

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF FEBRUARY 12, 2019

Item 4, Report No. 3, of the Finance, Administration and Audit Committee, which was adopted without amendment by the Council of the City of Vaughan on February 12, 2019.

4. INDEMNIFICATION BY-LAW AND SEVERANCE BY-LAW

The Finance, Administration and Audit Committee recommends:

- 1) That the recommendation contained in the following report of the Deputy City Manager, Corporate Services, dated February 4, 2019, be approved: and**
- 2) That the confidential recommendation of the Finance, Administration and Audit Committee (Closed Session) meeting of February 4, 2019, be approved.**

Recommendations

- 1. That a by-law to amend the Indemnification By-law, as substantially set out in Attachment 1 and in a form satisfactory to the City's legal counsel, be approved.**
- 2. That a by-law to amend the Severance By-Law, as substantially set up in Attachment 2 and in a form satisfactory to the City's legal counsel be approved.**

Item:



Finance, Administration and Audit Committee Report

DATE: Monday, February 04, 2019

WARD(S): ALL

TITLE: INDEMNIFICATION BY-LAW AND SEVERANCE BY-LAW

FROM:

Nick Spensieri, Deputy City Manager, Corporate Services

ACTION: DECISION

Purpose

New requirements under the *Municipal Act 2001*, which will come into effect on March 1, 2019, require the City to indemnify the Integrity Commissioner. To meet this requirement, the City's indemnification by-law, By-law 91-2011 (the "Indemnification By-law"), must be amended. Staff also recommend further amending the Indemnification By-law so that it is more closely aligned with York Region's indemnification by-law. Additionally, the City's severance by-law, By-law 142-2004 (the "Severance By-law") was identified by staff for review and recommended revisions considering it was last updated in 2004.

Recommendations

1. That a by-law to amend the Indemnification By-law, as substantially set out in Attachment 1 and in a form satisfactory to the City's legal counsel, be approved.
2. That a by-law to amend the Severance By-Law, as substantially set up in Attachment 2 and in a form satisfactory to the City's legal counsel be approved.

Report Highlights

- Subsection 223.3(6) of the *Municipal Act, 2001*, which will come into force on March 1, 2019, requires municipalities to indemnify Integrity Commissioners for costs reasonably incurred in connection with the defence of a proceeding if the proceeding relates to an act done in good faith in the performance his or her duty or authority under Part V.1 of the *Municipal Act, 2001*.
- The City's current Indemnification By-law does not apply to its Integrity Commissioner and must be amended to meet the requirements of subsection 223.3(6) of the *Municipal Act, 2001*.
- Staff further recommend additional amendments to the Indemnification By-law related to proceedings commenced under the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M. 50, and costs incurred by Members of Council in obtaining legal advice to determine whether the member has a pecuniary interest in a matter which is the subject of consideration by council. These amendments would ensure greater consistency between the indemnification by-laws of the City and York Region.
- The Severance By-Law was last updated in 2004. A review of the by-law has identified areas that require update in order to provide fair and consistent remuneration with other jurisdictions, including York Region.

Background

The new provisions of the *Municipal Act, 2001*, provide that a municipality must indemnify its Integrity Commissioner, and the people acting under his or her instructions, from all claims arising against them in relation to their conduct as the Integrity Commissioner as performed in good faith. The City's current Indemnification By-law does not apply to its Integrity Commissioner and, as a result, staff recommend amending it to satisfy the new requirements under the *Municipal Act, 2001*.

Staff further recommend additional amendments to the Indemnification By-law be made to ensure greater consistency between the indemnification by-laws of the City and York Region.

The Severance By-law was last reviewed and updated in 2004. A review of By-laws from other nearby municipalities revealed gaps that are addressed through the recommended amendments. The objective of the recommended amendments is to provide for fair and consistent remuneration.

Previous Reports/Authority

N/A

Analysis and Options

Indemnification By-Law

In order to satisfy the new requirements under the *Municipal Act, 2001*, which will come into effect on March 1, 2019, the Indemnification By-law must be amended to apply to the City's Integrity Commissioner.

The results of staff's jurisdictional review showed that the City's Indemnification By-law is generally consistent with the by-laws of other municipalities, including Newmarket, Richmond Hill, Aurora, Mississauga, Brampton, Barrie, and York Region.

There are differences between York Region's indemnification by-law and the City's Indemnification By-law. Most notably, there are two relevant provisions that are currently in York Region's indemnification By-law and are absent from the City's Indemnification By-law.

First, York Region's indemnification by-law includes a provision that allows Members of Council to seek reimbursement for legal fees incurred from obtaining a legal opinion to assess and identify a potential pecuniary interest or conflict of interest the Member has in a particular matter that is scheduled to be considered by Council or a Board. This provision is authorized under the *Municipal Act, 2001* and promotes principles of responsible government. As this provision supports and encourages Members of Council to seek expert opinions on potential conflicts of interest, staff recommend including it in the City's Indemnification By-law.

Secondly, York Region's indemnification by-law applies to proceedings brought under the *Municipal Conflict of Interest Act* where a member of council or local board is found not to have contravened section 5 of the *Municipal Conflict of Interest Act*, which, among other things, includes a duty disclose any pecuniary interest. The *Municipal Conflict of Interest Act* expressly authorizes municipalities to pass by-laws to protect a member of council, or of any local board thereof, who has been found not to be in contravention of section 5, against any costs and expenses incurred by the member as a result of the proceeding.

Creating greater consistency between the City and York Region's indemnification by-laws will improve the efficiency of government and provide clarity as to what types of costs are covered under the respective by-laws.

In addition, the Indemnification By-law has been amended to clarify that employees (as defined in the Indemnification By-law) are entitled to receive indemnification once a legal proceeding has been commenced; indemnification is no longer dependent on the City Solicitor and City Manager's assessment of the request for indemnification. The City Solicitor and City Manager still have the ability to impose restrictions on the legal fees incurred, counsel chosen, etc. If the legal proceeding determines that an employee's acts or omissions giving rise to the legal proceeding were not done or not made in good faith and were not based on the reasonable belief that such acts or

omissions were lawful and in the best interests of the Corporation, the employee must reimburse the Corporation forthwith.

Severance By-Law

By-law 142-2004 was developed and approved to provide for severance remuneration for members of Council. The By-law authorizes payment to a Councillor who ceases to be a member of Council by reason of:

- a) Being defeated in a municipal election;
- b) Completing a term of Council and choosing not to run for re-election or;
- c) Resigning his or her seat on Council for any reason, provided that in the case of resignation, no such payment shall be made until thirty (30) days after the end of the term resigned from.

The By-law restricts payment to a member who:

- a) Is removed from Council by the operation of law including, but not limited to, being elected to Provincial or Federal Office,
- b) Resigns as a member of Council but would have been removed by the Operation of law during the term resigned from, or
- c) Gives notice in writing to the Clerk at any time while this By-Law remains in force that he or she opts out of receiving a severance.

Staff have reviewed severance by-laws from several municipalities including York Region, Markham, Mississauga, Richmond Hill and Toronto. The following areas were identified as gaps that the recommended changes to the by-law will address:

- a) Definition of “Years of Service” will be updated to ensure that periods of time where a member’s pay is suspended through order of the Integrity Commissioner are not included in the calculation of severance.

The intent of this change is not to penalize twice a Councillor for a breach of the Code of Conduct, but rather to demonstrate to the public that severance is recognizing all years of service where a Councillor received their regular remuneration.

- b) The conditions where severance is payable will include in the event of death of a Councillor while in office and where a Councillor is removed from office during a term of Council as a result of municipal reorganization.

This change provides consistency with other severance by-laws. It does not broaden the value of remuneration but rather the conditions under which severance is payable.

- c) Conditions of non-payment will be revised to remove “being elected to Provincial or Federal office”.

Similarly, this change will provide consistency with other municipal by-laws and in addition provides an incentive to a Councillor that may be interested in running for Provincial or Federal Office.

The recommended changes address gaps in the By-law that either prevented or permitted the payment of severance. These amendments will update the By-law to be consistent with other jurisdictions and ensure that departing members of Council receive fair remuneration for their service.

Financial Impact

The proposed amendments to the Indemnification By-law will broaden the scope of its applicability, which may result in increased costs to the City. For example, the City may incur further costs related to the reimbursement of legal fees associated with obtaining a legal opinion regarding potential conflicts of interests for Members of Council, or costs associated with defending an action in which the Integrity Commissioner is a named defendant.

The proposed amendments to the Severance By-Law do not change the value of the calculation but do alter the conditions of payment and broadens the scope of its applicability. Staff do not expect any material financial impact and no recommended changes to the operating budget as a result of the proposed changes.

Broader Regional Impacts/Considerations

The proposed amendments will assist in creating consistency between the indemnification by-laws and severance by-law of the City and York Region.

Conclusion

Staff recommend amending the City's Indemnification By-law in order to satisfy the new requirements under the *Municipal Act, 2001*, support Members of Council in seeking clarification regarding potential conflicts of interest and create consistency between the indemnification by-laws of York Region and the City. In addition, the updates to the Severance By-law will ensure the departing members of Council receive fair remuneration for their service consistent with other municipal jurisdictions.

Attachments

1. By-law # XXX-2019, a by-law to amend the Indemnification by-law, By-law 91-2011.
2. By-law XXX-2019, a by-law to amend the Severance by-law, By-law 142-2004

Prepared by

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THE CITY OF VAUGHAN

BY-LAW

BY-LAW NUMBER XXX-2019

A By-law to provide for severance remuneration for members of Council and to repeal and replace By-Law 142-2004.

WHEREAS municipalities have the authority under Section 8 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended to pass by-laws related to financial incentives in respect of retirement and severance payments to be provided to employees and members of Council;

AND WHEREAS the Council of the City of Vaughan wishes to enact a by-law providing for a severance payment to be provided to members of Council in certain circumstances to provide financial adjustment to unemployment or retirement of a Councillor;

NOW THEREFORE the Council of The Corporation of the City of Vaughan **ENACTS AS FOLLOWS:**

1. **Definitions:**

“Councillor” means a person who is or becomes a member of Council of the City of Vaughan on or after December 1, 2003 and who is elected under the *Municipal Elections Act* or appointed to fill a vacancy in the office of a member so elected.

“Councillor’s Salary” means the salary paid by the City to a Councillor immediately prior to the date that the Councillor ceases to be a Councillor.

“Years of Service” means the consecutive years served as a Councillor of the City, provided that a Councillor’s service shall be deemed to be consecutive despite any temporary break in the period of service as a result of a recount under the *Municipal Elections Act*. Years of Service does not include periods where a Councillor was not remunerated as a result of a suspension of the remuneration paid to the Councillor pursuant to section 223.4(5) of the *Municipal Act*, (however such a suspension does not constitute a break in consecutive years).

2. That subject to Section 3 of this By-law, a severance remuneration equal to one (1) month of the Councillor's Salary for each of the Councillor's prior Years of Service to a maximum of twenty-four (24) consecutive months be paid to a Councillor who ceases to be a Councillor by reason of:
 - (a) being defeated in a municipal election;
 - (b) completing a term of Council and choosing not to run for re-election;
 - (c) resigning his or her seat on Council for any reason;
 - (d) being removed from office during a term of Council as a result of municipal reorganization; or
 - (e) death of a Councillor while in office (in which case the severance may be paid to the Councillor's estate).
3. Where a Councillor's eligible Years of Service pursuant to Section 2 of this By-law includes part of a year, the severance remuneration payable shall be calculated in proportion to the time actually served.
4. No payment of severance shall be made to a Councillor who:
 - (a) is removed from Council by judicial process or disqualification under or operation of any Act of Parliament of Canada or the Legislature of Province of Ontario.
 - (b) despite section 2(c) of this bylaw, resigns in anticipation of being removed from office by judicial process or disqualification under or operation of any Act of Parliament of Canada or the Legislature of Province of Ontario. (However, this does not include a resignation in anticipation of being elected to Provincial or Federal office).
 - (c) gives notice in writing to the Clerk at any time while this By-law remains in force that he or she opts out of receiving a severance.
5. By-law 142-2004 is hereby repealed.

Enacted by the City of Vaughan Council the XX day of XXXX, 2019.

Hon. Maurizio Bevilaqua, Mayor

Todd Coles, City Clerk

Authorized by Item No.____ of Report No. ____
of the _(insert committee)_____
Adopted by Vaughan City Council on _____

THE CITY OF VAUGHAN

BY-LAW

BY-LAW NUMBER XXX-2019

A By-law to amend By-law 91-2011 (the Indemnification By-law).

WHEREAS Section 8 of the *Municipal Act, 2001*, as amended, provides that the powers of a municipality under this or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to govern;

AND WHEREAS Section 223.3(6) of the *Municipal Act, 2001*, as amended, which comes into effect on March 1, 2019, provides that a municipality shall indemnify and save harmless the Commissioner or any person acting under the instructions of that officer for costs reasonably incurred by either of them in connection with the defence of a proceeding if the proceeding relates to an act done in good faith in the performance or intended performance of a duty or authority under Part V.1 of the *Municipal Act, 2001*, as amended, or a by-law passed under it or an alleged neglect or default in the performance in good faith of the duty or authority;

AND WHEREAS Section 283(1) of the *Municipal Act, 2001*, as amended, provides that municipalities may pay any part of the remuneration and expenses of the members of any local board of the municipality and the officers and employees of the local board;

AND WHEREAS Section 14 of the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M. 50, provides that a municipality may pass a by-law to protect a member of council or of any local board thereof who has been found not to have contravened section 5 of the *Municipal Conflict of Interest Act*, against any costs or expenses incurred by the member as a result of a proceeding brought under the *Municipal Conflict of Interest Act*, and for paying on behalf of or reimbursing the member for such costs or expenses;

AND WHEREAS Section 448(1) of the *Municipal Act, 2001*, as amended, provides that no proceeding for damages or otherwise shall be commenced against a member of council or an officer,

employee or agent of a municipality or a person acting under the instructions of the officer, employee or agent for any act done in good faith in the performance or intended performance of a duty or authority under the *Municipal Act, 2001*, as amended, or a by-law passed under it or an alleged neglect or default in the performance in good faith of the duty or authority;

AND WHEREAS it is necessary to update By-law 91-2011 so that it reflects best practices amongst the municipalities and is more closely aligned to York Region's Indemnification By-law;

NOW THEREFORE the Council of the Corporation of the City of Vaughan **ENACTS AS FOLLOWS:**

1. The City of Vaughan By-law Number 91-2011, is hereby amended as follows:

a) The definition of "employee" in section 1 is amended by replacing it with the following definition:

"employee" means any member of Council, including the Mayor, the Integrity Commissioner, including any person acting under the instructions of the Integrity Commissioner, a person appointed as Lobbyist Registrar under section 223. 11 of the *Municipal Act, 2001*, salaried officers and employees employed by the Corporation, or any former member of Council, former Integrity Commissioner, former Lobbyist Registrar, or former officer or employee of the Corporation.

b) The definition of "legal proceeding" is amended by replacing it with the following definition:

"Legal Proceeding" means:

- (i) a civil proceeding or administrative action;
- (ii) a proceeding wherein a person is charged with an offence under the *Criminal Code*, R.S.C. 1985, c. C. 46 or the *Highway Traffic Act*, R.S.O. 1990, s. H.8, where the person is subsequently acquitted of the offence or charges are withdrawn; or,
- (iii) a proceeding brought under the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M. 50 (the "*MCIA*"), where the member of council or

local board has been found not to have contravened section 5 of the
MCIA, or,

- (iv) a complaint to a professional association.

But excludes

- (i) any proceeding commenced by the Corporation;
- (ii) any proceeding in which the Corporation is a party adverse in interest; or,
- (iii) any proceeding where the City's and the employee's interests conflict."

- c) Section 1.1 shall be added to the By-law as follows:

"1.1. The Corporation shall reimburse members of Council for expenses incurred in obtaining legal advice to determine whether the member has a pecuniary interest in a matter which is the subject of consideration by council or a board. The Corporation shall not reimburse a member of council unless the City Solicitor has approved the legal counsel retained by the member of council. The Corporation shall also have the right to limit the amount which it will reimburse for legal costs and may require that any account for legal costs for which reimbursement is sought be assessed by a Court Assessment Officer prior to payment by the Corporation and the City Solicitor shall have the right to review such accounts on a monthly basis upon request."

- d) Section 2 is amended by removing the last period in the paragraph, and adding the following wording:

", provided that any acts or omissions giving rise to the legal proceeding were done or made in good faith and based on the reasonable belief that such acts or omissions were lawful and in the best interests of the Corporation."

- e) Section 4 is deleted in its entirety.

f) Section 8 is amended by deleting the opening phrase "Where an employee qualifies for indemnification under this By-law, the Corporation shall:" and replacing it with "The Corporation shall provide indemnification to an employee as follows under this By-law:"

g) Section 8.1 shall be added to the By-law as follows:

"8.1. If it is determined in a legal proceeding that an employee's acts or omissions giving rise to the legal proceeding were not done or not made in good faith or were not based on the reasonable belief that such acts or omissions were lawful and in the best interests of the Corporation, the employee shall not be eligible for indemnification under this By-law and shall reimburse the Corporation forthwith upon demand for any and all monies paid by the Corporation under this By-law to the employee or on the employee's behalf."

2. This By-law comes into force on the day it is passed and shall not be applied retroactively.

Enacted by the City of Vaughan Council the ____ of ____, 2019.