

NO: R205

COUNCIL DATE: October 18, 2021

REGULAR COUNCIL

TO: **Mayor & Council** DATE: **October 14, 2021**

FROM: **General Manager, Corporate Services** FILE: **3900-20-15912**
General Manager, Finance
General Manager, Policing Transition

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

RECOMMENDATION

The Corporate Services, Finance and Policing Transition Departments recommend that Council:

1. Receive this report for information;
2. Approve the proposed amendments to the *Surrey Officer and Indemnification By-law, 2006, No. 15912*, as summarized in Appendix "I" and reflected within the *Surrey Officer and Indemnification By-law, 2006, No. 15912*, as documented in Appendix "II" of this report; 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 (the "Amendments") to the *Surrey Officer and Indemnification By-law, 2006, No. 15912* (the "Officer and Indemnification By-law"), in order for the City of Surrey (the "City") to provide indemnification for the police officers and employees of the Surrey Police Board (the "Board").

BACKGROUND

Under the *Police Act, R.S.B.C. 1996, c. 397* (the "*Police Act*"), the indemnification of sworn Surrey Police Service ("SPS") officers and, in fact, all employees of the Board are the responsibility of the City and not the SPS. Accordingly, as SPS becomes operationalized in the Fall of 2021, the City will assume responsibility for indemnifying and defending SPS officers and employees against claims for damages arising out of the performance of their duties.

The City already has a process for indemnification and defence in place for policing services, as it currently provides indemnification to the civilian employees assisting the RCMP pursuant to the City's bylaws and insurance program. Conversely, RCMP Members are indemnified by Canada under a federal program.

In addition to indemnification of employees, the City maintains a commercial insurance program to cover the City's operations for liability and property exposures. The City maintains a sizable self-insured retention and has in-house claims investigation and litigation professionals to manage claims under the self-insured retention limits. The City also retains, on occasion, external claim investigators and legal counsel when it is warranted. Decisions regarding claims and litigation management rest solely with the delegated City staff.

DISCUSSION

In accordance with the *Police Act*, subsection 20(1)(a), "a municipality is jointly and severally liability for a tort committed by any of its municipal constables, special municipal constables, designated constables, enforcement officers, bylaw enforcement officers or employees of its municipal police board, if any, if the tort is committed in the performance of that person's duties."

Under Surrey's *Officer and Indemnification By-law*, the City currently indemnifies its own officers and employees in order for them to defend or respond to claims brought against them in connection with the exercise of their duties. The City also indemnifies its officers and employees for payment of their liability in damages in connection with the exercise of their duties. The Amendments give effect to the *Police Act* by extending the City's indemnification to SPS police officers and employees of the Board.

As a limit to indemnification, SPS officers will face personal liability where they are found guilty of dishonesty, gross negligence or malicious or wilful misconduct. In those circumstances, the City may seek indemnification from these officers for claims brought against the City.

The City's indemnification does not extend to members of the Board as they are indemnified by the Province. In accordance with subsection 21(2) of the *Police Act*, Board members are immune from personal liability for actions they take, or fail to take, in the performance of their duties as Board members. There is no immunity from personal liability if a Board member has been guilty of dishonesty, gross negligence or malicious or wilful misconduct.

Finally, the Amendments also include housekeeping provisions to update section references to the *Local Government Act* and to clarify that the Fire Chief is an officer of the municipality.

LEGAL SERVICES REVIEW

Legal Services has reviewed this report and the Amendments to the Officer and Indemnification By-law and have no concerns.

SUSTAINABILITY CONSIDERATIONS

The work of these amendments supports the objectives of the City's Sustainability Charter 2.0. In particular, this work relates to the Sustainability Charter 2.0 theme of Public Safety. Specifically, this work supports the following Desired Outcome ("DO") and Strategic Direction ("SD"):

- Community Safety and Emergency Services DO₁: Residents are safe and have a strong sense of security in all neighbourhoods and throughout the city; and
- Community Safety and Emergency Services SD₃: Ensure programs, policies and initiatives exist along the public safety continuum, and support the entire community.

CONCLUSION

Based on the above information, it is recommended that Council approve the proposed amendments to the *Surrey Officer and Indemnification By-law, 2006, No. 15912*.

Rob Costanzo
General Manager, Corporate Services

Kam Grewal
General Manager, Finance

Terry Waterhouse
General Manager, Policing Transition

Appendix "I": Summary of Proposed Amendments to the *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 the second paragraph of the preamble, replace the words "Section 287.2" with "Section 740(1)".
2. In the third paragraph of the preamble, replace the words "Section 287.2(2)" with "Section 740(2)".
3. In the fourth paragraph of the preamble, replace the words "Section 287.2(5)" with "Section 740(5)".
4. In the fifth paragraph of the preamble, replace the words "Section 287.2" with "Section 740".
5. In Subsection 2(m), replace the words "Section 287.2(1)" with "Section 740(1)".
6. In Subsection 2(n), replace the words "*Local Government Act, R.S.B.C. 1996, c. 323*" with "*Local Government Act, R.S.B.C. 2015, c. 1*".
7. In Subsection 2(o), replace the words "Section 287.2(1)" with "Section 740(1)".
8. In Subsection 2(o), delete the third appearance of the word "and".
9. In Subsection 2(p), insert ";" at the end of the subsection.
10. Insert the following new Subsections 2(q), (r), (s) and (t) after Subsection 2(p), as follows:
 - "(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 of the Surrey Police Board that is not a Surrey Police Officer, and for the purposes of this By-law, a 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 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."
11. In Section 3.1, insert "Fire Chief," after "City Clerk (Corporate Officer),".

12. Insert a new Section 7.1A immediately after Section 7.1, as follows:

"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 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 satisfaction of a judgment, award or penalty imposed in relation to the foregoing. The City will not indemnify a member of the Surrey Police Board in relation to the foregoing."

13. In Section 7.2, replace the word "section" with "Section".

14. Delete Section 7.3 in its entirety and replace it as follows:

"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 the Municipal Official or Surrey Police Officer or Surrey Police Board Employee has been guilty of dishonesty, gross negligence, or malicious or wilful misconduct."

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.

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

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 287.2~~Section 740(1) of the Local Government Act;

AND WHEREAS the City Council, pursuant to ~~Section 287.2(2)~~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 287.2(5)~~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 287.2~~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 287.2(1)~~**Section 740(1)** of the Local Government Act;
- (n) "Local Government Act" means the ~~Local Government Act, R.S.B.C. 1996, c. 323~~**Local Government Act, R.S.B.C. 2015, c. 1**, as amended;
- (o) "Municipal Official" has the meaning set out in ~~Section 287.2(1)~~**Section 740(1)** of the Local Government Act and includes Employees, Officers and members of Council; ~~and~~
- (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 of the Surrey Police Board that is not a Surrey Police Officer, and for the purposes of this By-law, a 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 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 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 in relation to the foregoing. The City will indemnify its Municipal Officials against 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 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 satisfaction of a judgment, award or penalty imposed in relation to the foregoing. The City will not indemnify a member of the Surrey Police Board in relation to the foregoing.

7.2 As a limit on Indemnification under ~~section~~**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 where the actions or conduct of those Municipal Officials result in a claim for damages against the City by a third party, unless the Municipal Official has been guilty of dishonesty, gross negligence, or malicious or wilful misconduct.~~**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 the Municipal Official or Surrey Police Officer or Surrey Police Board Employee has been guilty of dishonesty, gross negligence, or malicious or wilful misconduct.**

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 1ST AND 2ND 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