

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

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