Agenda – Council – September 20, 2018

Report – Executive Policy Committee – September 12, 2018

Item No. 6 Community Centres – Liability Insurance and Vehicle/Equipment Insurance Costs

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On September 12, 2018, the Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and submitted the following to Council:

1. That all past historical practices be endorsed with respect to insurance and indemnifications provided to Community Centres, General Council of Winnipeg Community Centres (GCWCC) and other organizations such as Assiniboine Park Conservancy Inc., Business Improvement Zones and City owned museums, and subject to Recommendation 2, the continuation of these practices be authorized, including:

    A. purchasing insurance coverage for All Risk Property Insurance, including unlicensed vehicles; Commercial General Liability Insurance; Crime Insurance; and Volunteer Accident Insurance for Community Centres, the GCWCC and the Business Improvement Zones; and Commercial General Liability Insurance for Assiniboine Park Conservancy Inc. and City owned Museums;

    B. settlement of claims (within existing settlement authorities) made against the organizations as identified in (a.) above, and for losses that are set out in City of Winnipeg insurance policies identified in (a.) above;

    C. indemnification of Directors and Officers of Community Centres for personal liability resulting from actions taken in these roles.

2. That an increase to the operating budget for Community Services in an annual amount of up to $60,000 to purchase a policy of Director's and Officer's Liability Insurance for Community Centre Volunteer Boards and GCWCC as well as individual Directors and Officers to a limit of $2.0 million be referred to the 2019 Operating Budget.

3. That until and unless funding for the purchase of Director's and Officer's Liability Insurance is approved in the 2019 Operating Budget process, the City's Insurance Reserve Fund be authorized to respond to Director's and Officer's Liability Insurance type claims up to $250,000 per claim, as per past practice.

4. That the Proper Officers of the City be authorized to do all things necessary to implement the foregoing.

Report – Executive Policy Committee – September 12, 2018

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On September 12, 2018, the Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and submitted the matter to Council.

COUNCIL DECISION:

On January 25, 2017, Council concurred in the January 11, 2017, recommendation of the Executive Policy Committee, that the Winnipeg Public Service be directed to investigate and report back to Executive Policy Committee on liability insurance and vehicle/equipment insurance costs for the General Council of Winnipeg Community Centres.

On December 14, 2016, Council ruled automatic referral of the following motion to the Executive Policy Committee:

Moved by Councillor Mayes,
Seconded by Councillor Pagtakhan,

That the Winnipeg Public Service be directed to investigate and report back to Executive Policy Committee on liability insurance and vehicle/equipment insurance costs for the General Council of Winnipeg Community Centres.

ADMINISTRATIVE REPORT

Title: Community Centres - Liability Insurance and Vehicle/Equipment Insurance Costs

Critical Path: Executive Policy Committee - Council

AUTHORIZATION

Author	Department Head	CFO	CAO
P. de Graaf	C. Fernandes	P. Olafson, Acting for M. Ruta	D. McNeil

EXECUTIVE SUMMARY

The City of Winnipeg insurance policies consisting of All Risk Property Insurance (including scheduled unlicensed vehicles); Commercial General Liability Insurance; Crime Insurance; and Volunteer Accident Insurance have in the past been extended to include and protect Community Centres, the General Council of Winnipeg Community Centres Inc. (GCWCC). Various types of insurance coverage have also been extended to other organizations such as the Business Improvement Zones, Assiniboine Park Conservancy and City owned museums.

Commercial General Liability policies of insurance do not include protection for Community Centre Boards and GCWCC (including its Directors and Officers) against errors and omissions that may result in a lawsuit arising out of the management duties of the Board and its Directors and Officers. The City has in the past addressed this issue by indemnifying Directors and Officers of Community Centres, using the Insurance Reserve Fund to do so.

This report is requesting Council endorse actions taken by the Public Service to date in accordance with all related insurance matters (including claims settlement) and to endorse the continuation of all practices into the future, with the exception that it is proposing that the City purchase a policy of Director's and Officer's Insurance for Community Centres and GCWCC.

RECOMMENDATIONS

1. That Council endorses all past historical practices with respect to insurance and indemnifications provided to Community Centres, GCWCC and other organizations such as Assiniboine Park Conservancy Inc., Business Improvement Zones and City owned museums and, subject to Recommendation 2, authorize the continuation of these practices. Past practices would include:

    a. purchasing insurance coverage for All Risk Property Insurance, including unlicensed vehicles; Commercial General Liability Insurance; Crime Insurance; and Volunteer Accident Insurance for Community Centres, the GCWCC and the Business Improvement Zones; and Commercial General Liability Insurance for Assiniboine Park Conservancy Inc. and City owned Museums;

b. settlement of claims (within existing settlement authorities) made against the organizations as identified in (a.) above, and for losses that are set out in City of Winnipeg insurance policies identified in (a.) above;

c. indemnification of Directors and Officers of Community Centres for personal liability resulting from actions taken in these roles.

2. That Council refer to the 2019 operating budget process an increase to the operating budget for Community Services in an annual amount of up to $60,000 to purchase a policy of Director's and Officer's Liability Insurance for Community Centre Volunteer Boards and GCWCC as well as individual Directors and Officers to a limit of $2.0 million.

3. That until and unless funding for the purchase of Director's and Officer's Liability Insurance is approved in the 2019 operating budget process, Council authorize the City's Insurance Reserve Fund to respond to Director's and Officer's Liability Insurance type claims up to $250,000 per claim, as per past practice.

4. That the proper officers of the City be authorized to do all things necessary to implement the foregoing.

REASON FOR THE REPORT

On January 25, 2017, Council directed the Winnipeg Public Service to investigate and report back to the Executive Policy Committee on liability insurance and vehicle/equipment insurance costs for the General Council of Winnipeg Community Centres (GCWCC). Particular interest was expressed in the extent to which Directors and Officers of Community Centre Volunteer Boards were protected against personal liability. This report complies with that direction.

Council endorsement and ratification of the historic practice of the Public Service in providing indemnification for Community Centres, GCWCC and other organizations such as Assiniboine Park Conservancy Inc., Business Improvement Zones and City owned museums, is required. This includes the settlement of claims (within existing settlement authorities) as well as providing indemnities for the personal liability of Directors and Officers of Community Centres.

Council approval is required for the purchase of Director's and Officer's Liability Insurance for Community Centres and their volunteer board of Directors and Officers.

IMPLICATIONS OF THE RECOMMENDATIONS

Council endorsement of the existing practices provides retroactive legal validity for good faith actions by the Public Service, which were taken in the belief that they reflected Council's directions although they lacked formal and explicit approval by Council. Council's approval of these practices on a go-forward basis will provide a solid legal foundation for the Public Service to act in the future and will allow Community Centres and the other named organizations to operate with confidence that they will not have to incur the expense of purchasing individual policies of insurance or, alternatively, operate without insurance protection for their normal operations.

The purchase of a policy of Director's and Officer's Liability Insurance for Community Centre Volunteer Boards, as well as individual Directors and Officers, requires additional mill rate support of approximately $60,000, beginning in 2019 and each year thereafter. If Council does not approve the purchase of Director's and Officer's Liability Insurance for Community Centres, including funding, this Report recommends that Council authorize the City's Insurance Reserve Fund to respond to Director's and Officer's Liability Insurance type claims up to $250,000 per claim, as per past practice. In the absence of either authorization, Community Centres will be without any protection for claims against their boards or individual Directors or Officers.

HISTORY/DISCUSSION

The Community Centre volunteer model has been in place since the 1950s. The GCWCC was formed in 1971, wherein volunteers and City staff played supportive roles in Community Centre operations. Community Centres are independent legal entities, but the land and buildings are owned by the City of Winnipeg. There are currently 63 Community Centres in Winnipeg and each Community Centre Board is operated by a Volunteer Board of Directors. Community Centres are organized into five districts that align with the City's five Community Committees. Each Community Centre District Board meets monthly and District Board members also attend monthly GCWCC Board meetings. Significant volunteer support is required to run the majority of Community Centre programming and operations. In 2016, there were 17,491 volunteers who gave over 1,250,000 hours of their time to Community Centres. Community Centres are an integral part of life in the City of Winnipeg and volunteers–including those serving as Officers and Directors of Community Centres–make their operation possible.

This report is requesting Council to endorse and ratify all actions taken by the Public Service to date in accordance with the practices relating to insurance matters and claims settlements for Community Centres, as well as for organizations such as Assiniboine Park Conservancy Inc., Business Improvement Zones, and City owned museums.

The City currently provides the following insurance coverage and indemnifications to Community Centres and the GCWCC:

a. Property Insurance covering physical damage for building contents which are not City-owned, including unlicensed equipment (i.e. mowers, tractors, and their implements) has been provided to the Community Centres and the GCWCC by agreement of the City property insurers. Property insurance is provided by the City's All Risk Property insurance policy.

b. Commercial General Liability insurance protects the Community Centres and the GCWCC against liability claims for bodily injury and property damage arising out their normal operations. The City's Liability Insurers have agreed to include these operations under the commercial general liability policy issued to the City of Winnipeg.

c. The allocated cost of the building contents and Commercial General Liability insurance coverage for all Community Centre operations including the GCWCC amounts to approximately $50,000 annually.

d. Crime Insurance, including Employee Dishonesty, has been extended by the City of Winnipeg's Crime Insurer, to the operations of Community Centres and the GCWCC.

e. Volunteer Accident Insurance provides compensation to volunteers of the Community Centres or the GCWCC who may suffer a work-related injury.

f. Vehicle/Equipment Insurance - The City of Winnipeg's Property and Commercial General Liability Insurance policies and programs have been extended to include and protect Community Centre equipment and the operations of the lawnmowers used by Community Centres relative to the City's Sweat Equity Program and the Universal Funding Formula agreement. The cost of the general liability coverage for Community Centre operations, along with any nominal amount associated with the operations of the lawnmowers, has been absorbed into the City of Winnipeg's Insurance Operating Budget.

g. Director's & Officer's Liability - Past practices have made funds available from the Insurance Reserve fund to pay for liability claims arising out of incidents involving individual Directors and Officers of the community centres up to $250,000.

h. The City's insurance and indemnity protection does not extend to some events or activities in which community centres are engaged on a "one-off" basis for purposes of revenue generation. Although the Insurance Branch attempts to have these operations included under the City's insurance programs, if this is not possible the community centre involved may be required to purchase their own insurance for these events. The City's Insurance Branch assists them in purchasing this insurance. The City's insurance does not extend to 3rd party users of the facilities.

City of Winnipeg insurance policies – consisting of All Risk Property Insurance (including schedule unlicensed vehicles); Commercial General Liability Insurance; Crime Insurance; and Volunteer Accident Insurance – have, in the past, been extended to include and protect other organizations such as the Business Improvement Zones, Assiniboine Park Conservancy and City-owned museums for various types of insurance coverage. Not all forms of insurance have been extended to all organizations.

The Public Service has required that Community Centres and the other organizations had to pay a City-imposed deductible of $500 for each insured incident. Amounts beyond the $500 deductible were covered under the Insurance Reserve Fund up to $250,000. Other external resources, such as policies of insurance, were applicable for greater losses. In the past, claims against any of these organizations have been settled in accordance with the amounts authorized in the Claims Settlement By-law.

An additional Deductible Buy Down liability policy relating to insured incidents under the City's Commercial General Liability policy has been purchased. The purpose of this policy is to reduce the liability insurance deductible to $5,000 from $250,000 that the City carries, but only for losses involving the Community Centres, GCWCC and other organizations such as Assiniboine Park Conservancy Inc., Business Improvement Zones, and City-owned museums. The cost of the deductible buy down policy is $78,750 annually. All insurance costs for these polices have been absorbed into the City of Winnipeg's Insurance Operating Budget.

All of these policies and practices have been widely known to the organizations involved, members of Council and the public. They have appeared in budgetary and other public documents. However, it appears that they have never been formally endorsed and approved by Council. Rectifying this oversight will ensure that no actions taken pursuant to these practices can be challenged on the basis that they are unauthorized and therefore invalid.

With the exception of past practice in respect of Directors and Officers Liability, this report also recommends Council endorsement of existing insurance coverages for all of these organizations on a go-forward basis. Approval of this recommendation will provide clarity, transparency, stability and certainty for both the Public Service and these organizations.

Finally, this Report makes recommendations concerning liability protection for Directors and Officers of Community Centres. Directors and Officers of Community Centres are not afforded protection from liability under the Charter, unlike members of Council, members of boards or committees established by The City of Winnipeg Charter or a by-law, members of boards or committees appointed by Council, and City employees who are protected from liability under the Charter,

In the past, the City has provided protection for Directors and Officers of Community Centres by indemnifying them to a maximum of $250,000. Where expenditures under this practice have been required, they have been funded by the Insurance Reserve Fund.

In the last ten years there has been only one claim submitted against Community Centre Board volunteers in the amount of less than $5,000. Although the likelihood of Director's and Officer's claims is low, the loss potential or severity of the loss can be great, which could result in financial hardship for Community Centre and/or the City of Winnipeg.

An analysis of the Director's and Officer's Liability Insurance market was undertaken in 2017. Indications from insurers estimated annual premiums for the Director's and Officer's Liability Insurance would cost approximately $25,000 - $40,000 annually. This estimate is likely to have risen significantly since 2017 and could be as much as $60,000. This estimate captured all 63 Community Centres based on limits of liability of $1,000,000 or $2,000,000.

This report recommends that the existing practice should be replaced with the purchase of a policy of Director's and Officer's Liability Insurance for Community Centre Volunteer Boards and GCWCC which would include the individual Directors and Officers to a limit of $2.0 million. It recommends that this expenditure should be referred to the 2019 operating budget process.

If Council chooses not to approve the purchase of Director's and Officer's Liability Insurance for Community Centres and GCWCC, either by refusing to approve this recommendation or by failing to fund this cost in the 2019 budget, then this report recommends that the existing practice of extending liability to Directors and Officers of Community Centres and GCWCC to a maximum of $250,000 should be continued.

FINANCIAL IMPACT

Financial Impact Statement **Date:** June 28, 2018

Project Name: **First Year of Program** **2019**

Community Centres - Liability Insurance and Vehicle/Equipment Insurance Costs

	2019	2020	2021	2022	2023
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Grants (Enter Description Here)	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Other - Enter Description Here	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ 60,000	$ 60,000	$ 60,000	$ 60,000	$ 60,000
Less: Incremental Revenue/Recovery	-	-	-	-	-
Net Cost/(Benefit)	$ 60,000	$ 60,000	$ 60,000	$ 60,000	$ 60,000
Less: Existing Budget Amounts	-	-	-	-	-
Net Budget Adjustment Required	$ 60,000	$ 60,000	$ 60,000	$ 60,000	$ 60,000

Additional Comments: Direct costs beginning in 2019 are for purchase of Director's and Officer's (D&O) Liability Insurance policies for up to $2.0 million in coverage for all independently incorporated community centre volunteer boards (currently numbered at 63) and will require a mill rate support increase to the Community Services Department operating budget beginning in 2019, and each year thereafter. The cost will be subject to change on an annual basis.

"Original signed by Kelly Lemoine"
Kelly Lemoine, CPA, CA
Manager, Finance and Administrative Services
Community Services Department

CONSULTATION

This Report has been prepared in consultation with:

- Parks and Open Space, Public Works Department
- Risk Management, Corporate Finance
- Legal Services (as to legal matters)
- The General Council of Winnipeg Community Centres

OURWINNIPEG POLICY ALIGNMENT

01-3 PROSPERITY

Direction 1: Provide efficient and focused civic administration and governance

01-5 RECREATION

Direction 2: Work with community partners to provide services that are responsive to the community's recreation and leisure needs.

Direction 3: Directly provide, or facilitate through partnerships, equitable access to a base level of recreation, culture and leisure services for all Winnipeggers.

Direction 4: With community partners, participate as a leader in planning and delivering recreation and leisure services in Winnipeg.

Direction 5: Provide or facilitate community development and recreation opportunities for vulnerable youth.

Direction 6: Plan for sustainable and connected recreation and leisure infrastructure.

SUBMITTED BY

Department:	Community Services; Corporate Finance
Division:	Community Development and Recreation Services; Risk and Insurance
Prepared by:	Peter de Graaf, Manager of Community Development and Recreation Services; Cindy Bauer, Manager of Risk & Insurance
Date:	June 29, 2018
File:	CMS-2016-59