member is entitled to have legal fees paid, based on the following guidelines:

- the lawyer must be based in British Columbia and be a member of good standing with the Law Society of British Columbia;

- the hourly rate of the lawyer should not exceed \$400/hour. The Council Member may obtain an opinion from the City's Risk Manager concerning whether a particular situation justifies retaining legal counsel at a rate in excess of \$400/hour;
- fees will only be paid in relation to responding to (i.e. defending) a complaint under the Code of Conduct. Fees will not be paid for pursuing a complaint or if the advice is otherwise unrelated to responding to the complaint;
- if in the opinion of the Ethics Commissioner, the Council Member's lawyer acts in a manner which has unnecessarily and excessively raised costs for the proceedings, the Ethics Commissioner may recommend that a portion of the fees not be paid. Staff will withhold payment in accordance with the recommendation of the Ethics Commissioner; and
- if the Ethics Commissioner makes a finding that the Council Member acted with dishonesty, gross negligence, or malicious or willful misconduct, then the Council Member will reimburse the City for the legal fees already paid by the City, and the Council Member will not have their legal fees relating to the complaint paid on a going-forward basis by the City (unless Council resolves to waive such repayments by the Councillor and/or to continue such payments for legal fees). Before the City makes any payment under this Policy, the Council Member must provide to the City a written agreement in a form satisfactory to the Risk Manager which acknowledges their agreement with this Policy and their obligation to reimburse the City if these circumstances arise.

3. Payment of Reasonable Legal Fees and Reimbursement by Council Member:

- to assist in managing costs and administration, the external legal counsel shall follow the External Legal Counsel Guidelines (Council) as provided by the Risk Management Division (Attached as Schedule 1);
- legal invoices must be submitted to the Risk Management Division for processing as soon as practicable after they are incurred; and
- travel expenses for legal counsel retained outside the lower mainland must be pre-approved by the City's Risk Manager.



**City of Surrey
External Legal Counsel Guidelines
(Council)**

Overhead Expenses

Hourly rates for professional services (Legal, Certified Paralegal) are intended to encompass overhead which will not be separately reimbursed. A few examples of overhead include the following but this does not represent a comprehensive list of overhead items. Please discuss any items with the City of Surrey Risk Manager.

- Legal Assistant functions (regardless of who performs them)
- Time charges for legal assistant or clerical staff
- Domestic telephone charges
- Facsimile charges

Billing

The City of Surrey requests that billing be provided in the following manner.

- A cover invoice with;
 - Your and our file numbers
 - Our file name (plaintiff or defendant – depending)
 - Fees & Disbursements
 - Taxes
 - Total Bill
- The cover invoice should also contain the File Number, Invoice Number, GST number and billing address. This is the copy that will be sent to accounts payable for payment. If requested, the invoice will not contain information specific to the matter.
- A time accounting of the file management with the date, detailed description of the work completed, time required and initials of the person that performed the work.
- A table containing the list of those who worked on the file and their hourly rate shall appear at the bottom of the detailed file work.