

NO: R024

COUNCIL DATE: February 24, 2025

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## REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **February 19, 2025**

FROM: **City Solicitor**

FILE: **o625-01**

SUBJECT: **Proposed Policy for Administration of the  
*Surrey Officer and Indemnification By-Law, 2006, No. 15912***

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## RECOMMENDATION

Legal, Bylaw & Risk Services recommends that Council:

1. Receive this report for information; and
2. Adopt the proposed Policy No. K-2 entitled “Application and Administration of Surrey Officer and Indemnification By-law”, for staff’s administration of the *Surrey Officer and Indemnification By-law, 2006, No. 15912* (the “Indemnification Bylaw”), a copy of which is attached as Appendix “I” to this report.

## INTENT

The intent of this report is to obtain Council’s approval of a proposed policy for staff’s administration of the Indemnification Bylaw.

## BACKGROUND

On February 20, 2006, in accordance with the *Local Government Act*, Council adopted provisions of the Indemnification Bylaw that require the City to indemnify its officers, employees, and Council Members against claims for damages and other proceedings arising out of the performance of their duties, including the payment of defence costs.

In November 2023, Council adopted amendments to the Indemnification Bylaw to implement an “insurance model” of indemnification that allows the City greater control over the conduct, funding, and resolution of contentious matters for which it provides indemnification. Attached as Appendix “II” is Corporate Report No. R197; 2023, which outlined the amendments considered by Council and the rationale for their adoption.

In Corporate Report No. R197; 2023, staff indicated that staff would develop a policy for the administration of the amended Indemnification Bylaw.

## DISCUSSION

Staff have prepared the proposed policy attached as Appendix “I” for Council’s consideration. The proposed policy provides guidance on the following:

1. The process through which the Risk Manager will receive and evaluate requests for indemnification;
2. The considerations that will inform how the Risk Manager manages the defence and resolution of proceedings for which the City is providing indemnification; and
3. The process through which the City will pay for defence costs.

Staff recommend that Council adopt the proposed policy so that both staff and potential indemnitees have guidance on how the Indemnification Bylaw will be administered.


## CONCLUSION

Staff have developed a proposed policy to guide staff’s administration of the Indemnification Bylaw. Staff recommends that Council adopt the proposed policy to provide both staff and potentially indemnitees with guidance on how the Indemnification Bylaw will be administered.

Philip C.M. Huynh  
City Solicitor

Appendix “I”: Policy No. K-2 Application and Administration of Surrey Officer and Indemnification By-law

Appendix “II”: Corporate Report No. R197; 2023

	<h1>City of Surrey</h1> <h1>Policy</h1> <p style="text-align: right;">No. K-2</p>
<p><b>Policy Title:</b></p> <p><b>Approval Date:</b></p> <p><b>History:</b></p> <p><b>Department:</b></p>	<p><b>APPLICATION AND ADMINISTRATION OF SURREY OFFICER AND INDEMNIFICATION BY-LAW</b></p> <p>_____</p> <p>_____</p> <p><b>LEGAL, BYLAW &amp; RISK SERVICES</b></p>

## Policy Statement

This Policy provides guidance regarding the application and administration of the indemnification provisions under the *Surrey Officer and Indemnification By-law, 2006 No. 15912* (the “**Indemnification Bylaw**”).

### 1. Reason for Policy

In November 2023, Council approved amendments to the Indemnification Bylaw to implement an “insurance model” of indemnification that allows the City greater control over the conduct, funding, and resolution of contentious matters for which it provides indemnification. This policy provides guidance on how the amended bylaw will be applied and administered.

### 2. Notice of Claims

Any person who wishes to seek indemnification under the Indemnification Bylaw shall do so by completing the form attached as **Schedule A** within 7 days of receiving notice of the claim, action, prosecution, or proceeding for which they are seeking indemnification. In particular, they must confirm through the form that they consent to the City having sole discretion to appoint and instruct legal counsel, conduct all necessary investigations, and negotiate and settle the action, prosecution, or claim.

While the Manager, Risk Services (the “**Risk Manager**”) may approve a request for indemnification where notice was provided after the above noted 7-day deadline, the Risk Manager may only do so 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.

Reasonable excuses for delay in providing notice include personal and/or medical emergencies that render timely notice difficult or impracticable provided that notice is provided within a reasonable time thereafter.

### **3. Availability of Indemnification**

The Risk Manager is responsible for making all determinations as to whether individuals are entitled to indemnification pursuant to the bylaw. In making this determination, the Risk Manager shall not approve indemnification where it cannot be reasonably justified under the bylaw. At the same time, the Risk Manager shall err on the side of authorizing indemnification where it can be reasonably justified under the bylaw. A key consideration in the decision is whether a failure to authorize indemnification may raise questions about the availability of indemnification that discourages persons in positions similar to the indemnitee from the proper performance of their duties.

### **4. Appointment of Counsel and Defence/Resolution of Proceedings**

The Risk Manager will generally have the sole discretion to appoint and instruct legal counsel, conduct all necessary investigations, negotiate, and settle proceedings for which indemnification is being provided, subject to the approval requirements in Section 7.4 of the Indemnification Bylaw. In exercising this discretion, the Risk Manager will be guided by:

1. the interests of the City and its taxpayers;
2. the requirement in the Indemnification Bylaw that any expenditures must be reasonable; and
3. the Risk Manager's judgement on questions of cost and strategy.

As a limited exception to the general rule that the Risk Manager will exercise sole discretion to appoint and instruct legal counsel, conduct all necessary investigations, negotiate, and settle proceedings for which indemnification is being provided, the Risk Manager may provide the indemnitee greater input into and/or control over the conduct and resolution of proceedings that may have a significant personal and/or professional impact on the indemnitee.

Costs associated with defending a proceeding will be invoiced directly by the relevant legal counsel/expert(s) to the Risk Manager.



# Request for Indemnification Form

## Internal Only

Send to:  
Legal Services & Risk Management Division  
4E - 13450 104<sup>th</sup> Ave  
[claims@surrey.ca](mailto:claims@surrey.ca)

RISK MANAGEMENT CLAIM NUMBER:

\_\_\_\_\_  
(Office Use Only)

**Please complete the following in full:**

APPLICANT NAME: \_\_\_\_\_ HOME PHONE: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_ WORK PHONE: \_\_\_\_\_  
CITY: \_\_\_\_\_ POSTAL CODE: \_\_\_\_\_ EMAIL: \_\_\_\_\_

<b>Current Job Title:</b>	<b>Department/Division:</b>	<b>Employment Status:</b>
<b>Name of Your Direct Supervisor/Manager:</b>	<b>Supervisor/Manager Phone Number:</b>	<b>Supervisor/Manager Email Address:</b>

I am a member or former member of the Surrey Police Board: Yes No

Please describe the type of legal proceeding you have been named a party in (*please attach notice of proceedings, pleadings or other official documentation you have been served*): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**(If you do not feel you have sufficient space, please attach additional information to this form.)**

Please explain the circumstances that gave rise to this claim: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



# Request for Indemnification Form

## Internal Only

If this request for indemnification is being submitted more than 7 days after you were notified of a claim, action, or proceeding, please provide your reason(s) for the delay: \_\_\_\_\_

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I, the undersigned, consent to provide the City sole discretion to appoint and instruct legal counsel; conduct all necessary investigations; and negotiate and settle the action, prosecution, or claim on my behalf.

**Declaration of Applicant:**

I acknowledge that the City's receipt of this notice does not constitute its approval of my indemnification request.

I acknowledge that indemnification will not apply if it is found that the claim described above is due to gross negligence or dishonesty or wilful or malicious misconduct on my part, or if I am otherwise ineligible for indemnification.

Applicant's Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_

NO: *R197*

COUNCIL DATE: *November 20, 2023*

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## 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***

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## 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

**Note: Appendices available upon request.**

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*