Agenda – Council – July 18, 2019

Report – Executive Policy Committee – July 9, 2019

Item No. 8 Adoption of Policy – Indemnification of Council Members for Legal Proceedings

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On July 9, 2019, the Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and submitted the following to Council:

1. That the "Indemnification of Council Members for Legal Proceedings" Policy, attached as Schedule "A" hereto, be adopted.

2. That the Proper Officers of the City do all things necessary to implement the intent of the foregoing.

Agenda – Council – July 18, 2019

Report – Executive Policy Committee – July 9, 2019

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On July 9, 2019, the Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and submitted the matter to Council.

ADMINISTRATIVE REPORT

Title: ADOPTION OF POLICY – INDEMNIFICATION OF COUNCIL MEMBERS FOR LEGAL PROCEEDINGS

Critical Path: Executive Policy Committee – Council

AUTHORIZATION

Author	Department Head	CFO	A/CAO
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EXECUTIVE SUMMARY

From time to time, Council members are personally named as defendants or respondents in legal proceedings or investigations based on actions that they have undertaken during their term in office. The City's Legal Services Department has one client, the municipal corporation of The City of Winnipeg, and is not in a position to provide representation to Council members in such proceedings or investigations.

For employees, the criteria and mechanisms pursuant to which the City will obtain and pay for external legal representation and cover costs and damages awards are set out in various collective agreements and employment contracts. A gap currently exists with respect to the same structure for Council members. The recommended "Indemnification of Council Members for Legal Proceedings" policy fills that gap by setting out a structure for Council members that is similar to that provided by the City for its employees.

RECOMMENDATIONS

1. That Council adopt the "Indemnification of Council Members for Legal Proceedings" Policy attached as Schedule "A" hereto.

2. That the proper officers of the City do all things necessary to implement the intent of the foregoing.

REASON FOR THE REPORT

Council approval is required to adopt the new "Indemnification of Council Members for Legal Proceedings" policy recommended in this report.

IMPLICATIONS OF THE RECOMMENDATIONS

Approval of the recommendations will ensure that Council members who are personally named in legal proceedings are provided similar protection from personal liability as the City provides its employees through collective agreements and employment contracts.

HISTORY/DISCUSSION

On June 11, 2019, Executive Policy Committee concurred in the recommendations of the Governance Committee of Council as follows:

1. *That the Public Service be directed to report back to the appropriate committee of Council within 120 days with recommendations for: a process for determining the circumstances in which the City will engage and pay for external legal counsel when a Councillor is the subject of a proceeding or claim where Legal Services is unable to represent them, including:*

    A. a jurisdictional scan of similar policies in other municipalities; and
    B. financial impacts.

2. *A process for determining the circumstances in which the City will pay for costs awarded when a Councillor is the subject of a proceeding or claim, including:*

    A. liability insurance; and
    B. asset protection options.

The timelines for submission of this report were advanced from the initial 120 day period; as a result, a jurisdictional scan of similar policies in other municipalities was unable to be conducted. However, the following discussion is based on current contractual obligations and policy in place at the City for employees through collective agreements and employment contracts.

Charter

Section 497 of *The City of Winnipeg Charter* provides that:

> ***Liability Restricted***
> *497(1) No action or proceeding for damages or other relief may be commenced against a member of council, a member of any board or committee established by this Act or a by-law, a member of any board or committee appointed by council, or an employee:*
> *(a) for any act done in good faith in the performance or exercise, or intended performance or exercise, of a duty or authority under this Act or a by-law passed under this Act; or*
> *(b) for any alleged neglect or default in the performance or exercise in good faith of the duty or authority.*
> ***Exception for defamation***
> *497(2) Subsection (1) is not a defence to an action in defamation.*

Based on the foregoing, if an action or proceeding is commenced against a Council member acting in the course of his or her duties, and bad faith or defamation is ***not*** alleged, the City's Legal Services Department will act on behalf of the Council member to have his or her name removed from the action or proceeding.

Bad Faith, Defamation, or Other Proceedings

The City's Legal Services Department has one client, the municipal corporation known as The City of Winnipeg. As a result, in circumstances where an employee or Council member may have acted outside of the scope of his or her duties, where bad faith or defamation are alleged, or in other proceedings personal to the employee or Council member (such as investigations conducted by the City's Integrity Commissioner), the City's Legal Services Department will not be in a position to provide legal representation.

For employees, the criteria and mechanisms pursuant to which the City will obtain and pay for external legal representation and cover costs and damages awards are set out in various collective agreements and employment contracts. A gap currently exists with respect to the same structure for Council members. The attached policy fills that gap by setting out a structure for Council members that is similar to that provided by the City for its employees.

Liability Insurance

The Risk Management Branch has advised that the City does not currently carry directors and officers liability for Council members. While the City could explore the purchase of such insurance coverage, it should be noted that such a policy would not cover acts done in bad faith, or intentional, dishonest, fraudulent, or criminal activity. As a result, similar to what is recommended under the attached policy, a Council member would be required to repay the insurer if it was found that the they had acted in bad faith, or participated in intentional, dishonest, fraudulent, or criminal activity.

Under such a policy, the insurers have control over the defence of the action or proceeding and assign their own legal teams, thereby removing control of this aspect of the proceeding from the City and the Council member.

Asset Protection Options

It is recognized that individual Council members may wish to explore asset protection options to minimize their personal risk in the event of a legal action or proceeding against them personally. Because these options are aimed at protecting the personal assets of Council members, this is a matter that is most appropriately undertaken and paid for personally by such Council member.

Financial Implications

The financial impact of adopting the recommendations of this report will vary and are not easily determinable. The frequency, nature, and complexity of legal actions and proceedings where Council members are personally named are difficult to predict, yet all impact costs. Therefore, the Public Service is proposing to collect information on costs incurred over the next couple of years and make a request for the appropriate level of funding in the future. Any costs incurred as a result of the adoption of the recommendations will be charged to the Legal Services Department and may result in the Department requiring over-expenditure approval to its operating budget.

FINANCIAL IMPACT

Financial Impact Statement **Date:** July 2, 2019

Project Name:
ADOPTION OF POLICY – INDEMNIFICATION OF COUNCIL MEMBERS FOR LEGAL PROCEEDINGS

COMMENTS:

As this is a policy document, there is no direct financial impact. However, additional expenditures may be incurred in the future should legal proceedings be initiated against a Council member. The City does not currently budget for this cost, but a request for additional budget dollars for the Legal Services department may be made after actual costs incurred as a result of this policy is known.

original signed by
Tanis Yanchishyn
Manager of Finance (Campus)
Corporate Finance Department

CONSULTATION

This Report has been prepared in consultation with:

Corporate Finance
Risk Management

OURWINNIPEG POLICY ALIGNMENT

n/a

SUBMITTED BY

Department: Legal Services Department
Division: n/a
Prepared by: K. Boryskavich
Date: July 2, 2019

Attachments:
Schedule A: Indemnification of Council Members for Legal Proceedings Policy