



City of Richmond

Report to Committee

To: General Purposes Committee

Date: August 27, 2019

From: Claudia Jesson
Director, City Clerk's Office

File: 12-8060-20-8459/Vol
01

Re: Indemnification Bylaw

Staff Recommendation

That Indemnification Bylaw No. 9911 be introduced and given first, second and third readings.

Claudia Jesson
Director, City Clerk's Office
(604-276-4006)

Att. 4

REPORT CONCURRENCE		
ROUTED TO:	CONCURRENCE	CONCURRENCE OF GENERAL MANAGER
Law Risk Management	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	
REVIEWED BY STAFF REPORT / AGENDA REVIEW SUBCOMMITTEE	INITIALS: 	APPROVED BY CAO

Staff Report

Origin

In 1987, Council passed Bylaw No. 4896, which was a bylaw to indemnify officers, employees and members of council of the Corporation of the Township of Richmond from damage claims that arise out of the performance of their duties (see **Attachment 1**). The current bylaw was adopted pursuant to section 262(3) of the *Municipal Act* (1979) (the “former legislation”), which has since been replaced by section 740 of the *Local Government Act* (see **Attachment 2**). The current legislation expands the scope of indemnification permitted by bylaw, particularly as it permits indemnification of former members of City council, City employees, and City officers (i.e. retired municipal officials), whereas the former legislation only permitted indemnification of current municipal officials.

The indemnification provisions in the current bylaw are outdated, and are narrower than those in place in most municipalities in the Lower Mainland. The proposed Indemnification Bylaw No. 9911 (see **Attachment 3**) reflects the changes in the current legislation and makes the City’s indemnification bylaw consistent with those of other municipalities in the Lower Mainland.

This report supports Council’s Strategic Plan 2018-2022 Strategy #5 Sound Financial Management:

Accountable, transparent, and responsible financial management that supports the needs of the community into the future.

Analysis

In the course of carrying-out their functions and duties, municipal officials are potentially subject to a legal action or prosecution. Provided that the action or prosecution is brought against a municipal official in the exercise or intended exercise or performance of their municipal duties and functions, provincial legislation permits a local government to indemnify municipal officials by bylaw. In very general terms, an indemnification bylaw provides that legal fees, as well as costs, fines and awards of damages incurred or made against a municipal official will be paid by the local government.

Indemnifying members of Council and staff from actions brought against them in the exercise of their municipal duties and functions is best practice, as it helps the City attract and retain municipal officials and provides municipal officials with the assurance that they will not suffer negative personal financial consequences from the well-intentioned exercise of their duties.

The scope of indemnification permitted by bylaw under the former legislation is narrower than that permitted under the current legislation. The former legislation:

- permitted indemnification of only current (and not former) members of council, City employees, and City officers;
- did not permit indemnification to members of other organisations (for example, libraries) that provide municipal services or for other persons who may provide municipal services (for example, volunteers);

- permitted indemnification by bylaw only in respect to claims for damages (i.e. civil proceedings seeking compensation) and legal costs in a court proceeding arising out of such claims. Indemnification for legal and other costs and awards in respect to criminal or regulatory prosecutions or proceedings under the *Public Inquiry Act* required a specific resolution of not less than 2/3 of council members; and
- did not permit indemnification for a fine incurred by an employee, officer or member of council in respect to any criminal offence.

The current legislation expands the scope of indemnification permitted by bylaw and, as a result, the proposed bylaw permits indemnification for:

- both current and former members of Council, City employees and City officers;
- a much broader range of “municipal officials” who provide municipal or quasi-municipal services (such as members of the library board, and City volunteers);
- any amount incurred to defend a criminal prosecution brought against a person in connection with the exercise of their duties, as well as any amount incurred to satisfy a judgement, award or penalty imposed in a prosecution, subject to exceptions described in **Attachment 4**; and
- legal and other costs and awards for regulatory prosecutions (such as a regulatory offence under the *Workers Compensation Act*) or proceedings under the *Public Inquiry Act*.

Consistent with the former legislation and the current bylaw, the current legislation and the proposed bylaw also stipulate that the City may not seek indemnity against a municipal official unless a court makes a finding that the municipal official has been guilty of dishonesty, gross negligence or malicious or wilful misconduct.

Financial Impact

The City’s current liability insurance (through the Municipal Insurance Association of British Columbia (MIABC)) covers both current and former municipal officials, and covers the broad range of municipal officials (including volunteers) included under the proposed bylaw. Therefore, in the very limited and unlikely cases where the City is not also added as a defendant, the financial impact of increasing the scope of people covered by the City’s indemnity bylaw would be borne within the City’s self-insurance deductible, currently at \$250,000 per claim or occurrence.

Similarly, in the very limited and unlikely cases where the City is not also added as a defendant, to the extent the proposed bylaw expands the scope of indemnification to cover the following items (which are not covered under the City’s insurance coverage), the indemnification costs will be borne by the City:

- a) damage caused by an intentional or criminal act;
- b) fines or penalties;
- c) liabilities under the *Workers Compensation Act*; and
- d) such other exclusions as may be approved annually by MIABC’s board.

Conclusion

The purposes of the proposed bylaw are to update the current bylaw to reflect the increased scope of authority to indemnify that is provided in the current legislation and to make the scope of the City's indemnification bylaw consistent with that of other local governments in the Lower Mainland. The current bylaw is out of date and does not provide the protection that elected officials and staff are entitled to receive, under the current legislation, in order to carry out their duties and responsibilities without apprehension.

The proposed bylaw will only bring the City of Richmond to be consistent with the standards for indemnifying by other local governments. Indemnifying members of Council and staff from actions brought against them in the exercise of their municipal duties and functions is best practice, as it helps the City attract and retain municipal officials and provides municipal officials with the assurance that they will not suffer negative personal financial consequences from the well-intentioned exercise of their duties.



Claudia Jesson
Director, City Clerk's Office
(604-276-4006)

- Att. 1: Current Bylaw
- Att. 2: Excerpts from the Local Government Act
- Att. 3: Indemnification Bylaw No. 9911
- Att. 4: Exceptions on Indemnification for Fines

ATTACHMENT 1
CURRENT BYLAW

THE CORPORATION OF THE TOWNSHIP OF RICHMOND

BYLAW NO. 4896

**A BYLAW TO INDEMNIFY OFFICERS, EMPLOYEES AND
MEMBERS OF COUNCIL OF THE CORPORATION OF THE
TOWNSHIP OF RICHMOND FROM DAMAGE CLAIMS**

WHEREAS section 262(2) of the Municipal Act R.S.B.C. 1979, Chapter 290 provides that the Council may by bylaw indemnify its officers, employees and members of Council against any claim for damages against an officer, employee or member of Council arising out of the performance of his duties and, in addition, pay legal costs incurred in a court proceeding arising out of the claim;

AND WHEREAS pursuant to section 262(3) of the Municipal Act, R.S.B.C. Chapter 290, the Council may provide that:

The Council shall not seek indemnity against an officer, employee or member of Council in respect of any action of the officer, employee or member that results in a claim for damages against the municipality, but the council may seek indemnity against an officer, employee or member where the claim arises out of the gross negligence of the officer, employee or member, or where, in relation to the action that gave rise to the claim against an officer or employee, the officer or employee wilfully acted contrary to

- (a) terms of his employment, or
- (b) an order of a superior.

NOW THEREFORE the Council of The Corporation of the Township of Richmond, in open meeting assembled, enacts as follows:

1. The Corporation of the Township of Richmond will indemnify its officers, employees and members of Council against any claim for damages against an officer, employee or member of Council arising out of the performance of his duties and, in addition, pay legal costs incurred in a court proceeding arising out of the claim.
2. The Corporation of the Township of Richmond shall not seek indemnity against an officer, employee or member of Council in respect of any action of the officer, employee or member that results in a claim for damages against the municipality, but the council may seek indemnity against an officer, employee or member where the claim arises out of the gross negligence of the officer, employee or member, or where, in relation to the action that gave rise to the claim against an officer or employee, the officer or employee wilfully acted contrary to

- (a) terms of his employment, or
- (b) an order of a superior.

Bylaw No. 4896

- 2 -

3. Bylaw No. 3153 is hereby repealed.
4. This Bylaw is effective and in force and binding on all persons as from the day following the date of its adoption.

ATTACHMENT 2
EXERPTS FROM THE LOCAL GOVERNMENT ACT

Immunity for individual local public officers

738 (1) In this section, "**local public officer**" means any of the following:

- (a) a member of a council;
- (b) a director of a regional board;
- (c) a trustee of an improvement district;
- (d) a commissioner for a local community commission under Division 9 [*Local Community Commissions*] of Part 6 [*Regional Districts: Governance and Procedures*];
- (e) a member of a commission established under section 263 (1) (g) [*regional district commissions*] of this Act or section 143 [*municipal commissions*] of the *Community Charter*;
- (f) a member of a library board under the *Library Act*;
- (g) a member of any greater board or of any board that provides similar services and is incorporated by letters patent;
- (h) a member of an advisory planning commission under section 461;
- (i) a member of a board of variance under Division 15 [*Board of Variance*] of Part 14 [*Planning and Land Use Management*];
- (j) a member of the Okanagan-Kootenay Sterile Insect Release Board or an officer or employee of that board;
- (k) a member of the Okanagan Basin Water Board;
- (l) a trustee of a body of the Islands Trust under the *Islands Trust Act*;
- (m) an officer or employee of a municipality, regional district, improvement district, library board under the *Library Act*, a greater board referred to in paragraph (g), the trust council under the *Islands Trust Act* or the Okanagan Basin Water Board;
- (n) an election official or a regional voting officer under section 179 [*assent voting conducted by more than one local government*];
- (o) a volunteer firefighter or a special constable;

(p) a volunteer who participates in the delivery of services by a municipality, regional district or a body referred to in paragraphs (c) to (l) under the supervision of an officer or employee of the municipality, regional district or any of those bodies;

(q) a member of a board of trustees established or appointed by a municipality under section 37 [*local government operations*] of the *Cremation, Interment and Funeral Services Act*;

(r) a member of a municipal committee, of a regional district board committee or of an improvement district committee under section 689 [*appointment of select and standing committees*] who is not also a member of the municipal council, regional district board or improvement district board, as applicable.

(2) No action for damages lies or may be instituted against a local public officer or former local public officer

(a) for anything said or done or omitted to be said or done by that person in the performance or intended performance of the person's duty or the exercise of the person's power, or

(b) for any alleged neglect or default in the performance or intended performance of that person's duty or the exercise of that person's power.

(3) Subsection (2) does not provide a defence if

(a) the local public officer has, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence or malicious or wilful misconduct, or

(b) the cause of action is libel or slander.

(4) Subsection (2) does not absolve any of the corporations or bodies referred to in subsection (1) (a) to (l) from vicarious liability arising out of a tort committed by any of the individuals referred to in subsection (1) for which the corporation or body would have been liable had this section not been in force.

Warning as defence for local government financial officer

739 It is a good defence to any action brought against a municipal or regional district financial officer for unlawful expenditure of local government funds if it is proved that the individual gave a written and signed warning to the council or board that, in his or her opinion, the expenditure would be unlawful.

Indemnification against proceedings for local government officials

740 (1) In this section:

"indemnification" means the payment of amounts required or incurred

(a) to defend an action or prosecution brought against a person 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,

(b) to satisfy a judgment, award or penalty imposed in an action or prosecution referred to in paragraph (a), or

(c) in relation to an inquiry under the *Public Inquiry Act*, or to another proceeding, that involves the administration of the municipality or regional district or the conduct of municipal or regional district business;

"municipal official" means

(a) a current or former council member,

(b) a current or former municipal officer or employee, or

(c) a person who is or was a person referred to in section 738 (1) [*immunity for individual municipal local public officers*], but only in relation to the exercise of powers or the performance of duties or functions for or on behalf of a municipality;

"regional district official" means

(a) a current or former member of a regional district board,

(b) a current or former officer or employee of a regional district, or

(c) a person who is or was a person referred to in section 738 (1), but only in relation to the exercise of powers or the performance of duties or functions for or on behalf of the regional district.

(2) Indemnification for municipal officials and regional district officials may be provided as follows:

(a) a council may do the following:

(i) by bylaw, provide for the indemnification of municipal officials in accordance with the bylaw;

(ii) by resolution in a specific case, indemnify a municipal official;

(b) a board may do the following:

(i) by bylaw, provide for the indemnification of regional district officials in accordance with the bylaw;

(ii) by resolution in a specific case, indemnify a regional district official.

(3) As a limit on indemnification under subsection (2), a council or board must not pay a fine that is imposed as a result of a municipal official or regional district official, as applicable, being convicted of an offence that is not a strict or absolute liability offence.

(4) Sections 100 [*disclosure of conflict*] and 101 [*restrictions on participation if in conflict*] of the *Community Charter* do not apply to a council member or board member who could be, or would be, indemnified under a bylaw or resolution under subsection (2) of this section.

(5) Subject to subsection (6), a council may not seek indemnity against a municipal official, and a board may not seek indemnity against a regional district official, in respect of any conduct of the person that results in a claim for damages against the municipality or regional district, as applicable.

(6) The restriction under subsection (5) does not apply if the court makes a finding in the action that the person has been guilty of dishonesty, gross negligence or malicious or wilful misconduct.

Indemnification against proceedings for other local public officers

741 (1) Subject to subsection (2), section 740 applies to the following in relation to any person referred to in section 738 (1) [*immunity for individual local public officers*]:

(a) a greater board;

(b) the Okanagan-Kootenay Sterile Insect Release Board;

(c) the trust council under the *Islands Trust Act*;

(d) a library board under the *Library Act*.

(2) Subsection (1) applies only in relation to the exercise of powers or the performance of duties or functions for or on behalf of the applicable corporation.

ATTACHMENT 3



City of Richmond

Bylaw 9911

Indemnification Bylaw No. 9911

The Council of the City of Richmond enacts as follows:

PART ONE: DEFINITIONS

1.1 In this bylaw:

City	means the City of Richmond;
Community Charter	means the <i>Community Charter</i> [SBC 2003] c. 26, as amended;
Council	means council of the City;
Local Government Act	means the <i>Local Government Act</i> [RSBC 2015] c. 1, as amended;
Municipal Official	means: <ul style="list-style-type: none">(a) a current or former member of Council;(b) a current or former officer of the City;(c) a current or former employee of the City;(d) a member of a City commission established under section 143 of the <i>Community Charter</i>;(e) a member of the City's library board;(f) a member of a City advisory planning commission under section 461 of the <i>Local Government Act</i>;(g) a member of a City board of variance under Division 15 of Part 14 of the <i>Local Government Act</i>;(h) an officer or employee of the City's library board;

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- (i) a volunteer firefighter or a special constable;
- (j) a volunteer who participates in the delivery of services by the City or a body referred to in paragraphs (d) to (g) above under the supervision of an officer or employee of the City or such body; or
- (k) a member of a City standing or select committee who is not also a member of Council; and

Public Inquiry Act means the *Public Inquiry Act* [SBC 2007] c. 9.

PART TWO: INDEMNIFICATION

- 2.1 Subject to section 2.2, the City will indemnify a **Municipal Official** from and against amounts required or incurred by the **Municipal Official**:
- (a) to defend an action or prosecution brought against the **Municipal Official** in connection with the exercise or intended exercise of the **Municipal Official's** powers or the performance or intended performance of the **Municipal Official's** duties or functions;
 - (b) to satisfy a judgment, award or penalty imposed in an action or prosecution referred to in section (a); or
 - (c) in relation to an inquiry under the **Public Inquiry Act**, or to another proceeding, that involves the administration of the City or the conduct of the City's business.
- 2.2 The City will not indemnify a **Municipal Official** pursuant to this Bylaw in respect to a fine imposed as a result of a **Municipal Official** being convicted an offence that is not a strict or absolute liability offence.
- 2.3 The City will not seek indemnity against a **Municipal Official** in respect of any conduct of the **Municipal Official** that results in a claim for damages against the City, unless a court makes a finding that the **Municipal Official** has been guilty of dishonesty, gross negligence or malicious or wilful misconduct.

PART THREE: SEVERABILITY AND REFERENCE TO OTHER ACTS

- 3.1 If any section, sub-section, clause or sub-clause of this bylaw is, for any reason, held to be invalid by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this bylaw.
- 3.2 Any reference to another enactment in this bylaw is a reference to the other enactment as amended or replaced, whether amended or replaced before or after the adoption of this bylaw.

5928448

Bylaw 9911

Page 3

PART FOUR: REPEAL AND CITATION

4.1 Bylaw No. 4896 is hereby repealed.

4.2 This bylaw may be cited as "Indemnification Bylaw No. 9911".

FIRST READING

SECOND READING

THIRD READING

ADOPTED

CITY OF RICHMOND
APPROVED for content by originating dept.
APPROVED for legality by Solicitor

MAYOR

CORPORATE OFFICER

5928448

ATTACHMENT 4
EXCEPTIONS ON INDEMNIFIATION FOR FINES

In accordance with the Current Legislation, the Proposed Bylaw limits indemnification for fines imposed as result of prosecution to those relating to convictions for strict or absolute liability offences (being offences that do not require the accused to have had a deliberate intention or “guilty mind” in order to be convicted, and are not subject to the defence of due diligence or mistake of fact). Given this limitation, and the fact that the offence must be in respect of the performance of a municipal official’s duties and functions, the practical scope of the indemnification for fines in the criminal context is quite narrow and likely limited to *Criminal Code* offenses pertaining to the dangerous operation of a motor vehicle.



Indemnification Bylaw No. 9911

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- (i) a volunteer firefighter or a special constable;
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- (k) a member of a **City** standing or select committee who is not also a member of **Council**; and

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means the *Public Inquiry Act* [SBC 2007] c. 9.

PART TWO: INDEMNIFICATION

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 - (b) to satisfy a judgment, award or penalty imposed in an action or prosecution referred to in section (a); or
 - (c) in relation to an inquiry under the **Public Inquiry Act**, or to another proceeding, that involves the administration of the **City** or the conduct of the **City's** business.
- 2.2 The **City** will not indemnify a **Municipal Official** pursuant to this Bylaw in respect to a fine imposed as a result of a **Municipal Official** being convicted an offence that is not a strict or absolute liability offence.
- 2.3 The **City** will not seek indemnity against a **Municipal Official** in respect of any conduct of the **Municipal Official** that results in a claim for damages against the **City**, unless a court makes a finding that the **Municipal Official** has been guilty of dishonesty, gross negligence or malicious or wilful misconduct.

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- 3.1 If any section, sub-section, clause or sub-clause of this bylaw is, for any reason, held to be invalid by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this bylaw.
- 3.2 Any reference to another enactment in this bylaw is a reference to the other enactment as amended or replaced, whether amended or replaced before or after the adoption of this bylaw.

PART FOUR: REPEAL AND CITATION

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4.2 This bylaw may be cited as “**Indemnification Bylaw No. 9911**”.

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SECOND READING

THIRD READING

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MAYOR

CORPORATE OFFICER