

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF MAY 27, 2020

Item 17, Report No. 20, of the Committee of the Whole, which was adopted, as amended, by the Council of the City of Vaughan on May 27, 2020, as follows:

By receiving the following communications:

- C1 Mr. Roman Ostrovsky, dated May 19, 2020;***
- C2 Ms. Jane Manolakos, dated May 19, 2020;***
- C3 Ms. Mary Mauti, dated May 20, 2020;***
- C4 Ms. Elvira Caria, Vellore Woods Ratepayers Association, dated May 20, 2020***
- C5 Ms. Carrie Liddy, dated May 20, 2020;***
- C6 Mr. Robert A. Kennedy, MacKenzie Ridge Ratepayers Association, dated May 20, 2020;***
- C7 Mr. Victor Lacaria, Weston Downs Ratepayers Association, dated May 20, 2020;***
- C8 Mr. Richard Lorello, dated May 20, 2020;***
- C9 Mr. Hiten Patel, dated May 20, 2020;***
- C10 Mr. Thomas Santoro, dated May 20, 2020;***
- C15 Rose and Frank Troina, Kilmuir Gate, Woodbridge, dated May 26, 2020;***
- C16 Mary and Ferdinando Torrieri, Kilmuir Gate, Woodbridge, dated May 25, 2020; and***
- C17 Ms. Vilma Casola, dated May 25, 2020.***

17. INDEMNIFICATION BY-LAW AMENDMENTS (REFERRED)

The Committee of the Whole recommends:

- 1) That the following be approved in accordance with Communication C13, Memorandum from the Deputy City Manager, Administrative Services and City Solicitor, dated May 15, 2020:**
 - 1. That the Indemnification By-law, substantially in the form as attached to this Communication from the Deputy City Manager, Administrative Services and City Solicitor dated May 15, 2020, be enacted;**
- 2) That the Code of Ethical Conduct for Members of Council and Local Boards and related Complaint Protocol included as Attachments #1 and #2 to the report of the Deputy City Manager, Administrative Services and City Solicitor, dated March 9, 2020, be confirmed by by-law;**
- 3) That any amounts incurred / to be incurred in 2020 to indemnify Members of Council and Local Board for Legal Proceedings that are not funded by the City's insurer be funded from the corporate contingency in 2020, and that such expenses be budgeted in the corporate budget for 2021 budget and going forward; and**

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF MAY 27, 2020

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- 4) That Communication C23 from Deputy Mayor and Regional Councillor Mario Ferri dated May 20, 2020, be received; and
- 5) That the report of the Deputy City Manager, Administrative Services and City Solicitor, dated March 9, 2020, be received.

Recommendations

(Referred)

Council, at its meeting of April 21, 2020, adopted the following recommendation (Item 7, Report No. 17):

Recommendation of the Committee of the Whole meeting of April 21, 2020:

The Committee of the Whole recommends that consideration of this matter be deferred to the Committee of the Whole meeting of May 20, 2020.

Council, at its meeting of March 11, 2020, (Committee of the Whole, Report No. 11, Item 14) adopted the following recommendation:

Recommendation of the Council meeting of March 11, 2020:

1. That communication C25 from Regional Councillor Ferri, dated March 8, 2020, be received.

Recommendation of the Committee of the Whole meeting of March 9, 2020:

- 1) That consideration of this matter be deferred to the April 7, 2020 Committee of the Whole (1) meeting.

Report and Recommendations of the Deputy City Manager, Administrative Services and City Solicitor, dated March 9, 2020:

1. That a new Indemnification By-law, substantially in the form as Attachment #3 to this report be enacted.
2. That the Code of Ethical Conduct for Members of Council and Local Boards and related Complaint Protocol included as attachments #1 and #2 to this report be confirmed by by-law.
3. That any amounts incurred/to be incurred in 2020 to indemnify Members of Council and Local Board for Legal Proceedings that are not funded by the City's insurer be funded from the corporate contingency in 2020, and that such expenses be budgeted in the corporate budget for 2021 budget and going forward.

Committee of the Whole (2) Report

DATE: Wednesday, May 20, 2020

WARD(S): ALL

TITLE: INDEMNIFICATION BY-LAW AMENDMENTS (REFERRED)

FROM:

Wendy Law, Deputy City Manager, Administrative Services and City Solicitor

ACTION: DECISION

Purpose

This report was scheduled for the March 9, 2020 Committee of the Whole meeting. At that meeting, and then adopted at the Council meeting of March 11, 2020, the matter was referred to Committee of the Whole meeting of April 7, 2020. The April 7, 2020 Committee of the Whole meeting was cancelled due to the COVID-19 pandemic crisis and re-scheduled to April 21, 2020. At the meeting of April 21, 2020, and then adopted at the Council meeting of April 21, 2020, the matter was referred to Committee of the Whole meeting of May 20, 2020.

This report provides an overview of staff's suggested revisions to the City's Indemnification By-law to implement the policy options discussed by the Integrity Commissioner in her reports to Committee of the Whole and to provide some overall updates and changes.

Report Highlights

- If Council chooses to adopt the policy recommendations contained in the Integrity Commissioner's reports, the City's Indemnification By-law will need to be revised.
- The revised Indemnification By-law would provide indemnification for legal fees incurred by Members of Council and Local Boards ("Members") related to Code of Conduct complaints.
- Indemnification of legal fees for Members will be funded from corporate contingency in 2020, and will be budgeted as in the corporate budget for 2021 and going forward.
- Staff are proposing additional amendments to the Indemnification By-law, and the Code Complaint Protocol to give effect to the changes and to address existing gaps.

Recommendations

(Referred)

Council, at its meeting of April 21, 2020, adopted the following recommendation (Item 7, Report No. 17):

Recommendation of the Committee of the Whole meeting of April 21, 2020:

The Committee of the Whole recommends that consideration of this matter be deferred to the Committee of the Whole meeting of May 20, 2020.

Council, at its meeting of March 11, 2020, (Committee of the Whole, Report No. 11, Item 14) adopted the following recommendation:

Recommendation of the Council meeting of March 11, 2020:

- 1) That communication C25 from Regional Councillor Ferri, dated March 8, 2020, be received.

Recommendation of the Committee of the Whole meeting of March 9, 2020:

- 1) That consideration of this matter be deferred to the April 7, 2020 Committee of the Whole (1) meeting.

Report and Recommendations of the Deputy City Manager, Administrative Services and City Solicitor, dated March 9, 2020:

1. That a new Indemnification By-law, substantially in the form as Attachment #3 to this report be enacted.
2. That the Code of Ethical Conduct for Members of Council and Local Boards and related Complaint Protocol included as attachments #1 and #2 to this report be confirmed by by-law.
3. That any amounts incurred/to be incurred in 2020 to indemnify Members of Council and Local Board for Legal Proceedings that are not funded by the City's insurer be funded from the corporate contingency in 2020, and that such expenses be budgeted in the corporate budget for 2021 budget and going forward.

Report dated March 9, 2020

Background

At its meeting on January 28, 2020, Council received staff's communication on "2019 Indemnification By-law Amendments" and asked that a further report be brought back to

Council from staff and the Integrity Commissioner on the issues identified therein. Both staff and the Integrity Commissioner prepared further reports, which were before Council on February 11, 2020. Staff now seek approval from Council to repeal the current Indemnification By-law 91-2011, as amended, and replace it with a new consolidated Indemnification By-law addressing the matters set out herein.

Previous Reports/Authority

[By-law 91-2011](#)

[By-law 013-2019](#)

[Council Report - Addendum Item 1 - February 11, 2020 - Suzanne Craig, Integrity Commissioner & Lobbyist Registrar](#)

[Communication - January 27, 2020 - 2019 Indemnification Bylaw](#)

[Communication - February 10, 2020 - Reimbursement of Legal Expenses for Council](#)

Analysis and Options

The *Municipal Act*, and section 14 of the *Municipal Conflict of Interest Act* (“MCIA”) set out the circumstances in which a municipality may indemnify its employees and members of Council and Local Boards. In particular, sections 279 and 283 of the *Municipal Act* allow a municipality to indemnify current and former employees, and members of Council and Local Boards, for expenses, such as legal fees (including damages awards and costs awards) incurred as a result acts or omissions done in the individual’s capacity as employee or member.

Section 14 of the MCIA confirms that a municipality may indemnify a member of Council or Local Board for legal fees incurred in respect of a legal proceeding under the MCIA, so long as the member has not contravened section 5, 5.1 or 5.2 of the MCIA.

In light of the regulatory framework as well as the Integrity Commissioner’s comments in respect of the Code of Conduct regime, and to address certain gaps in the existing By-law, staff are recommending certain amendments be made to the Indemnification By-law. Below is an overview of the proposed changes:

1. Enact one new Indemnification By-law that incorporates indemnification provisions of By-law 91-2011, as amended, with necessary amendments, together with the new

provisions as provided in this report. This way, all matters of indemnification are dealt with in one document.

2. As set out as an option for Council to consider by the Integrity Commissioner in her report to Committee of the Whole dated March 9, 2020, if Council agrees to proceed with the option, add indemnification for actual and reasonable legal fees incurred by a Member of Council and Local Board related to a Code of Conduct complaint filed with the Integrity Commissioner for an investigation under section 223.4 or 223.4.1 of the *Municipal Act, 2001*, as amended (a “Code Complaint”), where the Integrity Commissioner has found that:
 - i. there has been no Code contravention; or
 - ii. a Code contravention has occurred by reason of inadvertence, or
 - iii. a Code contravention has occurred by reason of a bona fide error in judgment; or
 - iv. the referral of the matter is frivolous, vexatious or not made in good faith and the Integrity Commissioner dismisses the complaint without an investigation, or that there are no grounds or insufficient grounds for an investigation; or
 - v. where it becomes apparent in the course of an investigation that there are insufficient grounds to continue the investigation, the Integrity Commissioner terminates the investigation and dismisses the complaint.
3. Clarify that unless the City Solicitor determines there is a conflict in representation and the City cannot represent a person who is eligible for indemnification (“Eligible Person”), the City (or the City, through its insurer) will assume carriage of the defence on behalf of the Eligible Person. Further clarify that Eligible Persons are required to aid the City in the defence of the Legal Proceeding. While this is already the practice at the City, as is in many other municipalities, and assuming carriage of a defence is generally required by the insurer, amendments to the By-law can provide further clarity in this respect.
4. Where an individual is required to retain their own counsel, such as in the case of a Code Complaint filed with the Integrity Commissioner, the individual can submit a request for indemnification to the City Solicitor, and such request may also include a request that actual and reasonable legal fees incurred be reimbursed/paid in advance of a final disposition being made. The existing sections of the Indemnification By-law relating to the process surrounding indemnification will continue to apply, including the current requirements for approval of legal counsel and budget, and the assessment of reasonableness of fees as submitted etc.

5. Where an individual's legal fees are paid in advance of a final disposition of a Legal Proceeding, and if it is subsequently determined that the individual is not entitled to indemnification in accordance with the By-law, the individual shall repay the Corporation within 90 days of such determination. Where an individual requests more than 90 days to reimburse the City, the City Solicitor shall bring a report to Council for direction.
6. If an Eligible Person receives a payment through a costs award or settlement in respect of a Legal Proceeding for which the City has indemnified the Eligible Person, such amounts must be paid to the City upon receipt by the Eligible Person.

The requirement for an individual to reimburse the City for indemnification expenses paid where the conduct in question is: (i) not related to the individual's capacity as an employee/Member, or (ii) was not done or made in good faith, or (iii) was not based on the reasonable belief that such acts or omissions were lawful and in the best interests of the corporation, are necessary pursuant to the *Municipal Act* and related case law. Likewise, the requirement for an Eligible Person to pay the City amounts received through costs awards or settlements are also necessary pursuant to the *Municipal Act* and related case law.

7. Any advance payment by the Corporation of reasonable legal fees incurred by an Eligible Person in a Legal Proceeding under the By-law shall be capped at \$25,000. For advance reimbursement requests of any amounts exceeding \$25,000 prior to the final disposition of the Legal Proceeding, the City Solicitor shall bring a report to Council for direction.

This is one of the options for Council's consideration that the Integrity Commissioner provided in her report to Council dated February 10, 2020. Rather than only applying the reimbursement cap of \$25,000 to Code Complaints before the Integrity Commissioner, it is recommended that this rule be generally applied for all cases of advance payment so that there is consistency in approach. Any request for advance payment of legal fees reasonably incurred by the Eligible Person in a legal proceeding shall be subject to a \$25,000 cap, unless Council determines otherwise. (For clarity, this does not apply where the City assumes the defence of the Eligible Person itself or through its insurer.)

8. Clarify that proceedings related to the *Municipal Elections Act, 1996*, S.O. 1996, c. 32, Sched., as amended do not qualify for indemnification. This is consistent with the language of the *Municipal Act, 2001* and related case law.
9. Under the proposed By-law, the administration of the Indemnification By-law will be managed through the City Solicitor's office. This will streamline the process around

indemnification and is similar to how other municipalities have structured their Indemnification By-laws. The By-law will also clarify that any issues of uncertainty relating to indemnification will be brought back to Council for determination.

10. Extend indemnification coverage of the By-law to members of the City's local boards, which would include the Vaughan Public Library Board. The prior Indemnification By-law provided indemnification for current/former members of Council as well as salaried officers employees. Members of the City's local boards were not included. The City has insurance liability coverage for members of local boards which covers members in the event they are named in a lawsuit as a result of their duties as it pertains to the board. Staff are therefore recommending that members of local boards be indemnified under the new Indemnification Bylaw.
11. Other administrative amendments are being included in the new By-law to increase readability and clarity. For instance, various definitions (such as "City Solicitor" and "Employee") would benefit from being streamlined. Similarly, it would make the By-law clearer if section 4.0 "Persons Served with Process" were amended to simply say that an Eligible Person served with a document which initiates a Legal Proceeding shall forthwith deliver same to the City Solicitor. In the context of Code Complaints, Members will not be required to provide a copy of the Complaint to the City Solicitor, but instead will be permitted by the Integrity Commissioner to disclose the existence and general nature of the inquiry to the City Solicitor in support of their request for indemnification.
12. The effective date of the By-law will be the date that it is enacted by Council (i.e. an anticipated enactment date of March 11, 2020). It is recommended that:
 - a. For ongoing matters where the City has assumed the defence of a Legal Proceeding on behalf of current or former employees, the City will continue to defend the Legal Proceeding on the Eligible Person's behalf.
 - b. For all matters where indemnification is authorized under Bylaw 91-2011, as amended, those indemnification approvals will continue to apply under the new By-law.
 - c. For Code Complaints filed with the Integrity Commissioner prior to the enactment of the new bylaw where a final disposition has not been rendered, the provision of the new bylaw will apply to any indemnification requests.

These transitional provisions are recommended to allow for minimal interruption of the indemnification entitlements of Eligible Persons. For Code Complaints, although there was a period of gap of indemnification for non-MCIA Code complaints between June 2019 and the present, if that gap had not existed, indemnification would apply only after the final

disposition.¹ As such, it is staff's position that the new By-law would apply to any Code Complaints where a final disposition has not been rendered by the Integrity Commissioner, even if the Code Complaint was filed prior to the date of the enactment of the new Bylaw, as the right to indemnification would not have crystallized until the disposition is made.

In addition to the recommended amendments to the Indemnification By-law above, staff have also identified beneficial amendments to the Code of the Ethical Conduct for Members of Council and Local Boards and the related Complaint Protocol to ensure consistency in approach.

In particular, in consultation with the Integrity Commissioner, staff recommend adding new paragraphs 5 and 6 to Rule No. 6 of the Code of the Ethical Conduct for Members of Council and Local Boards which confirm, respectively, that: (i) Members are required to comply with sections 5, 5.1, and 5.2 the MCIA, and (ii) declarations of pecuniary interests known to Members shall be recorded in the meeting minutes in accordance with section 6 of the MCIA. While Members are bound by these obligations regardless of whether they appear in the Code of the Ethical Conduct for Members of Council and Local Boards, including such provisions will help bring clarity to Members and to the public. No other changes are made to the Code, which can be found as attachment #1.

Further, in consultation with the Integrity Commissioner, staff recommend adding new section 7(iv) of the Complaint Protocol which confirms that the Integrity Commissioner has the ability to terminate an investigation where it becomes apparent in the course of an investigation that the complaint is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an investigation. While the Integrity Commissioner has inherent jurisdiction to terminate an investigation, adding an explicit provision to this effect (which is similar to prior sections included in the Complaint Protocol) will provide

¹ Former section 19 of the Complaint Protocol stated: (1) A Member of Council who is subject of an Integrity Commissioner complaint under Part A (Informal Complaint Procedure) or Part B (Formal Complaint Procedure) under this Protocol may charge against the Member's office budget the actual legal expense incurred for consultation with a lawyer of up to \$500.00.

(2) A Member of Council who is the subject of an Integrity Commissioner complaint investigation * under this Protocol may be reimbursed for actual and reasonable expenses incurred for consultation with a lawyer of up to \$5000.00, where it is determined that there has been no contravention of the Code of Ethical Conduct by the Member, such amounts to be charged against the Council Corporate Budget following approval by the Integrity Commissioner.

* An Integrity Commissioner complaint investigation begins when the Integrity Commissioner opens a case file and gives notice of the same to the Member of Council subject of the formal complaint

additional clarity for Members as well as the public. No other changes are made to the Complaint Protocol, which can be found as attachment #2.

Financial Impact

Although a provision providing indemnification of Mayor and Members of Council related to Code Complaints and MCIA proceedings had been in place in the past, there was no corresponding budget specifically allocated for indemnification.

The actual financial impact is difficult to forecast due to the varying number of matters that may arise each year and their complexity. As such, in consultation with Financial Planning and Development Finance, it is recommended that amounts incurred in 2020 to indemnify Members for legal proceedings not covered by the City's insurer, such as Code Complaints, will be funded from the corporate contingency in 2020. Such expenses will be budgeted in the corporate budget for 2021 and going forward.

Broader Regional Impacts/Considerations

N/A

Conclusion

Based on Council's prior direction for staff to review the Indemnification By-law and the options provided for Council to consider received from the Integrity Commissioner, staff are proposing a new Indemnification By-law. The new Indemnification By-law will provide indemnification for legal fees incurred by Members related to Code Complaints filed with the Integrity Commissioner, together with other updates. Corresponding minor changes are also proposed for the Code of Conduct and Code Complaint Protocol.

For more information, please contact: Wendy Law, 8700

Attachments

1. Code of Ethical Conduct for Members of Council and Local Boards
2. Complaint Protocol
3. Proposed Indemnification By-law
4. Communication C25 - Council (March 11, 2020) - Email from Regional Councillor Ferri, dated March 8, 2020
5. Communication C2 - Committee of the Whole (April 21, 2020) - Memorandum from the Deputy City Manager, Administrative Services & City Solicitor, dated April 14, 2020

6. Communication C4 - Committee of the Whole (April 21, 2020) - Mr. Robert A. Kenedy, PhD, President of the MacKenzie Ridge Ratepayers' Association, dated April 20, 2020
7. Communication C5 - Committee of the Whole (April 21, 2020) - Mr. Richard T. Lorello, dated April 21, 2020
8. Communication C6 - Committee of the Whole (April 21, 2020) - Regional Councillor Mario Ferri, dated April 21, 2020.

Attachment 1



**CITY OF VAUGHAN
POLICY MANUAL**

Policy No:	CL – 011
Department:	COUNCIL
Subject:	CODE OF ETHICAL CONDUCT FOR MEMBERS OF COUNCIL AND LOCAL BOARDS

CODE OF ETHICAL CONDUCT FOR MEMBERS OF COUNCIL AND LOCAL BOARDS

CITY OF VAUGHAN

Council Approval: 2009/21/09
Minute No. 181
Cross Reference: Policy No. 01.35

Amended: 2011/06/28
Report No/Item: 35/2

**CODE OF ETHICAL CONDUCT FOR MEMBERS OF COUNCIL
CITY OF VAUGHAN
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Introduction

Democracy is an active process – one that requires ongoing engagement between citizens and their elected officials. Ethics and integrity are at the core of public confidence in government and in the political process.

There has been a general trend at the municipal level of government in Ontario, to develop rules around ethical conduct for elected officials so that they may carry out their duties with impartiality and equality of service to all, recognizing that as leaders of the community, they are held to a higher standard of behavior and conduct. As of March 2019, municipalities are required to have codes of ethical conduct in place for Members of Council and local boards.

It is the purpose of this *Code of Ethical Conduct* to establish rules that guide Members of Council and Members of local boards (using the restricted definition of this term provided herein) in performing their diverse roles in representing their constituents and recognize Members' accountability for managing City resources allocated to them.

Preamble

Whereas the City of Vaughan first instituted a *Code of Conduct* for Members of Council in 1996;

And whereas the current *Code of Conduct for Members of Council* was adopted by Council in 2009;

And whereas the *Modernizing Ontario's Municipal Legislation Act, 2017*, S.O. 2017, c. 10, and the corresponding amendments to applicable legislation, require municipalities to establish codes of conduct for Members of Council and Members of local boards;

And whereas elected officials and Members of local boards of the City of Vaughan have and recognize their obligation to not only obey the law, but to go beyond the minimum standards of behaviour and act in a manner that is of the highest ethical ideals so that their conduct will bear the closest public scrutiny;

And whereas the private interest of elected officials and Members of local boards of the City of Vaughan must not provide the potential for, or the appearance of, an opportunity for benefit, wrongdoing, or unethical conduct;

And whereas this *Code of Ethical Conduct* stems from the principles of the pre-existing *Code of Conduct* that has been in place since 2009 based on the belief by the Council of the City of Vaughan that not just employees but also elected officials should have a document against which to measure their conducts that they may be held to account;

The Council of the City of Vaughan will adopt certain rules that further underscore a Councillor's belief in his/her responsibility as a public trustee and confirm that Members of City of Vaughan local boards will be held to the same ethical standard;

Commentary

The operation of democratic municipal government requires that elected officials and Members of local boards be independent, impartial and duly responsible to the people. To this end, it is imperative that:

- The City of Vaughan decisions and policy be made through the proper processes of municipal government structure.
- The City of Vaughan government structure and decision-making process reflect the importance of integrity, independence and accountability.
- Public office and membership on local boards shall not be used for personal gain.
- The public have confidence in the integrity of its municipal government and its local boards.

A written *Code of Ethical Conduct* protects the public interest and helps to ensure that the Members of Council and Members of local boards share a common basis for acceptable conduct. These standards are designed to provide a reference guide and a supplement to the legislative parameters within which the Members must operate.

The public is entitled to expect the highest standards of conduct from the Members that it elects to local government and Members that serve on its local boards. Members of Council and local boards are therefore expected to perform their duties of office with integrity and impartiality in a manner that will bear the closest scrutiny. In turn, adherence to the standards set out in this *Code* will protect and enhance the City of Vaughan's reputation and integrity.

Framework and Interpretation

1. This *Code of Ethical Conduct* applies to the Mayor and all Members of Council as well as all Members of local boards (restricted definition). It is to be given broad, liberal interpretation in accordance with applicable legislation and the definitions set out herein. Commentary and examples used in this *Code of Ethical Conduct* are meant to be illustrative and not exhaustive. From time to time additional commentary and examples may be added to this document by the Integrity Commissioner, as she or he deems appropriate.
2. The Integrity Commissioner is responsible for performing, in an independent manner, the following:
 - a. The application of this *Code of Ethical Conduct* for Members of Council and Members of local boards.
 - b. The application of any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of Members of Council and of local boards.
 - c. The application of sections 5, 5.1 and 5.2 of the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50, as amended, to Members of Council and of local boards.
 - d. Requests from Members of Council and of local boards for advice respecting their obligations under this *Code of Ethical Conduct*.
 - e. Requests from Members of Council and of local boards for advice respecting their obligations under a procedure, rule or policy of the municipality or of the local board, as the case may be, governing the ethical behaviour of Members.
 - f. Requests from Members of Council and of local boards for advice respecting their obligations under the *Municipal Conflict of Interest Act*.

- g. The provision of educational information to Members of Council, Members of local boards, the municipality and the public about this *Code of Ethical Conduct* and about the *Municipal Conflict of Interest Act*.
3. With respect to requests for advice, referred to in paragraphs 2(d),(e), and (f) above:
 - a. Requests for advice from Members shall be in writing and the Integrity Commissioner shall provide all advice in writing; and
 - b. As long as all the facts known to the Member are disclosed to the Integrity Commissioner and there is no change to these facts, then the Member may rely on any written advice provided by the Integrity Commissioner.
 - c. The Integrity Commissioner will create a “confidentiality wall” such that, if the Integrity Commissioner receives a Formal Complaint in respect of the matter for which advice was given, the written advice provided to the Member will not remove the presumption of neutrality of the Integrity Commissioner or unfairly prejudice the Member.
 4. Members of Council, Members of local boards, and members of the public or City Staff seeking clarification of any part of this *Code* should consult with the Integrity Commissioner.
 5. The Integrity Commissioner is barred from conducting an inquiry in respect of actions, omissions, or decisions of the administration of Council. Any requests for inquiry or complaints in respect of actions, omissions or decisions of the administration of Council shall be denied by the Integrity Commissioner.
 6. With respect to requests for advice, referred to in paragraphs 2(d), (e) and (f) above, the Integrity Commissioner will not be barred from receiving and investigating complaints for which written advice was given. Notwithstanding the above, the Integrity Commissioner may, from time to time and within her discretion, decide to delegate the investigation of a complaint under subsection 223.3(3) of the *Municipal Act*.
 7. Should an issue arise where it may be unclear whether a complaint falls within the mandate of York Region or the City of Vaughan, both the Regional and City of Vaughan Integrity Commissioners will work together to develop a process to resolve the matter and report the findings to the appropriate council(s). In such instances, consideration should be given to the following:
 - a. The municipality in which the complaint was filed;
 - b. The municipality in which the expense/mileage claim was submitted for an event or function; and
 - c. The reasonableness for the respective municipality’s Integrity Commissioner to undertake the investigation.

Commentary

This *Code of Ethical Conduct* does not prohibit the activities in which Members of Council normally engage on behalf of constituents in accordance with applicable laws.

The *Municipal Act* is the primary source of regulation for municipalities and provides the basis for good governance within municipal government. There are other important documents that regulate

the behavior and conduct of Members. Clear and consistent written rules provide elected officials with confirmation that their actions adhere to the highest ideals of integrity during their term of office. This *Code of Ethical Conduct* operates together with and as a supplement to the following existing statutes, documents and policies governing the conduct of Members.

Legislation:

- The *Municipal Act, 2001*, S.O. 2001, c. 25;
- The *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50;
- The *Municipal Elections Act, 1996*, S.O. 1996, c. 32, Sched;
- The *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56; and
- The *Criminal Code*, R.S.C., 1985, c. C-46.

Definitions:

In this *Code of Ethical Conduct*:

1. the terms “Child”, “Parent” and “Spouse” have the same meanings as in the *Municipal Conflict of Interest Act*;
2. “Elector” has the same meaning as set out in section 1 of the *Municipal Conflict of Interest Act*;
3. “Employee” includes a consultant, a part-time or seasonal worker, and full-time worker, but not a Member.
4. “Member” means (i) a member of Vaughan City Council, or (ii) a member of the following local committees/local boards: Accessibility Advisory Committee, Committee of Adjustment, Heritage Vaughan Committee, and the Property Standards Committee.
5. “Family Member”¹ means,
 - Spouse, common-law partner, or any person with whom the person is living as a Spouse outside of marriage
 - Parent, including step-parent and legal guardian
 - Child, including step-child and grandchild
 - siblings and children of siblings
 - aunt/uncle, niece/nephew, first cousins
 - in-laws, including mother/father, sister/brother, daughter/son
 - any person who lives with the Member on a permanent basis
6. “Official duties” or “functions” have the following meaning:

For Members of Council, it includes those activities that are reasonably related to a Member’s office, taking into consideration the different interest, the diverse profiles of their wards and their different roles on Committees, agencies, boards and commissions.

¹ For the purposes of complaints under section 5, 5.1 and 5.2 of the MCIA, the Integrity Commissioner will adopt the definitions contained in the *Municipal Conflict of Interest Act*, section 3 in respect of an interest of certain persons deemed that of the Member.

For persons employed in the office of Members, it includes those activities and responsibilities that flow from acting on direction from or taking action on behalf of a Member.

7. "Staff" includes Deputy City Managers, Directors, Managers, Supervisors, clerical and technical unionized employees, hourly unionized staff, part-time unionized staff, full-time non-unionized employees, temporary / seasonal staff, contract staff, students and volunteers.

Implementation:

This *Code* shall replace Policy Number CL-011 – *Code of Ethical Conduct for Members of Council*.

Rule No. 1

Key Principles: The key principles that underline the rules in this *Code of Ethical Conduct* and shall be used to guide Members in decisions on their actions, and to guide the Integrity Commissioner in interpreting Rules 2 – 21 of this *Code*, are as follows:

- a) **Members shall serve and be seen to serve their constituents in a conscientious and diligent manner.**

Commentary

This underscores that Members carry out their official City activities in a way that will foster and enhance respect for government and above all, demonstrate respect for members of the public.

- b) **Members should be committed to performing their Functions with integrity and transparency.**

**Amended, Council, June 28, 2011, Rpt 35, Item 2:*

Responding to Inquiries from the Public

Vaughan City Council is committed to overseeing the provision of responsive and accessible services including dealing with reasonable inquiries and requests for information in a timely manner. On occasion, an individual citizen may not be accepting of the response and may restate the inquiry in various ways, or may be rude or harassing in their delivery of the inquiry. There is a need to balance access to information against the need to protect the legitimate interests of the City; the need to respect approved policies and procedures of the City within civil and respectful discourse; and the need to respect the role of officers and employees of the municipality.

Members of Council who receive requests for information or inquiries from members of the public, City staff or other Members of Council may be guided by Protocol 03.26 "Response by City Staff to Requests for Information from the Public". In addition, complaints regarding staff may be forwarded to the appropriate City Commissioner or the City Manager.

This Code does not require Members of Council to provide a response to an inquiry or request for information that is frivolous or vexatious, unreasonable or harassing.

For example:

- the Member of Council is of the opinion on reasonable grounds that the inquiry is made for a purpose other than to obtain information;
- the inquiry has been made more than once and is being used for the purpose of revisiting an issue that has been previously addressed;
- the inquiry is articulated in such a way that it can be considered harassing or abusive;
- the Member is of the opinion, on reasonable grounds, that providing a response would interfere with the operations of the City;
- the inquiry is not an inquiry but rather a complaint.

Communication labelled "Private" and/or "Confidential" may be shared or disclosed as necessary or appropriate, taking into consideration the following:

- information may be disclosed to appropriate staff in order to respond to the issue or concern being communicated;
 - information will not be treated as confidential where the communication was shared by the requestor or not made in a confidential manner (copied to others, or made in the presence of others);
 - if the information is needed by an officer, employee, consultant or agent of the City who needs the information in the performance of her or his duties and if the information is necessary and proper in the discharge of the City's functions.
-

Commentary

As public officials, Members recognize the public's right to reasonable access to information in relation to how decisions are made. This right of access includes the right of the public to receive complete and understandable information which must be balanced against the requirement to protect the legitimate interests of the City and the respect for approved policies of the City.

- c) Members shall avoid the improper use of the influence of their office, and conflicts of interest, both apparent and real. Members shall not extend, in their discharge of their Official Duties, preferential treatment to Family Members, organizations or groups in which they or their Family Member have a pecuniary interest, which pecuniary interest is known to the Member.**

Commentary

As a result, Members will have a common understanding that they will not participate in activities that grant, or appear to grant, any special consideration, treatment, or advantage to an individual which is not available to every other individual. Members recognize that their actions are governed by the *Municipal Conflict of Interest Act*. The Integrity Commissioner will distinguish between a *Code* conflict, which may be both apparent and real and which may be in respect of a Family Member as defined by the *Code*, and a pecuniary interest under the *Municipal Conflict of Interest Act* in respect of sections 1.1, 2 and 3 of the *Municipal Conflict of Interest Act*.

In addition, it is recognized that while Members are political representatives, they are also private citizens. Accordingly, Members may, in their capacity as private citizens, choose to endorse political parties. Members must take care to clarify that they do so as a private individual and must not be seen as using their office to endorse political candidates for election.

- d) Members shall avoid any interest in any contract made by him/her in his/her official capacity and shall not contract with the City or any agency thereof for the sale and purchase of supplies, material or equipment or for the rental thereof.**

- e) **Members shall not engage in the management of a business carried on by a corporation nor profit directly or indirectly from a business, including but not limited to a corporation, that does business or has contracted with the City of Vaughan, or hold an office or directorship, unless holding the office or directorship is in a social club, religious organization, other charitable organization or corporations with shares directly or indirectly held by the municipality.**
- f) **Approved exceptions**
A Member may engage in an activity prohibited by clause 1(e) if the following conditions are met:
- 1. The Member has disclosed all material facts to the Integrity Commissioner.**
 - 2. The Integrity Commissioner is satisfied that the activity, as carried on in the specified manner, did not create a conflict between the Member's private interest and public duty.**
 - 3. The Integrity Commissioner has given the Member his or her approval and has specified the manner in which the Member of Council may remedy the situation.**
 - 4. The Member remedies the situation in the manner specified by the Integrity Commissioner**

Commentary

Members must adhere to the City's purchasing policies and pay careful attention to the Councillors' expense policies. Examples of exceptions include, hospital boards and other not-for-profit organizations and charities.

- g) **Members shall perform Official Duties and arrange their public affairs in a manner that promotes public confidence and respect and will bear close public scrutiny; and**

Commentary

Members shall not participate in activities that grant, or appear to grant, any special consideration, treatment, or advantage to an individual which is not available to every other individual member of the public.

- h) **Members shall seek to serve the public interest by upholding both the letter and the spirit of the laws and policies established by the Federal Parliament, Ontario Legislature, and the City Council.**

Commentary

A number of the provisions of this *Code* incorporate policies, procedures and provisions adopted by Council and contained in various statutes. The provisions of this *Code* are intended to be applied in concert with existing legislation and go beyond the minimum standards of behaviour.

- i) Members shall fulfill their roles as set out in the *Municipal Act* and respect the role of staff in the administration of the business affairs of the City.**

Commentary

Members recognize that the decision-making authority for the municipality lies with Council, not an individual Councillor and that it is the role of the officers and employees of the municipality to implement council's decisions and establish administrative practices and procedures to carry out council's decisions. Members recognize and respect the role of City staff and affirm that only Council as a whole has the capacity to direct staff members. Council as a whole must be able to access information, on a need to know basis, in order to fulfill its decision-making duties and oversight responsibilities [...]. Individual Members also recognize that the information that they receive as members of the decision-making body of Council, or a local board, is subject to the confidentiality and disclosure rules of Provincial and Federal statutes and City of Vaughan bylaws. (See Rule No. 3 on Confidential Information and Rule No. 16 on Conduct Respecting Staff).

Rule No. 2

Gifts and Benefits:

- 1. No Member shall accept a fee, advance, gift, loan, or personal benefit that is connected directly or indirectly with the performance of his or her duties, except as specifically contemplated.**

For these purposes, a fee or advance paid to or a gift or benefit provided with the Member's knowledge to a Member's Spouse, Child, or Parent, or to a Member's staff that is connected directly or indirectly to the performance of the Member's duties is deemed to be a gift to that Member. Set out below are recognized as exceptions to Rule 2, which apply to Members of Council only; Members of local boards are not permitted to accept any gifts and benefits:

- (a) compensation authorized by law;**
- (b) such gifts or benefits that normally accompany the responsibilities of office and are received as an incident of protocol or social obligation;**
- (c) a political contribution otherwise reported by law;**
- (d) services provided without compensation by persons volunteering their time to a Member;**
- (e) a suitable memento of a function honoring the Member (e.g. a trinket or favour of relatively little monetary value such as pen, notepad, t-shirts);**
- (f) food, lodging, transportation and entertainment provided by provincial, regional and local governments or political subdivisions of them, by the Federal government or by a foreign government within a foreign country or by a conference, seminar or event organizer where the Member is either speaking or attending in an official capacity at an official event;**
(for greater certainty of item f, where Council has authorized or endorsed an initiative or event, this would be considered an official event.)
- (g) food and beverages consumed at banquets, receptions or similar events, for charitable, not for profit and community purposes, if:**
 - 1. attendance serves a legitimate public duty purpose; and**
 - 2. the value is reasonable and the invitations infrequent.**
- (h) business meals;**
- (i) communication to the offices of a Member, including subscriptions to newspapers and periodicals related to the duties of Office.**
- (j) Sponsorships and donations for community events or initiatives organized or run by a Member of Council or a third party on behalf of a Member where Council has authorized or endorsed the event or initiative.**

(for greater certainty of item j, for Member-organized community events or initiatives, Members should be transparent in their dealings with the public and should not handle any funds on behalf of any organizations and should remain at arms length from the financial aspects of these events and initiatives.)

Rule #2 Part 1(j) does not affect the entitlement of a Member of Council to:

- i. Use her or his office expense budget to run or support community events subject to the terms of the Councillor Expense Policy;*
- ii. Urge constituents, businesses and other groups to support community events put on by others in the Member's Ward or elsewhere in the City;*
- iii. Play an advisory or membership role in any organization that holds community events in the Member's Ward; and*
- iv. Collaborate with the City of Vaughan and its agencies to hold community events.*

Members of Council are strongly encouraged to document all gifts and benefits they receive. As indicated above, Members of local boards are not permitted to receive any gifts or benefits.

With respect to Members of Council, in the case of categories (b), (e), (f), (g) (h), and (i), where the value of the gift or benefit exceeds \$750 , or if the total value received from any one source during the course of a calendar year exceeds \$750, the Councillor shall, within 30 days of receipt of the gift or reaching the annual limit, list the gift or benefit on a Councillor information statement, the form of which will be prescribed by the Integrity Commissioner.

The Integrity Commissioner shall, without notice, examine from time to time the Councillor information statement to ascertain whether the receipt of a gift or benefit might, in her or his opinion, create a conflict between a private interest and the public duty of the Councillor.

In the event that the Integrity Commissioner makes the preliminary determination, he or she shall call upon the Member to justify receipt of the gift or benefit. Should the Integrity Commissioner determine that receipt was inappropriate, he or she may direct the Member to return the gift, reimburse the donor for the value of any gift or benefit already consumed, or forfeit the gift or remit the value of any gift or benefit already consumed to the City or City agency, board or commission. The above actions of the Integrity Commissioner do not require receipt of a Formal Complaint or that the Integrity Commissioner conduct a formal Code of Conduct investigation.

Each Member shall file a copy of their Councillor information statement with the office of the City Clerk on a quarterly basis (the first quarter being April 30th of the calendar year) and the statements shall be a matter of public record.

Commentary:

Gifts and benefits are often received by Members of Council in the course of their duties, and attendance at public functions is expected and considered part of their role. The object of this rule is to provide transparency around the receipt of incidental gifts and benefits, where the total value may be perceived as potentially influencing decision making.

Personal integrity and sound business practices require that relationships with vendors, contractors, or others doing business with the City, be such that no Member of Council is perceived as showing favoritism or bias toward the vendor, contractor or other. Each Member of Council is accountable to the public and should keep a list of all gifts received from individuals, firms or associations (with estimated values) in their constituency offices for review by Integrity Commissioner, as he/she deems appropriate. However, for Members of Council, those gifts or benefits that exceed \$750 or the annual limit of \$750 for one source, shall be kept on a form prescribed by the Integrity Commissioner and filed with the office of the City Clerk on a quarterly basis.

Gifts that are subject to listing on the Member of Council information statement can be many types of things, and may include:

- property (e.g. a book, flowers, a gift basket, a painting or sculpture, furniture, wine);
- use of property or facilities (e.g. a vehicle, an office, a cottage) at a reduced rate or at no cost;
- membership in a club or other organization (e.g. a golf club) at a reduced rate or at no cost;
- an invitation to and/or tickets to attend an event (e.g. an athletic commercial event, concert, a play) at a reduced rate or at no cost;
- an invitation to attend a gala or fund-raising event at a reduced rate or at no cost.

An invitation to attend a function where the invitation is connected directly or indirectly with the performance of the Member's duties of Office (i.e. for which the public office holder has a ceremonial, presentational or representational official role) is not considered to be a gift. Attendance is considered to be the fulfillment of an official function or duty.

There are a range of expenses that support a Councillors' role in community development and engagement activities in their ward.

For MPPs, these expenses are generally paid for by caucus funds. This is not the case for municipal Members of Council. The section of the Councillor Expense Policy that deals with Community Expense-Events will indicate allowable expenses for reimbursement and provide for Members of Council to include certain community expenses related to a Member's role in community development as allowable expenditures from their office expense budget. However, gaming tickets during charitable functions, such as raffle tickets, table prize tickets, etc. should not be eligible for reimbursement.

Lobbying of public office holders is a permissible but is a regulated activity in the City of Vaughan. Lobbying is defined and regulated by By-law Number 165-2017 (the City's lobbying by-law inclusive of the Lobbyist Code of Conduct). Members are public office holders. As a matter of general principle, as public office holders, Members should be familiar with the terms of the lobbying by-law inclusive of the Lobbyist Code of Conduct. If a Member is or at any time becomes aware that a person is in violation of the Lobbyist Code of Conduct or registration regime, the Member should draw that person's attention to the obligations imposed by the Lobbying By-law and Lobbying Code of Conduct. A Member should report any such violation or attempted violation of Lobbying By-law to the Lobbyist Registrar.

- 2. Expenses incurred by Members working during normal meal periods serve a legitimate public duty purpose, provided that the expenses incurred are reasonable and appropriate in the circumstances. Reasonable and appropriate expenses are those that:**
 - a. Are incurred for an official duty or function;**

- b. **Are modest, representing a prudent use of public funds;**
- c. **Do not involve alcoholic beverages**

In general, working meals are to be provided in-house.

Commentary

Rule #2 must be considered with and balanced against the principle contained expense policies in all Ontario municipalities, which is that Members are entitled to be reimbursed for expenses that are legitimately and appropriately incurred for an official duty or function and which are reasonable and prudent expenses and use of public funds in the circumstances. In making a determination of what constitutes a modest and prudent use of public funds, Members should consider the dollar amounts set in Policy CL-012 – Council Members Expense Policy, as amended.

Given the heavy demands on Members' schedules in the performance of their duties and Functions, there are legitimate circumstances that require business meetings over a meal period and result in the Member working through his or her normal meal periods.

As representatives of the municipal government, Members will be expected or required to extend hospitality to external parties as part of their Official Duties and Functions. This *Code* recognizes that through adherence to the current and proposed rules of the City's Councillor Expense Policy, it is legitimate for Members to incur hospitality expenses for meetings, examples of which include:

- a. Engaging representatives of other levels of government, international delegations or visitors, the broader public sector, business contacts and other third parties in discussions on official matters;
- b. Providing persons from national, international and charitable organizations with an understanding and appreciation of the City of Vaughan or the workings of its municipal government;
- c. Honouring persons from Vaughan in recognition of exceptional public service.

This *Code* recognizes that the current and proposed City of Vaughan Councillor Expense Policy, holds legitimate that Members of Council will be reimbursed or have their office budgets charged for expenses that are incurred while extending hospitality to an external party, including hospitality that takes place in the course of travelling on a duty or function or a Member of Council provided the expenses are reasonable and appropriate in the circumstances.

Reasonable and appropriate expenses are expenses that strike a balance between economy (the expenses represent a prudent use of public funds) and proportionality (the expenses represent what is customary for such functions).

Wherever possible, Members should utilize City-owned facilities and resources that are appropriate to the function.

- 3. This Code recognizes that as community leaders, Members of Council may lend their support to and encourage, community donations to registered charitable and Not for profit groups. Monies raised through fundraising efforts shall go directly to the**

groups or volunteers and chapters acting as local organizers of the group. This Code recognizes the important work of Members of Council in supporting charitable causes and the need for transparency in Members' involvement.

This Code sets the following guiding principles for Members of Council:

- (a) Members of Council should not directly or indirectly manage or control any monies received relating to charitable organization's fundraising.
- (b) A Member of Council or a third party acting on behalf of the Member shall neither solicit nor accept support in any form from an individual, group or corporation with any pending planning, conversion, or demolition variance application before Vaughan City Council.
- (c) With reference to Member- Organized Community Events, Members of Council must report to the Integrity Commissioner, the names of all donors and the value of their donation that supplement the event.
- (d) Where a Member of Council sponsors and/or lends support to a charitable organization's event, this Code recognizes that all donations are subject to the *Code of Ethical Conduct* and CL-012 – Council Members Expense Policy.
- (e) No donation cheques should be made out to a Member of Council.

Nothing included herein affects the entitlement of a Member of Council to:

- i. Use her or his office expense budget to run or support community events subject to the terms of the Policy CL-012 – Council Members Expense Policy section relating to Community Expense Hosting Events by Council Members;
 - ii. urge constituents, businesses and other groups to support community events and advance the needs of a charitable organization put on by others in the Member's Ward or elsewhere in the City;
 - iii. play an advisory or membership role in any organization that holds community events in the Member's Ward; and
 - iv. collaborate with the City of Vaughan and its agencies to hold community events.
- (f) Members of Council should not handle any funds on behalf of any charitable organization or Community group and should remain at arms length from the financial aspects of these community and external events.

Rule No. 3

Confidential Information:

- 1. No Member shall disclose or release by any means to any member of the public, any confidential information acquired by virtue of their office, in either oral or written form, except when required by law or authorized by Council to do so.**
- 2. No Member shall use confidential information for personal or private gain, or for the gain of relatives or any person or corporation.**
- 3. No Member shall directly or indirectly benefit, or aid others to benefit, from knowledge respecting bidding on the sale of City property or assets.**
- 4. No Member shall disclose the content of any such matter, or the substance of deliberations, of the in-camera meeting until the Council or committee discusses the information at a meeting that is open to the public or releases the information to the public.**
- 5. No Member shall permit any persons other than those who are entitled thereto to have access to information that is confidential.**
- 6. No Member shall access or attempt to gain access to confidential information in the custody of the City unless it is necessary for the performance of their duties and not prohibited by Council policy.**

Commentary:

Confidential information includes information in the possession of the City that the City is either prohibited from disclosing, or is required to refuse to disclose, such as under Access and Privacy legislation. Such legislation imposes mandatory or discretionary restrictions on disclosure of information received in confidence from third parties of a corporate, commercial, scientific or technical nature, personal information about an individual disclosure of which would constitute an unjustified invasion of privacy, and information that is subject to solicitor-client privilege. Where it is clear that a communication was not made in a confidential manner (i.e. copied to others or made in the presence of others) or the manner of communication undermines the validity of labeling it 'confidential', such communication will not be given any higher level of confidentiality than any other communication. The words 'privileged', 'confidential', or 'private' will not be understood to preclude the appropriate sharing of the communication for the limited purpose of reviewing, responding or looking into the subject-matter of the communication.

For the purposes of the *Code of Ethical Conduct*, "confidential information" may also include information that concerns personnel, labour relations, litigation, property acquisitions, the security of the property of the City or a local board, and matters authorized in other legislation, to remain confidential.

Under the Procedural By-law, a matter that has been legitimately discussed at an in-camera (closed) meeting remains confidential, until such time as a condition renders the matter public.

Requests for information should be referred to appropriate staff to be addressed as either an informal request for access to municipal records or as a formal request under the *Municipal*

Freedom of Information and Protection of Privacy Act.

Particular care should be exercised in ensuring confidentiality of the following types of information:

- the security of the property of the municipality or local board;
- personal information about an identifiable individual, including municipal or local body employees;
- a proposed or pending acquisition or disposition of land by the municipality or local board;
- labour relations or employee negotiations and personnel matters.
- litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board;
- advice that is subject to solicitor-client privilege, including communications necessary for that purpose;
- a matter in respect of which a council, board, committee or other body may hold a closed meeting under another Act;
- items under contract negotiation
- price schedules in contract tender or Request For Proposal submissions
- statistical data required by law not to be released (e.g. certain census or assessment data)

Rule No. 4

Use of City Property, Services and Other Resources

No Member shall use for personal purposes any City property, equipment, services, supplies or services of consequence (for example, agency, board, commission, or City-owned materials, websites, board and City transportation delivery services, and any Members expense budgets) other than for purposes connected with the discharge of City duties, which may include activities within the Member's office of which City Council has been advised.

No Member shall obtain financial gain from the use of City developed intellectual property, computer programs, technological innovations or other patentable items, while an elected official or thereafter. All such property remains the exclusive property of the City of Vaughan.

No Member shall use information gained in the execution of his or her duties that is not available to the general public for any purposes other than his or her Official Duties.

Commentary:

Members, by virtue of their position, have access to a wide variety of property, equipment, services and supplies to assist them in the conduct of their City duties as public officials. This privilege should not be seen to be abused. In recognizing that Members are held to a higher standard of behavior and conduct, Members should not use such property for any purpose other than for carrying out their Official Duties. Careful attention should be given to the provisions of the City's Councillor expense policy which identifies approved allowable expenses.

During election campaigns, refer to Rule No. 5 and 7.

Rule No. 5

Election Campaign Work:

- 1. Members of Council are required to follow the provisions of the *Municipal Elections Act, 1996*.**

Commentary

Although the Integrity Commissioner of the City of Vaughan does not have jurisdiction to receive or investigate complaints regarding alleged contraventions of the *Municipal Elections Act*, the Integrity Commissioner shall forward any information regarding a potential breach of the *Municipal Elections Act* by a Member of Council, directly to the City Clerk.

- 2. No Member shall use the facilities, equipment, supplies, services or other resources of the City for any election campaign or campaign-related activities.**
- 3. No Member shall use the services of persons for campaign related activities during hours in which those persons receive any compensation from the City.**

Commentary

Paragraph 2 of Policy CL-008 – Permitting of City Facilities by Members of Council and Registered Candidates provides as follows: “Given that the Municipal Elections Act prohibits the use of corporate resources for election-related purposes, in a municipal election year, commencing on June 30th until the date of the election, Members of Council may not book directly, or indirectly, any City facility for any purpose that might be perceived as an election campaign purpose.”

Special attention should be given to section 10.0 of Policy CL-012 Council Member Expense Policy – Election Year Expenses.

Rule No. 6

Business Relations

- 1. No Member shall borrow money from any person who regularly does business with the City unless such person is an institution or company whose shares are publicly traded and who is regularly in the business of lending money.**
- 2. No Member shall act as a paid agent before Council or a committee of Council or any agency, board, or committee of the City.**
- 3. No Member shall refer a third party to a person, partnership, or corporation in exchange for payment or other personal benefit.**
- 4. If a Member becomes aware that an entity for which the Member has a material interest (or is a director or employee), may offer or provide goods, consulting or other services to the City, the Member will seek advice from the Integrity Commissioner about the application of the *Municipal Conflict of Interest Act* and whether, in consideration of the circumstances, membership is in the best interests of City. In providing this advice, the Integrity Commissioner will consider the risk of harm to the reputation of the Council.**
- 5. Members will comply section 5, 5.1 and 5.2 of the *Municipal Conflict of Interest Act*, as amended from time to time.**
- 6. Declarations of pecuniary interests known to Members shall be recorded in the minutes of Committee and Council meetings. In the event that Member declares an interest during Closed Session, the Member shall affirm their declaration of interest at the beginning of the Open Session as noted on the agenda.**

Commentary

Members are mindful to avoid any activity that may give rise to consideration of personal gain as a result of holding public office.

Rule No. 7

Improper Use of Influence:

- 1. No Member shall use the influence of her or his office for any purpose other than for the exercise of her or his Official Duties.**

Commentary

Pursuant to corporate policy, the City Manager directs Deputy City Managers, who in turn, direct City staff. City Council and not individual Members of Council appropriately give direction to the City administration. This provision relates not only to the Member's actions in respect of City staff, but also in other ways as determined by the Integrity Commissioner in the course of conducting an inquiry.

Examples of prohibited conduct include: the use of one's status as a Member to improperly influence the decision of another person to the private advantage of oneself, or one's Parents, Child or Spouse, Staff, friends, or associates, business or otherwise. This would include attempts to secure preferential treatment beyond activities in which Members normally engage on behalf of others as part of their Official Duties as a Member. Also prohibited is the holding out of the prospect or promise of future advantage through a Member's supposed influence within the local board or at the City, in return for present actions or inaction.

Rule No. 8

Conduct At Council Meetings and Local Board Meetings

- 1. Members shall conduct themselves at meetings with decorum. Respect for deputants and for fellow Members and staff requires that all Members show courtesy and not distract from the business of the Council or local board during presentations and when other Members have the floor.**

Commentary

A Member recognizes the importance of cooperation and strives to create an atmosphere during Council, Committee, and local board meetings that is conducive to solving the issues before Council or the local board, listening to various point of view and using respectful language and behavior in relation to all those in attendance.

Rule No. 9

Transparency & Openness in Decision Making and Member's Duties

- 1. Members shall endeavour to conduct and convey City business and all their duties in an open and transparent manner (other than for those decisions which by virtue of legislation, Council Members are authorized to be dealt with in a confidential manner in closed session), so that stakeholders can view the process and rationale which was used to reach decisions, and the reasons for taking certain actions.**

Commentary

Various statutes, City by-laws, policies and procedures, as well as, decisions of courts and quasi-judicial tribunals form the basis of decisions made by City Council. Unless prohibited by legislation of by-law, Members should clearly identify to the public how a decision was reached and upon which law, procedure and policy their decision was based.

Rule No. 10

Media Communications

- 1. Members will accurately communicate the decisions of Vaughan's Council and local boards, even if they disagree with the decision, so that there is respect for and integrity in the decision-making processes of Council and local boards.**

Commentary

A Member may state that he or she did not support a decision or voted against the decision. A Member should refrain from making disparaging comments about other Members, and the processes and decisions of Council or the local board, as the case may be.

Rule No. 11

Representing the City

- 1. Members shall make every effort to participate diligently in the activities of the Committees, agencies, boards, commissions and advisory committees to which they are appointed.**

Commentary

Individual Members are appointed to committees, agencies, boards and commissions based on their various backgrounds and ability to contribute diligently to matters before them bringing their expertise and experience.

To participate diligently means that a Member shall not be absent from Council, agencies, boards and commissions meetings without reasonable justification (e.g. illness of Member or special family circumstance) for more than three consecutive scheduled meetings or on a regular basis.

Rule No. 12

Conduct Respecting Current and Prospective Employment:

1. No Member shall allow the prospect of his or her future employment by a person or entity to detrimentally affect the performance of his or her duties to the City.

Rule No. 13

Encouragement of Respect for the City and Its By-Laws

- 1. Members shall encourage public respect for the City and its by-laws.**

Commentary

A Member must not denigrate a City by-law in responding to a citizen, as this undermines confidence in the City and the rule of law.

Rule No. 14

Harassment

- 1. Members shall be governed by the City's Respectful Workplace Policy.**
- 2. Harassment by a Member of another Member, Staff, or any member of the public, is misconduct.**
- 3. Upon receipt of a complaint that relates to Rule No. 14, the Integrity Commissioner may forward the information subject of the complaint to Human Resources who will refer it to an independent investigator.**

Commentary

It is the policy of the City of Vaughan that all persons be treated fairly in the workplace in an environment free of discrimination and of personal and sexual harassment.

The City of Vaughan's Respectful Workplace Policy (Harassment and Discrimination) ensures a safe and respectful workplace environment and appropriate management of any occurrences of harassment and discrimination as defined by the policy.

The City of Vaughan Policy applies to Members and will provide guidance to the independent investigator. Upon receipt of the findings of the independent investigator, the Integrity Commissioner shall utilize the investigator's findings to make a determination on the application of the *Code of Ethical Conduct* and the merits to an investigation on the ethical conduct of the Member subject of the complaint.

Rule No. 15

Discreditable Conduct

- 1. Members shall conduct themselves with appropriate decorum at all times.**

Commentary

As leaders in the community, Members are held to a higher standard of behavior and conduct, and accordingly their behavior should be exemplary.

All Members of Council and local boards have a duty to treat members of the public, one another, and Staff appropriately and without abuse, bullying or intimidation, and to ensure that their work environment is free from discrimination and harassment.

Rule No. 16

Conduct Respecting Staff:

- 1. No Member shall compel staff to engage in partisan political activities or be subjected to threats or discrimination for refusing to engage in such activities.**
- 2. No Member shall use, or attempt to use, their authority for the purpose of intimidating, threatening, coercing, commanding, or influencing any staff member with the intent of interfering in staff's duties, including the duty to disclose improper activity.**
- 3. Members shall be respectful of the role of staff to advise based on political neutrality and objectivity and without undue influence from any individual Member or faction of the Council.**
- 4. No Member shall maliciously or falsely impugn or injure the professional or ethical reputation, or the prospects or practice of staff and all Members shall show respect for the professional capacities of the staff of the City.**

Commentary

Members should expect a high quality of advice from staff based on political neutrality and objectivity irrespective of party politics, the loyalties of persons in power, or their personal opinions.

Members of Council must recognize that only Council as a whole has the capacity to direct staff members to carry out specific tasks or functions as provided in the *Municipal Act*. The Administration, under the direction of the City Manager, serves the Council as a whole, and the combined interests of all Members as expressed through the resolutions of Council. An individual Member should not request staff to undertake extensive work or prepare lengthy reports, other than pursuant to a Council direction.

It is inappropriate for a Member to attempt to influence staff to circumvent normal processes in a matter or overlook deficiencies in a file or application. It is also inappropriate for Members to involve themselves in matters of administration or departmental management which fall within the jurisdiction of the City Manager. Any such attempts should be reported to the Integrity Commissioner.

Rule No. 17

Employment of Council Relatives/Family Members

- 1. No Member shall attempt to influence the outcome, or to influence any City employee to hire or promote a Member's family.**
- 2. No Member shall make any decision or participate in the process to hire, transfer, promote, demote, discipline or terminate any member of his or her Family.**
- 3. No Member shall supervise a Family Member or be placed in a position of influence over a Family Member.**
- 4. No Member shall attempt to use a family relationship for his or her personal benefit or gain.**
- 5. Every Member shall adhere to the City's nepotism policy.**

Commentary:

If a Family Member of a Member is an applicant for employment with the City or candidate for promotion or transfer, the Family Member will proceed through the usual selection process pursuant to the City's hiring policies, with no special consideration.

Rule No. 18

Failure to Adhere To Council Policies and Procedures:

- 1. Members shall adhere to such by-laws, policies and procedures adopted by Council that are applicable to them.**

Commentary

A number of the provisions of this *Code of Ethical Conduct* incorporate policies and procedures adopted by Council. More generally, Members are required to observe the terms of all policies and procedures established by City Council.

Members of Council must pay special attention to, and comply strictly with, the Councillors Expense Policy.

This provision does not prevent a Member of Council from requesting that Council grant an exemption from a policy.

Rule No. 19

Reprisals and Obstruction:

- 1. No Member shall obstruct the Integrity Commissioner in the carrying out of her or his responsibilities.**
- 2. No Member shall threaten or undertake any act of reprisal against a person initiating an *inquiry or complaint* under the *Code of Ethical Conduct* or who provides information to the Integrity Commissioner in any investigation.**

Commentary

Members should respect the intent of the *Code of Ethical Conduct* and investigations conducted under it. It is also a violation of the *Code of Ethical Conduct* to obstruct the Integrity Commissioner in the carrying out of her or his responsibilities, as, for example, by the destruction of documents or the erasing of electronic communications or refusing to respond in writing to a formal complaint lodged pursuant to the Complaint Protocol passed by Council.

Rule No. 20

Compliance with the *Code of Ethical Conduct*:

Members of Council

1. Upon receipt of the Integrity Commissioner's recommendations, and where the Integrity Commissioner reports that in her or his opinion, there has been a violation of the *Code of Ethical Conduct*, Council may impose the following penalties on a Member of Council:
 - a) A reprimand; or
 - b) Suspension of the remuneration paid to the Member in respect of his or her services as a Member of Council for a period of up to 90 days.
2. Where the Integrity Commissioner reports that in her or his opinion, there has been a violation of the *Code of Ethical Conduct*, the Integrity Commissioner may also recommend that Council take other remedial actions. Such remedial actions must be measures which are intended to address the violation and the effects of the violation. Such remedial actions may include but are not limited to the following:
 - a) Requiring repayment or reimbursement of moneys received by the Member.
 - b) Requiring the return of property, or reimbursement of its equivalent monetary value, received by the Member.
 - c) Requiring a written and/or verbal apology from the Member to Council, the complainant, or both.
 - d) Removal from membership of a Committee (if applicable) where, due to the Member's violation of the *Code of Ethical Conduct*, it would no longer be appropriate for the Member to sit on the Committee.
 - e) Removal as Chair of a Committee (if applicable) where, due to the Member's violation of the *Code of Ethical Conduct*, it would no longer be appropriate for the Member to chair the Committee.
3. Upon Council's decision on the Integrity Commissioner's recommendations, the Member whose has violated the *Code of Ethical Conduct* shall comply with Council's decision. Failure to comply with Council's decision shall constitute a contravention of this Code.

Members of Local Boards

1. Upon receipt of the Integrity Commissioner's recommendations, and where the Integrity Commissioner reports that in her or his opinion, there has been a violation of the *Code of Ethical Conduct*, in the case of a Member of a local board, Council may impose the following penalties:
 - a) A reprimand;
 - b) Suspension of the remuneration paid to the Member in respect of his or her services as a Member of a Local Board for a period of up to 90 days; or
 - c) Removal from the Local Board.
2. Where the Integrity Commissioner reports that in her or his opinion, there has been a violation of the *Code of Ethical Conduct*, the Integrity Commissioner may also

recommend that Council take other remedial actions. Such remedial actions may include but are not limited to the following:

- a) Requiring repayment or reimbursement of moneys received by the Member.**
 - b) Requiring the return of property, or reimbursement of its equivalent monetary value, received by the Member.**
 - c) Requiring a written and/or verbal apology from the Member to Council, the complainant, the local board, or any/all of these parties.**
 - d) Removal from membership of a Committee (if applicable).**
 - e) Removal as Chair of a Committee (if applicable).**
- 3. Upon Council's decision on the Integrity Commissioner's recommendations, the Member whose has violated the *Code of Ethical Conduct* shall comply with Council's decision. Failure to comply with Council's decision shall constitute a contravention of this Code.**

Commentary

Members of Council are accountable to the public through the election process. Between elections they may, for example, become disqualified and lose their seat if convicted of an offence under the *Criminal Code* of Canada or for failing to declare a conflict of personal interest under the *Municipal Conflict of Interest Act*.

In addition, the *Municipal Act* authorizes Council to impose either of two penalties on a Member following a report by the Integrity Commissioner that, in her or his opinion, there has been a violation of the *Code of Ethical Conduct*. For clarity, the Integrity Commissioner is not limited to the actions listed in 2 (a-e) above.

In the case of Members of local boards, these Members serve at the pleasure of Council. Accordingly, where the Integrity Commissioner reports that in her or his opinion, there has been a violation of the *Code of Ethical Conduct*, Council has a broader range of disciplinary measures that may be taken.

Rule No. 21

Implementation

- 1. Members are expected to formally and informally review their adherence to the provisions of the *Code* on a regular basis or when so requested by the Integrity Commissioner.**
- 2. At the beginning of each term, Members will be expected to sign two copies of the *Code of Ethical Conduct*.**
- 3. At the beginning of each term, each Member of Council shall meet with the Integrity Commissioner.**
- 4. At the beginning of each term, each Member of Council shall file an explanatory statement of all community organizations in which they participate, in the form provided by the Integrity Commissioner, within 60 days of being elected or appointed. Thereafter, each Member of Council shall file or update their disclosure statement, once in every calendar year on the date established by the Commissioner.**
- 5. Councillors and members of the public should not assume that any unethical activities not covered by or not specifically prohibited by these ethical standards of conduct, or by any legislation, are therefore condoned.**

Commentary

At the beginning of each term, Members of Council will be expected to sign two copies of the *Code of Ethical Conduct* (one for themselves and one for the Clerk's Office) to convey to each other and all stakeholders that they have read, understand and accept it.

A *Code of Ethical Conduct* component will be included as part of the orientation workshop for each new Council.

Attachment 2
COMPLAINT PROTOCOL
FOR THE CODE OF ETHICAL CONDUCT FOR MEMBERS OF COUNCIL AND LOCAL BOARDS

Authority: *Municipal Act, 2001*, S.O. 2001, (as amended) CHAPTER 25 and as adopted by Council at its meeting held on _____, 2019.

1. Until such time as a new/revised *Council Code of Ethical Conduct* is adopted, only complaints relating to behaviour or activity occurring subsequent to March 1, 2019 will be addressed by this procedure.
2. After December 31, 2008 all complaints must be addressed in accordance with the below captioned procedure within six (6) months of the alleged violation or no action will be taken on the complaint.
3. Defined terms used but not defined in this Complaint Protocol shall have the same meaning as set out in the *Code of Ethical Conduct for Members of Council and Local Boards* (the "Code of Conduct").

PART A: INFORMAL COMPLAINT PROCEDURE

4. Individuals (including City employees, members of the public, Members of Council or local boards) who identify or witness behaviour or activity by a Member that appears to be in contravention of the Code of Conduct, or sections 5, 5.1 and 5.2 of the *Municipal Conflict of Interest Act* ("MCIA") in the case of Council Members, may address the prohibited behaviour or activity themselves as follows:

- (i) Advise the Member that the behaviours or activity appears to contravene the Code of Conduct, or section 5, 5.1 or 5.2 of the MCIA in the case of Council Members;
- (ii) Encourage the Member to acknowledge and agree to stop the prohibited behaviour or activity and to avoid future occurrences of the prohibited behaviour or activity;
- (iii) Document the incidents including dates, times, locations, other persons present, and any other relevant information. Request that the Integrity Commissioner assist in the informal discussion of the alleged complaint with the Member in an attempt to resolve the issue. If applicable, confirm to the Member your satisfaction with the response of the Member; or, if applicable, advise the Member of your dissatisfaction with the response; and

At the earliest possible juncture, the Member whose behaviour is complained of will be advised of an inquiry to the Integrity Commissioner under the Informal Complaint Procedure, and any complainant will be so advised;

- (iv) Pursue the matter in accordance with the formal complaint procedure outlined in Part B, or in accordance with any other applicable judicial or quasi-judicial process or complaint procedure.

Individuals are encouraged to pursue this informal complaint procedure as a means of stopping and remedying a behaviour or activity that they believe violates the Code of Conduct. The informal complaint procedure will not apply to complaints against Members in respect of section 5, 5.1 or 5.2 of the MCIA. With the consent of both the complaining individual and the Member, the Integrity Commissioner may participate in any informal process. The parties involved are encouraged to take advantage of the Integrity Commissioner's potential role as a mediator/conciliator of issues relating to a complaint. However, it is not a precondition or a prerequisite that those complaining to pursue the informal complaint procedure prior to pursuing the formal complaint procedure in Part B. The Integrity Commissioner will assess the suitability of the informal complaint process for settlement or resolution on an ongoing basis and may at any time decline to continue participation in the process. The complainant or the respondent can decline to participate in the informal complaint process at any time. The informal complaint procedure is an informal process, and the Integrity Commissioner will not perform an official investigation nor provide a public report, even if the parties agree to involve the Integrity Commissioner in this informal process.

PART B: FORMAL COMPLAINT PROCEDURE

Formal Complaints

5. Electors and individuals acting in the public interest (including City employees, members of the public, and Members of Council or local boards) who identify or witness behaviour or an activity by a Member that they believe is in contravention of the Code of Conduct, or sections 5, 5.1, or 5.2 of the MCIA in the case of Council Members, may file a formal complaint with the required information on the proscribed affidavit (see page 6 of this procedure):
 - (i) All complaints must be made on the Complaints Form/Affidavit and shall be dated and signed by an identifiable individual;
 - (ii) The complaint must include an explanation for why the issues raised may be a contravention of Code of Conduct or the MCIA. Evidence in support of the allegation must also be included;
 - (iii) Witnesses in support of the allegation must be named on the complaint form;
 - (iv) The Integrity Commissioner will provide a summary of the complaint to the respondent and to others who may be involved in carrying out this procedure;
 - (v) The complaint form/affidavit must include the name of the alleged violator, the provision of the Code of Conduct or MCIA allegedly contravened, facts constituting the alleged contravention, the names for the complainant during normal business hours;
 - (vi) Receipt of formal complaints will be acknowledged in writing;
 - (vii) If the complaint relates to an alleged violation of sections 5, 5.1, or 5.2 of the MCIA, the complaint must be made within six weeks after the applicant became aware of the alleged contravention. The complainant must also provide a statutory declaration to this effect in their application.

Filing of Complaint and Classification by Integrity Commissioner

6.
 - (i) The complaint shall be filed with the City Clerk who shall forward the matter to the Integrity Commissioner for initial classification to determine if the matter is, on its face, a complaint with respect to non-compliance with the Code of Conduct, or sections 5, 5.1, or 5.2 of the MCIA in the case of Council Members, and not covered by other legislation or other Council policies as described in subsubsection 3. The Integrity Commissioner shall make a decision regarding classification within 30 days of receiving the complaint from the City Clerk.
 - (ii) If the complaint is not in the prescribed form, the Integrity Commissioner may defer the classification until a Complaint Form/Affidavit is received.

NOT A VIOLATION

- (iii) If the complaint, including any supporting affidavit, is not, on its face, a complaint with respect to non-compliance with the Code of Conduct, or sections 5, 5.1, or 5.2 of the MCIA in the case of Council Members, or the complaint is covered by other legislation or complaint procedure under another Council policy, the Integrity Commissioner shall advise the complainant in writing as follows:

CRIMINAL MATTER

- (a) If the complaint on its face is an allegation of a criminal nature consistent with the *Criminal Code* of Canada, the complainant shall be advised that if the complainant wishes to pursue any such allegation, the complainant must pursue it with the appropriate Police Service.

MUNICIPAL CONFLICT OF INTEREST ACT

- (b) If the complaint on its face is with respect to non-compliance with the *Municipal Conflict of Interest Act*, save an except sections 5, 5.1, and 5.2, the complainant shall be advised to review the matters with the complainant's own legal counsel.

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- (c) If the complaint is more appropriately addressed under the *Municipal Freedom of Information and Protection of Privacy Act*, the complainant shall be advised that the matter must be referred to the City Clerk for Access and Privacy Review.

OTHER POLICY APPLIES

- (d) If the complaint seems to fall under another policy, the complainant shall be advised to pursue the matter under such policy.

LACK OF JURISDICTION

- (e) If the complaint is, for any reason not within the jurisdiction of the Integrity Commissioner, the complainant shall be so advised and provided with any additional reasons and referrals as the Integrity Commissioner considers appropriate.

MATTER ALREADY PENDING

- (f) If the complaint is in relation to a matter which is subject to an outstanding complaint under another process such as a court proceeding, Human Rights complaint or similar process, the Integrity Commissioner may, in his/her sole discretion suspend any investigation pending the result of the other process.
- (g) If the Integrity Commissioner has already reviewed and rendered a decision or has investigated the matter subject of the complaint, the complainant will be advised that the matter cannot be further pursued through the Code complaint process

INDIVIDUAL NOT ACTING IN THE PUBLIC INTEREST

- (h) If the Integrity Commissioner is of the opinion that the individual making the complaint is not acting in the public interest, the complainant shall be so advised, and the Integrity Commissioner shall not conduct an investigation. In assessing whether a complainant is acting in the public interest, the Integrity Commissioner shall consider: (i) whether the complainant is advancing a concern, issue or complaint that involves an issue of importance to some or all citizens of Vaughan rather than a private interest which is mainly of interest to the affected parties; and (ii) whether the complaint is vexatious, frivolous, or unreasonably persistent, as set out in the City of Vaughan's Vexatious and Frivolous Complaints Policy. The Integrity Commissioner may also consider any other relevant facts in assessing whether a complainant is acting in the public interest.

Investigation

7. (i) Where the Integrity Commissioner determines that an investigation is warranted, he/she will proceed as follows, except where otherwise required by the *Public Inquiries Act*, 2009, S.O. 2009, c. 33, Sched. 6:
 - a. Give the complaint to the Member whose conduct is in question with a request that a written response to the allegation be provided within ten days; and
 - b. Give a copy of the response provided to the complainant with a request for a written reply within ten days.
- (ii) If necessary, after reviewing the submitted materials, the Integrity Commissioner may speak to anyone, access and examine any other documents or electronic materials and may enter any City work location relevant to the complaint for the purpose of investigation and potential resolution.
- (iii) The Integrity Commissioner may make interim reports to Council where necessary and as required to address any instances of interference, obstruction, delay or retaliation encountered during the investigation.
- (iv) If the Integrity Commissioner is of the opinion that the referral of a matter to him/her is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an investigation, the Integrity Commissioner shall not conduct an investigation, and where this becomes apparent in the course of an investigation, terminate the investigation.

Opportunities for Resolution

8. Following receipt and review of a formal complaint, or at any time during the investigation, where the Integrity Commissioner believes that an opportunity to resolve the matter may be successfully pursued without a formal investigation, and both the complainant and the Member agree, efforts may be pursued to achieve an informal resolution.

No Complaint Prior to Election

9. (i) Notwithstanding any other provisions of this Protocol, no complaint may be referred to the Integrity Commissioner, or forwarded by the Clerk for review and/or investigation between the regularly scheduled nomination day and voting day in any year in which a regular municipal election will be held.
- (ii) If the Commissioner has not completed an inquiry before nomination day for a regular election the Commissioner shall terminate the inquiry on nomination day.
- (iii) If an inquiry is terminated in accordance with section 12(ii), the Commissioner shall not commence another inquiry in respect of the matter unless, within six weeks after voting day in a regular election the person who made the application or the Member or former Member whose conduct is concerned applies in writing to the Commissioner for the inquiry to be carried out.
- (iv) Where an inquiry has been terminated, and the complainant or former Member has requested the inquiry be carried out, the Integrity Commissioner shall be permitted to use any information and evidence obtained prior to the termination. If no request is made to carry out the inquiry, no review or investigation shall be made.

Reporting on Code of Conduct Investigations

10. (i) The Integrity Commissioner shall report to the complainant and the Member generally no later than 90 days after the receipt of the Complaint Form/Affidavit of the complaint. If the investigation process takes more than 90 days, the Integrity Commissioner shall provide an interim report and must advise the parties the date the report will be available.
- (ii) Where the complaint is sustained in whole or in part, the Integrity Commissioner shall report to Council outlining the findings, the terms of any settlement, or recommended corrective action. Where the complaint is not sustained, the Integrity Commissioner shall report to Council the result of the investigation.
11. (i) Where the Integrity Commissioner reports to Council that in her or his opinion, there has been a violation of the Code of Conduct, the municipality may impose penalties and remedial actions in accordance with the *Municipal Act* and the Code of Conduct. The Integrity Commissioner shall not issue a report finding a violation of the Code of Conduct on the part of any respondent unless the respondent has had notice of the basis for the proposed finding and any recommended sanction or remedial action, and an opportunity either in person or in writing to comment on the proposed findings.
- (ii) If the Integrity Commissioner determines that there has been no contravention of the Code of Conduct or that a contravention occurred although the Member took all reasonable measures to prevent it, or that a contravention occurred that was trivial or committed through inadvertence or an error of judgement made in good faith, the Integrity Commissioner may so state in the report and may make appropriate recommendations pursuant to the *Municipal Act* and the Code of Conduct.
- (iii) The Integrity Commissioner shall give a copy of the report to the complainant and the Member whose conduct is concerned.
- (iv) Upon receipt of a report, the Clerk shall process the report for the next meeting of Council's Committee of the Whole.

Reporting on MCIA Investigations

12. (i) The Integrity Commissioner shall complete his/her investigation into alleged contraventions of sections 5, 5.1, or 5.2 of the MCIA within 180 days after the receipt of the Complaint Form/Affidavit. However, this section does not apply if the investigation is terminated in accordance with section 223.4.1(12) of the *Municipal Act*.
- (ii) If, upon completion of the investigation, the Integrity Commissioner determines that on a balance of probabilities there has been a violation of the MCIA, or is otherwise of the opinion that it is in the City's interest for a judge to determine if there has been a violation of the MCIA, the Integrity Commissioner may apply to a judge for such a determination. For greater certainty, nothing in this Protocol shall prevent a complainant from bringing their own application to a judge for a determination of whether there has been a violation of sections 5, 5.1, or 5.2 of the MCIA.
- (iii) Upon completion of the investigation, the Integrity Commissioner shall advise the complainant whether the Commissioner will be making an application to a judge for a determination if there has been a violation of the MCIA. The Integrity Commissioner shall publish written reasons for his/her decision within 90 days of such decision. The Integrity Commissioner shall periodically report to Council on the outcome of his/her investigations of alleged MCIA contraventions.

No Reports Prior to Election

13. Notwithstanding any other provisions of this Protocol, between nomination day and voting day for a regular municipal election, the Integrity Commissioner shall not make any report to Council or to any other person about whether a Member has contravened the Code of Conduct, including sections 5, 5.1, or 5.2 of the MCIA in the case of Council Members.

Duty of Council

14. Council shall consider and respond to the report within 45 days after the day the report is presented to it (this timeline shall be extended as necessary in the case of summer hiatus and festive closure).

Public Disclosure

15. (i) The Integrity Commissioner and every person acting under his or her jurisdiction shall preserve confidentiality where appropriate and where this does not interfere with the course of any investigation, except as required by law and as required by this complaint protocol.

(ii) At the time of the integrity Commissioner's report to Council, and as between the parties, the identity of the Respondent shall not be treated as confidential information.

(iii) All reports from the Integrity Commissioner to Council will be made available to the public.

Please see Complaint Form/Affidavit below.

Please note that signing a false affidavit may expose you to prosecution under Section 131 and 132 or 134 of the *Criminal Code*, R.S.C.1985,c.C-46, and also to civil liability for defamation.

Page __ of __

Complaint Form/Affidavit

AFFIDAVIT OF

_____[full name]
I, _____[full name], of the [City, Town, etc.] of _____
_____[municipality of residence]
in the Province of Ontario.

MAKE OATH AND SAY [or AFFIRM]:

1. I have personal knowledge of the facts as set out in this affidavit, because

_____[insert reasons e.g. I Work for...I attended the
meeting at which....etc.]

2. I have reasonable and probable grounds to believe that a Member of Vaughan City Council, or a Member of a Vaughan local board, as set out in the *Code of Ethical Conduct for Members of Council* (the "Code of Conduct")

_____[specify
name of member], has contravened section(s) _____[specify section(s)] of the
Code of Conduct or sections 5, 5.1, or 5.2 of the *Municipal Conflict of Interest Act* in the case of Council
Members. The particulars of which are as follows: [Set out the statements of fact in consecutively
numbered paragraphs in the space below, with each paragraph being confined as far as possible to a
particular statement of fact. If you require more space, please use the attached Schedule A form and
check the appropriate box below. If you wish to include exhibits to support this complaint, please refer to
the exhibits as Exhibit A, B, etc. and attach them to this affidavit. If you are submitting a complaint in
respect of sections 5, 5.1, or 5.2 of the *Municipal Conflict of Interest Act*, please be aware that your
affidavit must include a statutory declaration in accordance with section 223.4.1(6) of the *Municipal Act*]

Please see attached Schedule A _____ (check if applicable)

1. This affidavit is made for the purpose of requesting that this matter be reviewed and for no other purpose.

SWORN [or AFFIRMED] before me at
the [City, Town, etc. of _____]
_____))
_____ in the Province of Ontario on _____)
_____))
_____ [date] _____)

[Signature of commissioner]

A Commissioner for taking affidavits, etc. _____)

Schedule A
(Additional Information)

To the affidavit required under subsection 5 of The Formal Complaint Procedure
[If more than one page is required, please photocopy this blank page and mark each additional page as 2
of 2, 2 of 3, etc. at the top right corner.]

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

This Schedule A referred to in the affidavit of _____ [full name]
Sworn [or Affirmed] before me on this _____ day
of _____, _____.

A Commissioner for taking affidavits, etc.

THE CITY OF VAUGHAN

BY-LAW

BY-LAW NUMBER XX-2020

A By-law to provide for the indemnity and defence of members of council, members of local boards, and employees of the Corporation against loss or liability incurred while acting on behalf of the Corporation, and to repeal By-law 91-2011, as amended.

WHEREAS Section 8 of the *Municipal Act, 2001*, S.O. 2001, c. 25 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 279(1) of the *Municipal Act, 2001*, as amended, provides that a municipality may, subject to certain limitations, act as an insurer and protect present and former members of council, local boards, employees, and officers from risk that may involve pecuniary loss or liability on the part of those individuals;

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 283(2) of the *Municipal Act, 2001* as amended, provides that a municipality may only pay the expenses of members of council, local boards, employees, and officers if the expenses are of those persons in their capacity as members, officers or employees, among other considerations;

AND WHEREAS Section 223.3(6) of the *Municipal Act, 2001*, as amended, provides that a municipality shall indemnify and save harmless the Integrity 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 the Integrity Commissioner is authorized under sections 223.4 and 223.4.1 of the *Municipal Act, 2001* to conduct inquiries as it relates to the Code of Ethical Conduct for Members of Council and local boards and the *Municipal Conflict of Interest Act*;

AND WHEREAS Section 8 of the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.

ATTACHMENT 3

50, as amended, allows an elector, an Integrity Commissioner of a municipality or a person demonstrably acting in the public interest to apply to a judge for a determination of the question of whether a member, or former member, has contravened section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*.

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

NOW THEREFORE the Council of The Corporation of the City of Vaughan enacts as follows:

Section 1- Definitions and Interpretation

- (1) In this By-law, unless a contrary intention appears,
 - (a) "Advance Payment" means payment by the Corporation of actual and reasonable legal fees incurred by an Eligible Person in the course of defending the Legal Proceeding, in advance of a final disposition of the Legal Proceeding;
 - (b) "Code" means the Code of Ethical Conduct for Members of Council and Local Boards, as amended;
 - (c) "Code Complaint" means a formal or informal complaint made to the Integrity Commissioner, and includes an inquiry under section 223.4 or 223.4.1 of the *Municipal Act, 2001*.
 - (d) "Corporation" means The Corporation of the City of Vaughan;
 - (e) "City Solicitor" means the City Solicitor of the Corporation, or designate;
 - (f) "City Manager" means the City Manager of the Corporation, or designate;
 - (g) "Eligible Person" means any of the following persons of the Corporation:
 - (i) a current or former member of Council;
 - (ii) a current or former member of a local board;
 - (iii) the current or former Integrity Commissioner, including any person acting under the instructions of the Integrity Commissioner;
 - (iv) the current or former Lobbyist Registrar;
 - (v) current or former officers and employees.

ATTACHMENT 3

(h) "Legal Proceeding" means:

- (i) a civil proceeding or administrative action, including but not limited to an action, application, motion, hearing, trial; or
- (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; or
- (iii) a proceeding brought under section 8 of the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M. 50, as amended (the "MCIA"); or
- (iv) a Code Complaint; or,
- (v) 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;
- (iii) any proceeding where the Corporation's and the Eligible Person's interests conflict; or
- (iv) any proceeding under the *Municipal Elections Act, 1996*, S.O. 1996, c. 32, Sched., as amended.

Section 2 - Indemnification of Eligible Persons

- (1) Subject to the provisions of this By-law, the Corporation shall indemnify an Eligible Person, and his or her heirs and legal representatives, in respect of any Legal Proceeding arising out of acts or omissions done or made by the Eligible Person:
 - (a) in his or her capacity as an Eligible Person, including those acts or omissions arising from the performance of any statutory duty imposed by any general or special Act; and
 - (b) acting in good faith and based on the reasonable belief that such acts or omissions were lawful and in the best interests of the Corporation or local board as applicable.
- (2) The Corporation shall reimburse members of Council and local boards 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.

ATTACHMENT 3

- (3) If an Eligible Person qualifies for indemnification in a Legal Proceeding under this By-law, the City will assume carriage of the Legal Proceeding on behalf of the Eligible Person, unless the City Solicitor determines that the City cannot represent the Eligible Person. For greater certainty, the City shall not assume carriage of a Legal Proceeding referred to in 1(h)(iii) or 1(h)(iv) above.
- (4) Where the City Solicitor determines that the City cannot represent the Eligible Person, the City Solicitor may request that the Eligible Person retain independent legal counsel and be indemnified for legal fees in accordance with this By-law.
- (5) The City Solicitor shall have the right to request that an Eligible Person obtain their own legal counsel at any time during the course of the Legal Proceeding if the City Solicitor is of the opinion that it is no longer appropriate for the City to defend and represent, or to continue to defend and represent the Eligible Person.
- (6) Where the City assumes the defence of a Legal Proceeding on behalf of an Eligible Person, the Eligible Person shall co-operate with the City and assist the City in the defence of the Legal Proceeding, as required by the City. This includes providing timely and fulsome responses to requests for information and attending the proceedings and meetings, as required.
- (7) Where an Eligible Person fails to co-operate and assist the City in accordance with section 2(6), the City Solicitor may determine that it would be inappropriate for the City to defend and represent, or continue to defend and represent, the Eligible Person, and the Eligible Person will no longer qualify for indemnification in respect of the Legal Proceeding.
- (8) If the City defends and represents the Eligible Person in a Legal Proceeding, the City shall not be responsible for any legal or other costs incurred by the Eligible Person unless such expenses have been pre-approved by the City Solicitor.

Section 3 - Process to Request Indemnification

- (1) If an Eligible Person is required to obtain their own legal representation pursuant to section 2, or if the Eligible Person is seeking to be reimbursed for legal expenses pursuant to section 2(2), he or she may make a written request for indemnification,
 - (a) to the City Solicitor; or,
 - (b) where the City Solicitor is the person seeking indemnification, to the City Manager; or
 - (c) where both the City Manager and the City Solicitor are named as parties in the legal proceeding giving rise to the request, to Council.
- (2) Upon receipt of a request for indemnification, the City Solicitor shall provide a written response within 10 business days of delivery of the request.

Advance Payment

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- (3) A written request referred to in section 3(1) may include a request for Advance Payment of actual and reasonable legal fees. In the absence of such a request for Advance Payment, payment of legal fees shall be made after a final disposition of the Legal Proceeding or the completion of the matter referred to in section 2(2) as appropriate (where a final disposition includes termination or settlement of a Legal Proceeding).
- (4) Any Advance Payment made by the Corporation is subject to:
 - (a) A cap of \$25,000 if the Advance Payment is not assumed or paid for by the Corporation's insurer;
 - (b) the requirement to reimburse the City, as set out in sections 5(2), 5(3), and 5(4); and
 - (c) the condition that, if repayment of legal fees is required under this Bylaw, that repayment shall be made within 90 days of the final disposition of the Legal Proceeding.
- (5) If an Eligible Person wishes to seek Advance Payment for an amount exceeding \$25,000 as provided in section 3(4)(a), the City Solicitor shall bring a report to Council for direction.
- (6) If at any point the Eligible Person wishes to deviate from the repayment obligations to repay the City within 90 days, the Eligible Person shall make a request to the City Solicitor who shall bring the matter to Council to seek direction and approval.

Approval of Lawyer

- (7) A written request for indemnification referred to in Section 3.0(1) may include a request for approval of a lawyer chosen by the Eligible Person, or may request that the City Solicitor suggest three lawyers.
- (8) Where a request for indemnification seeks approval of a lawyer chosen by the Eligible Person, the response by the City Solicitor shall also:
 - (a) approve the request to retain the lawyer chosen by the Eligible Person; or
 - (b) deny the request and suggest three lawyers of the Corporation's choice who could represent the Eligible Person in the Legal Proceeding at issue.
- (9) Where the City Solicitor has suggested three lawyers, the Eligible Person shall select from the list and shall notify the City Solicitor of the selection, within 5 calendar days of receipt.

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Section 4 - Eligible Persons Served with Process

- (1) Subject to section 4(2), where an Eligible Person is served with any document which initiates a Legal Proceeding, he or she shall forthwith deliver the document to the City Solicitor.
- (2) Where a Member of Council or local board receives a Code Complaint the Member of Council or local board may request permission from the Integrity Commissioner to disclose the existence and general nature of the complaint to the City Solicitor in support of their request for indemnification under this By-law.

Section 5 - Manner and Extent of Indemnification

- (1) The Corporation shall provide indemnification to an Eligible Person as follows under this By-law:
 - (a) Assume carriage of the defence on behalf of the Eligible Person or pay the actual and reasonable expenses of defending such Eligible Person in the Legal Proceeding; and/or,
 - (b) pay any damages or costs, including any monetary penalty, or award against such Eligible Person as a result of a Legal Proceeding; and/or,
 - (c) pay, either by direct payment or by reimbursement, any expenses reasonably incurred by the Eligible Person as a result of a Legal Proceeding or a request for payment of fees under section 3; and/or,
 - (d) pay any sum required in connection with the settlement of a Legal Proceeding, provided that the City Solicitor approves the terms of the settlement;

to the extent that such costs, damages, expenses, monetary penalty, other award or other sums related to the Legal Proceeding are not assumed, paid or reimbursed under any provision of the Corporation's insurance for the benefit and protection of such person against any liability incurred by him or her.

- (2) If it is determined in a Legal Proceeding that an Eligible Person's acts or omissions giving rise to the Legal Proceeding did not:
 - (a) arise out of acts or omissions done or made by the Eligible Person in his or her capacity as an Eligible Person; or
 - (b) were not done or not made in good faith; or
 - (c) were not based on the reasonable belief that such acts or omissions were lawful and in the best interests of the Corporation,

the Eligible Person shall not be eligible for indemnification under this By-law, and shall be required to reimburse the Corporation for all funds paid on the Eligible

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Person's behalf pursuant to this By-law within 90 days of such a determination.

- (3) An Eligible Person is not entitled to indemnification under this By-law and must reimburse the Corporation for any legal fees paid by the Corporation in respect of a Legal Proceeding if:
 - (a) the Eligible Person is convicted of an offence in the case of a Legal Proceeding under section 1(h)(ii); or
 - (b) In the case of a proceeding brought under section 8 of the *MCIA*, the member of Council or local board has been found to have contravened section 5, 5.1 or 5.2 of the *MCIA*; or
 - (c) In the case of a Code Complaint, where a contravention has been found, unless:
 - (i) the contravention has occurred by reason of inadvertence; or
 - (ii) the contravention has occurred by reason of a bona fide error in judgment; or
 - (iii) the referral of the matter is frivolous, vexatious or not made in good faith and the Integrity Commissioner dismisses the complaint without an investigation, or determines that there are no grounds or insufficient grounds for an investigation; or
 - (iv) where it becomes apparent in the course of an investigation that there are insufficient grounds to continue the investigation, the Integrity Commissioner terminates the investigation and dismisses the complaint.
- (4) If an Eligible Person receives a payment through a costs award or settlement in respect of a Legal Proceeding for which the City has indemnified the Eligible Person, such amounts must be paid to the City upon receipt by the Eligible Person.
- (5) The City Solicitor, acting reasonably, may request or impose one or all of the following:
 - (a) Budgets for anticipated legal expenses; and/or
 - (b) Status Updates in respect of the progress of the proceedings; and/or
 - (c) A limit on quantum of indemnification.
- (6) If there is a dispute between the City Solicitor, acting reasonably, and the Eligible Person with respect to the account for legal expense payments, the City Solicitor may require that such account for reimbursement be assessed by a Court Assessment Officer prior to payment by the Corporation.
- (7) The City Solicitor shall be provided with copies of the statements of account on a monthly basis, which shall outline all fees and disbursements, and shall be

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provided with information relating to these accounts, as may be requested from time to time, in order to determine reasonableness of the account before any payment would be made.

Section 6 - Failure to Comply with By-law / Exclusions

- (1) If an Eligible Person who has been approved to receive indemnification fails or refuses to comply with any of the provisions of this By-law, or in the event of one or more of the following:
 - (a) the Eligible Person or his or her lawyer takes a step which is unnecessary, or otherwise prejudicial to the conduct of the Legal Proceeding, as determined by the City Solicitor; or
 - (b) the quantum of indemnification exceeds the Budget referred to in section 5(5); or
 - (c) the maximum amount of indemnification approved has been paid, or
 - (d) the Eligible Person commences a counterclaim, crossclaim, third party claim, application for judicial review, or other proceeding related to the Legal Proceeding for which reimbursement is sought, without first obtaining prior approval from the City Solicitor,

then the Corporation shall not be liable to assume or pay any of the costs, damages, expenses, monetary penalty or other sums as set out in this By-law.

Section 7 - Appeal

- (1) Notwithstanding other provisions of this Bylaw, where a person seeks to appeal or bring an application for judicial review with respect to a judgment or decision in a Legal Proceeding covered by this By-law, the Corporation shall have the sole discretion to determine whether the expenses of the appeal or judicial review will be covered by this By-law. If an individual pursues an appeal or application for judicial review without representation by the Corporation and is successful in that appeal, the Corporation shall have sole discretion to determine whether the Eligible Person shall be indemnified for his or her legal expenses.

Section 8 - Executive Acts Authorized

- (1) The City Solicitor is authorized to execute any necessary documents on behalf of the Corporation in order to give effect to this By-law according to its true intent and meaning.
- (2) Nothing in this By-law shall prevent the City Solicitor from bringing a report to Council to seek direction on any matter related to indemnification.

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Section 9 - Repeal

- (1) By-law 91-2011, as amended, is hereby repealed.

Section 10 - Force and Effect

- (1) This By-law comes into force on the day it is passed. For greater certainty:
- (a) For ongoing Legal Proceedings where the Corporation has assumed the defence of the matter on behalf of an Eligible Person, the City will continue to defend the Legal Proceeding on the Eligible Person's behalf, subject to the terms of this By-law.
 - (b) For all Legal Proceedings where indemnification was authorized under Bylaw 91-2011, as amended, those existing indemnification approvals will continue under this By-law, and be subject to the terms of this By-law.
 - (c) For ongoing Legal Proceedings in which an Eligible Person was required to retain their own counsel, including Code Complaints filed with the Integrity Commissioner prior to the enactment of this By-law where a final disposition has not been rendered, the provision of this By-law will apply.

Enacted by City of Vaughan Council this 11th day of March, 2020.

Hon. Maurizio Bevilacqua, Mayor

Todd Coles, City Clerk

Authorized by Item No. 10 of
Report No. 11 of the Committee
of the Whole
Adopted by Vaughan City
Council on March 9, 2020

Subject: [External] Fw: Indemnity By-law Email
Attachments: Indemnification By-law Comments (03.07.20) (11).docx-1.docx

c.25
Communication
COUNCIL: Mar 11/20
CW Rpt. No. 11 Item 14

From: MARIO FERRI <mario.ferri@rogers.com>

Sent: Sunday, March 08, 2020 10:26 AM

To: Bevilacqua, Maurizio <Maurizio.Bevilacqua@vaughan.ca>; Rosati, Gino <Gino.Rosati@vaughan.ca>; Jackson, Linda <Linda.Jackson@vaughan.ca>; lafrate, Marilyn <Marilyn.lafrate@vaughan.ca>; Carella, Tony <Tony.Carella@vaughan.ca>; DeFrancesca, Rosanna <Rosanna.DeFrancesca@vaughan.ca>; Racco, Sandra <Sandra.Racco@vaughan.ca>; Shefman, Alan <Alan.Shefman@vaughan.ca>; Law, Wendy <Wendy.Law@vaughan.ca>; Reali, Mary <Mary.Reali@vaughan.ca>; Craig, Suzanne <Suzanne.Craig@vaughan.ca>

Subject: [External] Fw: Indemnity By-law Email

Hi all:

Firstly, I would like to thank the City Solicitor and her team for the hard work put into revising the Indemnity By-law. I appreciate that recommendations of this nature are never easy and that much time and effort went into drafting the by-law now before Council for consideration.

Through this communication, I am suggesting several revisions to the by-law which result from a difference of opinion on eight principles that I believe underly the draft by-law (I apologize in advance if I have misstated those principles). Below, I have set out the eight principles that I understand to have been the foundation of the proposed by-law and I have set out my position and/or area(s) of disagreement respecting those principles.

In proposing the revisions in the attached, my intention is to ensure that eligible persons receive the coverage they require to defend themselves to the full extent of the law, within the bounds of the law, and in accordance with the principles of natural justice and procedural fairness, while at the same time, ensuring that the City's financial interests are protected.

I provide the below and the proposed revisions set out in the attached chart with the utmost respect for the work undertaken by the City Solicitor and her team.

- *Principle 1: That the City Solicitor should have the authority to limit the costs associated with mounting a defense on behalf of an eligible person*
 - In my opinion, all eligible persons should have the right to defend themselves to the full extent of the law, so long as the costs associated with the defence are appropriate as determined by an independent person with requisite knowledge to make such a determination.
 - Put another way, it is my belief that the City Solicitor should not have the burden or right to limit the defense that an eligible person can mount by restricting their access to cost recovery; in my opinion, limiting the defence of an eligible person in this manner may run counter to natural justice and procedural fairness.
 - The proposed \$25,000.00 cap on legal fees (subject to council approval for more) is unduly low.
 - In saying this, I must note that I believe that it is of the utmost importance to protect the Corporation from runaway legal fees. To address this, I have proposed that if the City Solicitor believes that the fees associated with a legal proceeding are not

reasonable, he/she can refer any invoice received to a Court Assessment Officer, and that if the City Solicitor takes advantage of this option, the Corporation should only be required to pay those fees which are deemed reasonable by a Court Assessment Officer. In Ontario, all persons may apply to the Court to have legal fees assessed by a Court Assessment Officer. This options ensures that an independent person with requisite knowledge determines whether the fees are reasonable or not – should the City Solicitor determine that this is necessary.

- To implement these principles, I am proposing revisions to the following sections: 3(4)(a) and 3(5), 5(5)(a), 5(5)(c), 5(6), 6(1)(a), 6(1)(b), and 6(1)(c).
- *Principle 2: That the City Solicitor should have the authority to choose the lawyer selected by the eligible person and that the default should be that the City Solicitor will take over the defense*
- In my opinion, all eligible persons should have the right to choose the lawyer that will represent them – a lawyer which in their opinion, has the requisite skill, knowledge, and experience to defend them.
- I understand that the right to be represented by the lawyer of your choice is a fundamental tenet of natural justice and procedural fairness.
- I also believe that the City Solicitor (and the City's legal department) should not have the burden of defending the eligible person as this may unduly bog down the legal department which should be focused on defending the interests of the Corporation – not the interests of an eligible person.
- To implement these principles, I am proposing revisions to the following sections: 2(3)(8), 3(7) – 3(9), and 5(1)(a).
- *Principle 3: That the City Solicitor should have the authority to determine whether the act or omission which is the subject of the proceeding was done in good faith prior to the conclusion of the legal proceeding*
- In my opinion, it is not appropriate to put the City Solicitor in the position of having to stand in judgement of the eligible person to determine whether an eligible person, including Members of Council, acted in good faith.
- In my opinion, it runs counter to natural justice and procedural fairness for the City Solicitor to make this decision without the benefit of evidence and submissions by the eligible person. I also believe that requiring the City Solicitor to have to have to receive such submissions and render a decision will unduly burden the City Solicitor and result in unnecessary costs to the Corporation.

- The underlying premise in our justice system is that all are innocent until proven guilty – requiring the City Solicitor to make this determination before the legal proceeding is concluded is unfair both to City Solicitor and the eligible person, and is not in-keeping with the principle that everyone is innocent until proven otherwise.
- Rather, eligible persons should be presumed innocent until proven otherwise and coverage should be provided based on an objective set of criteria – being that the person requesting coverage is an eligible person and the cost recovery must be in relation to a legal proceeding as those terms are defined in the By-law.
- To implement these principles, I am proposing revisions to the following sections: 2(1) and 3(2).
- *Principle 4: That the City Solicitor should have the authority to determine all of the legal steps taken by the eligible person*
- In my opinion, all eligible persons should have the right to defend themselves to the full extent of the law based on the legal advice that they receive from their individual lawyer. Put in another way, the City Solicitor should not be dictating the defence of eligible persons – the eligible person should be dictating their own defence taking into the consideration the advice they receive.
- Further, providing the City solicitor with notice of every legal step taken in order to receive the City Solicitors consent (and therefore cost coverage) may breach solicitor client privilege and is not appropriate. The defense of the eligible person must be governed by the eligible person and their lawyer only, not the City Solicitor, whose interest (the best outcome for the Corporation) may be at odds with the eligible persons best interest. The City solicitor's duty is to the Corporation, not eligible members. It is unfair an improper to require the City Solicitor to serve two masters.
- To implement these principles, I am proposing revisions to the following sections: 6(1)(d), 7, and 8.
- *Principle 5: That the by-law should not cover the eligible person where the interests of the corporation and the eligible person are not perfectly aligned or where the Corporation commenced the proceeding*
- In my opinion, the eligible person should be covered whether or not the interest of the Corporation and the interest of the eligible person are aligned and whether or not the Corporation commenced the proceeding.
- For example, in the Miele case, the City's interest(s) and the interest(s) of many members of council are not perfectly aligned.
- Also, in the case of a conflict of interest complaint, the law now dictates that an application against a member of council may be initiated by the Corporation through the integrity commissioner. This should not stop coverage.

- To implement these principles, I am proposing revisions to the following section: 1(h).

- *Principle 6: That because by-laws of this nature cannot be retroactive, the by-law should only cover those matters where a final decision is not yet issued*

- In my opinion, the by-law can and should cover all matters where a final decision is yet issued and/or where the invoices for legal services remain outstanding.

- To implement these principles, I am proposing revisions to the following section: 10(c).

- *Principle 7: That only the City Solicitor shall have the right to bring matters related to the By-law to Council*

- In my opinion, Members of Council should also be able to bring matters before Council.

- To implement these principles, I am proposing revisions to the following sections: 8(2).

- *Principle 8: That coverage should only be provided if the act or omission which is the subject of the proceeding was done through inadvertence or in good faith*

- In my opinion, this requires a subjective analysis which will complicate when the eligible person can/should be covered.

- To implement these principles, I am proposing revisions to the following sections: 3(4)(b), 5(2), and 5(3)(c).

Based on my difference(s) of opinion on the eight principles as set out above, I have suggested several revisions which are set out in detail in the attached word document which includes a chart that sets out: (i) the section reference, (ii) the suggested revisions to the by-law, and (iii) the detailed reasons for each proposed revisions.

I kindly request that my colleagues on Council and the City Solicitor review the attached document and consider the proposed revisions. I have invested a considerable amount of time considering the draft by-law and proposing the revisions set out in the attached document and I trust that my thoughts on this issue will receive fair and due consideration.

Thank you all.

Respectfully

Mario Ferri

Proposed Revisions:

Subsection	Revision	Reason
1(h) – definition of ‘legal proceeding’	Remove: “But excludes” section in its entirety.	<p>The current section excludes the following from coverage:</p> <ul style="list-style-type: none"> (i) any proceeding commenced by the Corporation; (ii) any proceeding in which the Corporation is a party adverse in interest; (iii) any proceeding where the Corporation’s and the Eligible Person’s interests conflict; or (iv) any proceeding under the <i>Municipal Elections Act</i> <ul style="list-style-type: none"> • There is no legal requirement to exclude any of the foregoing from coverage; <p>UNREASONABLE AND ARBITRARY LIMITATION OF COVERAGE:</p> <ul style="list-style-type: none"> • In my view, the proposed limitation of coverage is well beyond what is reasonable or acceptable. The purpose of the indemnification provisions of the Municipal Act is to protect eligible persons against loss due to action or inaction in carrying out their role in their capacity as an Eligible Person. This protection is not limited to only where their interests and the City’s interests are aligned, as you will see below. Rather, this section has the effect of deeming otherwise eligible persons ineligible based on a preconceived notion of guilt or wrongdoing which I cannot support; • With respect to (i) above, I have been given to understand that this clause would have the effect of nullifying coverage for many Conflict of Interest proceedings. Respecting Conflict of Interest proceedings, the City through its integrity commissioner is now the one who may make an application against an employee – see section 223.4.1 (15) of the Municipal Act. Under this provision of the by-law, if the integrity commissioner started an application, it is doubtful that the employee would be covered, even if they are found not to have contravened, because this would be a proceeding commenced by the City. I believe that eligible persons must be covered no matter who commences the proceedings, to do otherwise would deem the eligible person to be in the wrong no matter the outcome of the proceeding – this is not just right. It would also stop councillors from being covered where the City

		<p>commences a proceeding and the party who the City commenced the proceeding against, makes a third-party claim against an eligible person. My view is, we must provide coverage, no matter who commences the proceeding. This arbitrary limitation on coverage is unjustified.</p> <ul style="list-style-type: none"> • With respect to (ii) and (iii) above, these clauses may have the effect of nullifying coverage for many future proceedings. A good example is the current Miele claim against the City and many Councillors where the interests of the councillors in the action may not align with the City. This arbitrary limitation on coverage is unjustified. • With respect to (iv) above, this section should only apply where the proceeding is commenced against the otherwise eligible person when the eligible person is not taking an action in their capacity as an employee or representative of the City. In which case, coverage should not be provided as the eligible person is not acting within their duties as an employee or representative of the City. This exclusion is not required as case law already makes this rule applicable <u>and section 2(1) implements this rule as the action complained of must be taken in his/her capacity as an Eligible Person, which you are not doing if the action was taken as a candidate rather than a councillor for example.</u> Alternatively, this section could be saved so long as subsections (i) – (iii) are deleted in their entirety.
Section 2(1)	<p>Delete the following:</p> <p>(b) acting in good faith and based on the reasonable belief that such acts or omissions were lawful and in the best interests of the Corporation or local board as applicable.</p>	<p>BY-LAWS MUST BE <u>OBJECTIVE</u> NOT SUBJECTIVE:</p> <p>It is my understanding that, by-laws of this type are not permitted to be subjective in Ontario – whereas this section requires a subjective analysis of what was in the mind of the eligible person when the act complained of occurred.</p> <p>This by-law should not put any decision maker, and especially not an employee of the Corporation, in the position that they need to read into the mind of the eligible person. Should the City solicitor be standing in judgement of the eligible person? Is that fair to the City Solicitor?</p> <p>In this case, coverage is only provided if a decision maker makes the <u>subjective</u> determination that the eligible person thought that the act complained of was right without any</p>

		<p>facts or submissions by the eligible person – whereas, a decision of this type is required to be objective.</p> <p>DENIAL OF NATURAL JUSTICE AND PROCEDURAL FAIRNESS:</p> <p>If this section is to remain, natural justice and procedural fairness would require that the eligible person must be given the opportunity to make submissions on this issue – <u>this will complicate this process unnecessarily and bog down staff resources.</u></p> <p>IMPACT ON CITY RESOURCES:</p> <p>As it is proposed, this would require the City Solicitor to decide whether an action taken was in good faith. This would put him/her in a very precarious situation of judging the veracity of eligible persons intent – including the intent of members of council (who have power over her/his position). This is not a fair position to put the City Solicitor in. In addition, it would require the City Solicitor to review facts, hear submissions on the topic, and render a decision – this will have an impact on City resources which is not required or preferred.</p> <p>LIMITATION ONLY REQUIRED FOR COVERAGE OF INTEGRITY COMMISSIONER:</p> <p>The current by-law limits coverage to acts or omissions 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. This limitation is only required to apply to the Integrity Commissioner and those officers who act under its instruction(s) pursuant to section 223.6(6) of the Municipal Act. However, in the current by-law, this section applies the limitation to all employees in all legal proceedings even though such limitation is not required.</p>
Section 2(3) – (8)	Delete in its entirety	<p>This section means that an eligible person must be represented by the City unless the City Solicitor thinks the City cannot represent the eligible person.</p> <p>DENIAL OF NATURAL JUSTICE AND PROCEDURAL FAIRNESS:</p> <p>This denies the eligible person their fundamental right embedded in the law of procedural fairness and natural justice to choose their own lawyer. It will also bog down the resources of the City. Eligible persons must, in my opinion, be given the right to select the representation they believe</p>

		<p>best suits them and who has their best interests at heart.</p> <p>What if the eligible person is not happy with the representation or attention they are receiving from the City Solicitor? – In accordance with this section, they would be forced to continue to use the City Solicitor in their defence, or face not having coverage, this is unacceptable.</p> <p>INHERENT CONFLICT OF INTEREST AND IMPROPER ROLE OF THE CITY SOLICITOR:</p> <p>It is generally accepted that the City Solicitor must, in accordance with his/her rules of professional conduct, take in the interests of the <u>Corporation</u> over any eligible person. Therefore, in a vast majority of cases, there will be an inherent conflict of interest if the City Solicitor is charged with defending an eligible person in a proceeding because the City Solicitor's <u>only</u> obligation is to the corporation.</p> <p>A good example is the current Miele claim where the City and many councillor's interests are not aligned.</p> <p>COMPLICATION BECAUSE COUNCIL WILL DIRECT PROCEEDINGS:</p> <p>Since the City Solicitor must act in accordance with direction from council, Council will be conducting the proceeding.</p> <p>IMPACT ON CITY RESOURCES:</p> <p>This will also bog down resources in the City's legal department for individual eligible persons whereas the focus of the City's legal department must be in the furtherance of the <u>City's</u> interests.</p> <p>REQUIRED SHARING OF INFORMATION:</p> <p>Pursuant to section 2(6) eligible persons are required to provide information to the City that they would otherwise only share with their personal representative. Eligible persons should not be required to share personal information with City staff in order to have coverage.</p>
Section 3(2)	<p>Revise section 3(2) as follows:</p> <p>Upon receipt of a request for indemnification, the City</p>	<p>BY-LAWS MUST BE <u>OBJECTIVE</u> NOT SUBJECTIVE:</p> <p>In my opinion, by-laws of this type cannot, and should not be subjective – and the current section requires a</p>

	<p>Solicitor shall provide a written response within 10 business days of delivery of the request.</p> <p><u>Coverage shall be provided if:</u></p> <p><u>(a) the requestor is an Eligible Person; and</u></p> <p><u>(b) the coverage requested is a proceeding.</u></p> <p><u>Otherwise, coverage shall be denied.</u></p>	<p>subjective analysis of what was in the mind of the eligible person when the act complained of occurred.</p> <p>BY-LAWS MUST BE CLEAR AND THE APPLICATION MUST BE REPEATABLE – THEREFORE CLEAR AND OBJECTIVE CRITERIA FOR COVERAGE MUST BE SET OUT:</p> <p>I believe that, Indemnification By-laws must have criteria and if met, coverage must be provided. In other words, anyone should be able to review the by-law and determine if they meet the pre-conditions for coverage. This is the case if the criteria to determine coverage is objective.</p> <p>My proposed revisions create an objective set of criteria that can be applied and will result in a repeatable outcome.</p>
<p>Sections 3(4)(a) and 3(5)</p>	<p>Delete in their entirety.</p>	<p>ARBITRARY CAP ON ONES RIGHT TO DEFEND THEMSELVES TO THE FULL EXTENT OF THE LAW:</p> <p>The proposed By-law caps the amount of indemnification to \$25,000.00. It seems to me that this is an arbitrary restriction on ones right to defend themselves, especially where their interests are not aligned with the City's (for instance in the Miele Claim) to the full extent of the law in a proceeding and I understand that it is not required by law. Ones ability to defend themselves to the full extent of the law should not be determined by the City Solicitor or Council.</p> <p>For example, in Miele claim, damages can be substantial if allegations are found to be valid. What if the City chose to limit indemnification to a fraction of the amount needed to cover the cost damages? Should employees be put to this risk? Currently eligible persons could be liable for millions of dollars through no fault of their own.</p> <p>I agree that eligible persons should not be permitted to act unreasonably in their defence and therefore run up improper legal bills. I am given to understand that, this is best addressed through a referral of the bills to an independent person with the requisite qualifications/knowledge to determine if such legal expenses are appropriate. The courts in Ontario already have this function through a 'Court Assessment Officer'. This is a fair and independent way to ensure that eligible persons do not unduly overcharge the City and will effectively reign in legal expenses.</p>

		<p>Section 5(6) ensures the City only pays reasonable legal costs as may be assessed by a Court Assessment Officer and the City will only be responsible for the amount found to be reasonable by this independent person with requisite expertise. Section 5(7) requires monthly invoices so the City Solicitor can determine the appropriateness of the amounts and can refer to the court assessment officer where required. This provides adequate protection for the City from run away legal fees.</p> <p>Section 3(5) is not required if section 3(4)(b) is deleted and therefore, it should be removed if section 3(4)(b) is removed.</p>
Section 3(4)(b)	<p>Revise as follows:</p> <p>(b) the requirement to reimburse the City, as set out in sections 5(2), and 5(3), and 5(4);</p>	<p>As will be discussed below, it is my opinion that section 5(2) is not appropriate as for the reasons set out. <u>Therefore, reference to 5(4) should be deleted simply for to adjust for renumbering when section 5(2) is deleted.</u></p>
Sections 3(7) – 3(9)	Delete in its entirety.	<p>This section gives the City Solicitor the right to determine who the eligible person chooses to defend him/her or to provide him/her with legal advice.</p> <p>DENIAL OF NATURAL JUSTICE AND PROCEDURAL FAIRNESS:</p> <p>This denies the eligible person their fundamental right embedded in the law of procedural fairness and natural justice to choose their own lawyer. Eligible persons must, in my opinion, be given the right to select the representation they believe has the requisite skill and knowledge, best suites them, and who has their best interests at heart.</p>
Section 5(1)(a)	Delete in its entirety.	<p>This section states that the City will assume carriage of the defence of the eligible person in a proceeding. I object to this section for the same reasons I object to section 3(7) – 3(9).</p> <p>DENIAL OF NATURAL JUSTICE AND PROCEDURAL FAIRNESS:</p> <p>This denies the eligible person their fundamental right embedded in the law of procedural fairness and natural justice to choose their own lawyer. I believe that eligible persons must, be given the right to select the representation they believe best suits them and who has their best interests at heart.</p>
Section 5(2)	Delete in its entirety.	This section states expenses occurred in a Legal Proceeding

		<p>will not be covered if it is determined that the act or omission giving rise to the Legal Proceeding <u>did not</u> [sic]: (b) were not done or not made in good faith; or (c) were not based on the reasonable belief that such acts or omissions were lawful and in the best interests of the corporation.</p> <p>It is my understanding that in most cases a court in a proceeding will not make this determination. In such a case – who would make the determination? Will the city take part in the hearing to request a court make such determination even where it is not relevant to the proceedings? This section should be removed for vagueness, for the potential financial impact on the City, and for mere impracticality.</p> <p>It is my belief that legal expenses incurred must be covered so long as such coverage does not offend the law. There is no requirement at law to provide for this limitation.</p>
Section 5(3)(c)	Delete in its entirety.	<p>This section states expenses occurred in defence of a code complaint will not be covered if the IC finds a contravention unless it is determined that the violation: (i) occurred through inadvertence; (ii) occurred by reason of a bona fide error in judgement; (iii) the referral was frivolous or vexatious, or (iv) where the investigation is stopped and investigation is terminated.</p> <p>Firstly, subsections 5(2)(c)(iii) and 5(2)(c)(iv) seem to be in error as these are circumstances where, by their very nature, no contravention of the code can be found so they must be deleted for that reason.</p> <p>Respecting subsections 5(2)(c) generally, it is my opinion that legal expenses incurred in defence of a code investigation must be covered, so long as such coverage does not offend the law. There is no requirement at law to provide for this limitation.</p>
Sections 5(5)(a) and 5(5)(c)	Delete in its entirety.	<p>Current section allows City to set budgets capping legal costs.</p> <p>ARBITRARY CAP ON ONES RIGHT TO DEFEND THEMSELVES TO THE FULL EXTENT OF THE LAW:</p> <p>It seems to me that this is an arbitrary restriction on ones right to defend themselves, especially where their interests are not aligned with the City's (for instance in the Miele</p>

		<p>Claim) to the full extent of the law in a proceeding and is not required by law. One's ability to defend themselves to the full extent of the law should not be determined by the City Solicitor or Council. In this case, it is determined by the City Solicitor or Council because they have the right to deny financial coverage.</p> <p>For example, in the Miele claim, damages can be substantial if allegations are found to be valid. What if the City chose to limit indemnification to a fraction of the amount needed to cover the cost damages? Should employees be put to this risk? Currently eligible persons could be liable for millions of dollars through no fault of their own.</p> <p>I agree that eligible persons should not be permitted to act unreasonably in their defence and therefore run up improper legal bills. In my opinion, this is best addressed through a referral of the bills to an independent person to determine if such legal expenses are appropriate. I understand that the courts in Ontario already have this function through a 'court assessment officer'. This is a fair and independent way to ensure that eligible persons do not unduly overcharge the City and will effectively reign in legal expenses.</p> <p>Section 5(6) ensures the City only pays reasonable legal costs as may be assessed by a Court Assessment Officer and the City will only be responsible for the amount found to be reasonable by this independent person with requisite expertise. Section 5(7) requires monthly invoices so the City Solicitor can determine the appropriateness of the amounts and can refer to the court assessment officer where required. This provides adequate protection for the City from runaway legal fees.</p>
Section 5(6)	<p>Add the following to the end of the section:</p> <p>"The Corporation shall have the right to limit the amount which it will reimburse, or provide Advance Payment, to the amount arrived at by the Court Assessment Officer"</p>	<p>This ensures that the City has the authority to limit reimbursements to the amount assessed by a Court Assessment officer. This strengthens the City's control over runaway legal expenses.</p>
Section 6(1)(a)	Delete in its entirety	<p>Current section allows City to set budgets capping legal costs.</p>

		<p>It appears to me that this section allows the City solicitor to deny coverage if the Solicitor does not agree with a legal step taken by the employee.</p> <p>This amounts to permitting the City solicitor to dictate legal steps taken. This section may be inappropriate as it may place the City solicitor in a conflict of interest (where the interests of the City and employee are not the same – for instance in the case of the Miele Claim), and may require the sharing of privileged legal strategy so the City Solicitor can determine the appropriateness of the action taken – this may require that the eligible person to reveal their legal strategy as sharing of this information may be determined to be a waiver of solicitor client privilege.</p> <p>Using the Miele claim as an example, the City Solicitor is required to defend its client (the City) and take all measures legally available to her to defend the City. If this by-law is passed as is, the City Solicitor would be permitted, by law, to limit the defence of the co-defendants by denying coverage of a legal step proposed to be taken which he/she believes is unnecessary, but which the lawyer hired to defend the eligible persons deems to be necessary. There is no appeal of this decision.</p>
Section 6(1)(b)	Delete in its entirety	<p>The current section allows the setting of limits to the City budget thereby capping legal costs.</p> <p>ARBITRARY CAP ON ONES RIGHT TO DEFEND THEMSELVES TO THE FULL EXTENT OF THE LAW:</p> <p>Again this is an arbitrary restriction on ones right to defend themselves, especially where their interests are not aligned with the City's (for instance in the Miele Claim) to the full extent of the law in a proceeding and is not required by law. One's ability to defend themselves to the full extent of the law should not be determined by the City Solicitor or Council.</p> <p>I agree that eligible persons should not be permitted to act unreasonably in their defence and therefore run up improper legal bills. In my opinion, this is best addressed through a referral of the bills to an independent person to determine if such legal expenses are appropriate. The courts in Ontario already have this function through a 'court assessment officer'. This is a fair and independent way to ensure that eligible persons do not unduly</p>

		<p>overcharge the City and will effectively reign in legal expenses.</p> <p>Section 5(6) ensures the City only pays reasonable legal costs as may be assessed by a Court Assessment Officer and the City will only be responsible for the amount found to be reasonable by this independent person with requisite expertise. Section 5(7) requires monthly invoices so the City Solicitor can determine the appropriateness of the amounts and can refer to the court assessment officer where required. This provides adequate protection for the City from run away legal fees.</p>
Section 6(1)(c)	Delete in its entirety	<p>The current section allows the setting of the City budget thereby capping legal costs.</p> <p>ARBITRARY CAP ON ONES RIGHT TO DEFEND THEMSELVES TO THE FULL EXTENT OF THE LAW:</p> <p>This is an arbitrary restriction on ones right to defend themselves, especially where their interests are not aligned with the City's (for instance in the Miele Claim) to the full extent of the law in a proceeding and is not required by law. Ones ability to defend themselves to the full extent of the law should not be determined by the City Solicitor or Council.</p> <p>I agree that eligible persons should not be permitted to act unreasonably in their defence and therefore run up improper legal bills. In my opinion, this is best addressed through a referral of the bills to an independent person to determine if such legal expenses are appropriate. The courts in Ontario already have this function through a 'court assessment officer'. This is a fair and independent way to ensure that eligible persons do not unduly overcharge the City and will effectively reign in legal expenses.</p> <p>Section 5(6) ensures the City only pays reasonable legal costs as may be assessed by a Court Assessment Officer and the City will only be responsible for the amount found to be reasonable by this independent person with requisite expertise. Section 5(7) requires monthly invoices so the City Solicitor can determine the appropriateness of the amounts and can refer to the court assessment officer where required. This provides adequate protection for the City from run away legal fees.</p>

Section 6(1)(d)	Delete in its entirety	<p>Requires City approval for an appeal, crossclaim, counterclaim, third-party claim, judicial review, etc.</p> <p>Eligible persons should not be required to get the consent of the City for these matters which are related to receiving the best defence possible.</p> <p>DENIAL OF PROCEDURAL FAIRNESS AND NATURAL JUSTICE:</p> <p>In order to ensure that justice is served, the eligible persons must be permitted to take all legal options they deem necessary in their own defence. To me this provision may act to effectively limit the options one can take. This arbitrary limit is unfair and not required.</p> <p>If the concern meant to be addressed is the legal fees, we can address this in the by-law through the ability to have the fees assessed by a Court Assessment Officer.</p> <p>POTENTIAL FOR CONFLICT:</p> <p>This section is inappropriate, may place the City solicitor in a conflict of interest (where the interests of the City and employee are not the same – for instance in the case of the Miele Claim), and may require the sharing of privileged legal strategy. If, for instance councillors were found to have offended the law in the Miele Claim, but the City was let off, the City Solicitor may be bound by her/his duty to the City to deny the councillors right to appeal, because any such appeal could open the City back up to being found to have been offside.</p>
Section 7	Delete in its entirety	<p>This amounts to permitting the City solicitor to dictate legal steps to taken.</p> <p>DENIAL OF PROCEDURAL FAIRNESS AND NATURAL JUSTICE:</p> <p>Ones ability to defend themselves to the full extent of the law should not be determined by the City Solicitor or Council. Under the MClA, if a councillor is found to violate and wish to appeal the decision, the City Solicitor should not have the right to deny coverage so the eligible person would be required to pay out of their own expense in order to defend themselves to the full extent of the law.</p> <p>POTENTIAL FOR CONFLICT:</p>

		<p>This section is inappropriate, may place the City solicitor in a conflict of interest (where the interests of the City and employee are not the same – for instance in the case of the Miele Claim), and may require the sharing of privileged legal strategy. If, for instance councillors were found to have offended the law in the Miele Claim, but the City was let off, the City Solicitor may be bound by his/her duty to the City to deny the councillors right to appeal, because any such appeal could open the City back up to being found to have been offside.</p>
Section 8(2)	<p>Revise as follows:</p> <p>“Nothing in this By-law shall prevent the City Solicitor <u>or Member of Council</u> from bringing a report to Council to seek direction on any matter related to indemnification.</p>	<p>This allows a member of council to also bring a matter to council as required.</p>
Section 10(c)	<p>Revise as follows:</p> <p>For ongoing Legal Proceedings in which an Eligible Person was required to retain their own counsel, including Code Complaints filed with the Integrity Commissioner prior to the enactment of this By-law where a final disposition has not been rendered <u>or where final accounts have not been settled</u>, the provision of this By-law will apply.</p>	<p>Extends coverage to those instances where final accounts have not been settled.</p>

COMMUNICATION : C 2
C W 2 : APRIL 21, 2020
ITEM : 7

DATE: April 14, 2020

TO: Hon. Mayor and Members of Council

FROM: Wendy Law, Deputy City Manager, Administrative Services & City Solicitor

RE: **Draft Indemnification By-law**

At the Committee of the Whole meeting on March 9, the Committee deferred consideration of the Indemnification By-law to a later date. Comments received from Deputy Mayor Ferri on the draft Indemnification By-law were presented at Committee as a Communication. Staff have responded to these comments in the chart attached as Appendix 1 to this Communication. In consideration of those comments, staff are proposing further amendments to the draft Indemnification Bylaw, as attached to this Communication as Appendix 2.

For context, the following principles are applicable in considering the Indemnification Bylaw:

1. As noted in my report on March 9, 2020, the *Municipal Act, 2001* authorizes a municipality to act as an insurer and indemnify its current and former members of council and employees ("Indemnified Persons") for pecuniary risks and losses. The *Act* also authorizes the payment of expenses incurred by any Indemnified Persons. In short, the Indemnification By-law serves as an insurance policy for the Indemnified Persons, and it is, in essence, an insurance and financial bylaw. This means that the primary issue for Council to decide is **the extent** to which the City will pay for individuals' legal expenses.
2. The *Municipal Act* is largely permissive when it comes to indemnification, not mandatory. This means that the *Act* allows the City to indemnify individuals but, outside of the Integrity Commissioner, the City is not required to provide indemnification. The By-law confers a privilege, not a right.
3. The *Municipal Act* and *Municipal Conflict of Interest Act* set certain limits on when and how a municipality can provide indemnification. The City's Indemnification By-law must comply with these limits. In addition, to protect the City's taxpayers, the Indemnification By-law should have clear checks and balances as well as cost control measures, similar to other by-laws that authorize expenditures.

4. Payments under the Indemnification By-law are generally funded through two sources:
 - a. Insurance - this provides coverage for the majority of the City's litigation.
 - b. General operating budget – to provide for coverage on matters that are not covered by insurance.
5. Given that the City's insurer is paying for most of the expenditures arising out of the City's Indemnification By-law, it is recommended that the By-law reflect the principles contained in the City's insurance policies, where applicable, to ensure that the City's insurance coverage remains intact. Of course, there are instances where it may serve valid public policy objectives for the City to insure against pecuniary losses irrespective of the City's insurance policy coverage. The current draft Indemnification By-law provides for those instances as well, while generally ensuring that the City is aligned with our insurance policies.
6. The Indemnification By-law applies to all current **and** former Members of Council, employees, board members, and Integrity Commissioners. Indemnification allows the City to protect these individuals from harm in the event of a legal proceeding. However, the City also needs to be able to protect itself by retaining a certain level of discretion, and tools to manage both the reputational risks and financial risks posed by ongoing litigation.
7. In response to the concern that the draft by-law may lead to arbitrariness in decisions, as in administering all by-laws, it is a fundamental principle in municipal law that the administration be conducted in a fair and consistent manner. Failure to do so is subject to judicial challenges. As such, although it is not explicitly stated in the by-law, the requirement to avoid arbitrariness and maintain consistency is inherently applicable.

As such, it is staff's recommendation that Recommendation #1 in the Report from the Deputy City Manager, Administrative Services and City Solicitor on the Indemnification Bylaw Amendments dated March 9, 2020 be deleted and replaced with the following:

1. That the Indemnification By-law, substantially in the form as attached to this Communication from the Deputy City Manager, Administrative Services and City Solicitor dated April 14, 2020, be enacted.

Draft By-law Section	Deputy’s Mayor’s Requested Revision & Reasons	Staff Comments	Benchmarking Against Other Municipalities
<p>1(h) “Legal Proceeding” means:</p> <p>(i) a civil proceeding or administrative action, including but not limited to an action, application, motion, hearing, trial; or</p> <p>(ii) a proceeding wherein a person is charged with an offence under the <i>Criminal Code</i>, R.S.C. 1985, c. C. 46 or the <i>Highway Traffic Act</i>, R.S.O. 1990, s. H.8; or</p> <p>(iii) a proceeding brought under section 8 of the <i>Municipal Conflict of Interest Act</i>, R.S.O.1990, c. M. 50, as amended (the “MCIA”); or</p> <p>(iv) a Code Complaint; or,</p> <p>(v) a complaint to a professional association;</p> <p>But excludes:</p> <p>(i) any proceeding commenced by the Corporation;</p> <p>(ii) any proceeding in which the Corporation is a party adverse in interest;</p> <p>(iii) any proceeding where the Corporation’s and the Eligible Person’s interests conflict; or</p> <p>(iv) any proceeding under the <i>Municipal Elections Act</i>, 1996, S.O. 1996, c. 32, Sched., as amended.</p>	<p>Remove “But excludes” section in its entirety.</p> <p>The current section excludes the following from coverage:</p> <p>(i) any proceeding commenced by the Corporation;</p> <p>(ii) any proceeding in which the Corporation is a party adverse in interest;</p> <p>(iii) any proceeding where the Corporation’s and the Eligible Person’s interests conflict; or</p> <p>(iv) any proceeding under the <i>Municipal Elections Act</i></p> <ul style="list-style-type: none">There is no legal requirement to exclude any of the foregoing from coverage; <p>UNREASONABLE AND ARBITRARY LIMITATION OF COVERAGE:</p> <ul style="list-style-type: none">In my view, the proposed limitation of coverage is well beyond what is reasonable or acceptable. The purpose of the indemnification provisions of the Municipal Act is to protect eligible persons against loss due to action or inaction in carrying out their role in their capacity as an Eligible Person. This protection is not limited to only where their interests and the City’s interests are aligned, as you will see below. Rather, this section has the effect of deeming otherwise eligible persons ineligible based on a preconceived notion of guilt or wrongdoing which I cannot support;With respect to (i) above, I have been given to understand that this clause would have the effect of nullifying coverage for many Conflict of Interest proceedings. Respecting Conflict of Interest proceedings, the City through its integrity commissioner is now the one who may make an application against an employee – see section 223.4.1 (15) of the Municipal Act. Under this provision of the by-law, if the integrity commissioner started an application, it is doubtful that the employee would be covered, even if they are found not to have contravened, because this would be a proceeding commenced by the City. I believe that eligible persons must be covered no matter who commences the proceedings, to do otherwise would deem the eligible person to be in the wrong no matter the outcome of the proceeding – this is not just right. It would also stop councillors from being covered where the City commences a proceeding and the party who the City commenced the proceeding against, makes a third-party claim against an eligible person. My view is, we must provide coverage, no matter who commences the proceeding. This arbitrary limitation on coverage is unjustified.	<p>This definition, including the exclusion section, is in the current Indemnification By-law 91-2011, as amended. The only new addition is section 1(h)(iv) that relates to the <i>Municipal Elections Act</i>.</p> <p>In reviewing this section, staff agree that subsection (iii) could be removed and have made the change in the revised by-law. However, staff recommend that indemnification be subject to certain general exclusions/ limitations even where there is no mandatory legal requirement to exclude coverage. This would prevent situations where the City would be paying for legal fees and costs in situations where the interests of the individuals seeking indemnity and the corporation conflict, as further discussed below. It is ultimately a financial and public policy decision of Council.</p> <p>The exclusion as contained in subsection (i) is important. Without this exclusion, the City could be paying for both sides of the litigation. If the City initiates litigation against an individual for alleged wrongdoing, it should not be required to pay for the legal fees of that individual as a matter of course. It is staff’s recommendation that the City should only pay for the opposing litigant’s fees under direction of the court or specific consideration of council on a case by case basis.</p> <p>With respect to proceedings under the <i>Municipal Conflict of Interest Act</i> (MCIA), this section does not nullify coverage. The legislation provides that when the Integrity Commissioner makes an application to court, the proceeding is not initiated by the City but by the Integrity Commissioner. Consultation with the Integrity Commissioner confirmed same. The Integrity Commissioner does not seek instructions from Council to start the proceeding, nor does the Integrity Commissioner take instruction from Council on how the proceeding is conducted. This means that the exclusion in section (i) does not have the effect of nullifying coverage for MCIA proceedings. In fact, the definition of a legal proceeding specifically included MCIA proceedings, where there is no finding of a contravention. (This is in line with the provisions of the MCIA.)</p>	<p>All other municipal Indemnification By-laws reviewed include exclusions to coverage. For instance, Toronto, York Region, Mississauga, London and Caledon do not indemnify for legal fees in proceedings where the municipality has sued the individual. All municipalities included varying other exclusions.</p>

	<ul style="list-style-type: none">With respect to (ii) and (iii) above, these clauses may have the effect of nullifying coverage for many future proceedings. A good example is the current Miele claim against the City and many Councillors where the interests of the councillors in the action may not align with the City. This arbitrary limitation on coverage is unjustified.With respect to (iv) above, this section should only apply where the proceeding is commenced against the otherwise eligible person when the eligible person is not taking an action in their capacity as an employee or representative of the City. In which case, coverage should not be provided as the eligible person is not acting within their duties as an employee or representative of the City. This exclusion is not required as case law already makes this rule applicable <u>and section 2(1) implements this rule as the action complained of must be taken in his/her capacity as an Eligible Person, which you are not doing if the action was taken as a candidate rather than a councillor for example</u>. Alternatively, this section could be saved so long as subsections (i) – (iii) are deleted in their entirety.	<p>With respect to this comment, it is our respectful opinion that it would not be an arbitrary decision on eligibility but one that would require justification (a general municipal law principle in by-law administration). As noted above, we agree that subsection (iii) can be removed to avoid the uncertainty as identified, but we recommend that subsection (ii) stays to provide Council with the ability to refuse paying for litigation where the City’s interest may be adverse.</p> <p>Subsection (iv) is the only new addition in the proposed by-law to the definition and it was included to provide clarity and reflects current case law.</p>	
<p>Section 2(1)</p> <p>Subject to the provisions of this By-law, the Corporation shall indemnify an Eligible Person, and his or her heirs and legal representatives, in respect of any Legal Proceeding arising out of acts or omissions done or made by the Eligible Person:</p> <p>(a) in his or her capacity as an Eligible Person, including those acts or omissions arising from the performance of any statutory duty imposed by any general or special Act; and</p> <p>(b) acting in good faith and based on the reasonable belief that such acts or omissions were lawful and in the best interests of the Corporation or local board as applicable.</p>	<p>Delete the following:</p> <p>(b) acting in good faith and based on the reasonable belief that such acts or omissions were lawful and in the best interests of the Corporation or local board as applicable.</p> <p>BY-LAWS MUST BE <u>OBJECTIVE</u> NOT SUBJECTIVE:</p> <p>It is my understanding that, by-laws of this type are not permitted to be subjective in Ontario – whereas this section requires a subjective analysis of what was in the mind of the eligible person when the act complained of occurred.</p> <p>This by-law should not put any decision maker, and especially not an employee of the Corporation, in the position that they need to read into the mind of the eligible person. Should the City solicitor be standing in judgement of the eligible person? Is that fair to the City Solicitor?</p> <p>In this case, coverage is only provided if a decision maker makes the <u>subjective</u> determination that the eligible person thought that the act complained of was right without any facts or submissions by the eligible person – whereas, a decision of this type is required to be objective.</p> <p>DENIAL OF NATURAL JUSTICE AND PROCEDURAL FAIRNESS:</p> <p>If this section is to remain, natural justice and procedural fairness would require that the eligible person must be given the opportunity to make submissions on this issue – <u>this will complicate this process unnecessarily and bog down staff resources</u>.</p>	<p>This requirement has been part of the City’s Indemnification By-law since 2011. In 2019, Council approved further amendments, which also included reference to this requirement. We recommend maintaining this section.</p> <p>This is a policy statement of Council in terms of what it is willing to indemnify for. It does not confer delegation of authority to the City Solicitor. In our respectful view, this statement is important as it releases the City of its obligation to pay for criminal, bad faith, or malicious behaviour of an Eligible Person, whether such is found by a court, tribunal or council. Please also note that criminal, bad faith and malicious actions and omissions are uninsurable.</p>	<p>The additional reference to the requirement to act in good faith was added in February 2019 to bring the City in-line with the requirements for indemnification included in other municipalities, particularly York Region. York Region does not provide indemnification where the individual “acted in bad faith” or the subject “actions or omissions were not within the individual’s good faith performance of his or her duties.”</p> <p>Most other municipalities reviewed also contain similar good-faith requirements. For instance, the City of Toronto does not indemnify its employees unless the acts in question were an “attempted performance in good faith of his or her duties”. Mississauga, Markham, London, Hamilton and Caledon all contain the requirement of “good faith” acts.</p>

	<p>IMPACT ON CITY RESOURCES:</p> <p>As it is proposed, this would require the City Solicitor to decide whether an action taken was in good faith. This would put him/her in a very precarious situation of judging the veracity of eligible persons intent – including the intent of members of council (who have power over her/his position). This is not a fair position to put the City Solicitor in. In addition, it would require the City Solicitor to review facts, hear submissions on the topic, and render a decision – this will have an impact on City resources which is not required or preferred.</p> <p>LIMITATION ONLY REQUIRED FOR COVERAGE OF INTEGRITY COMMISSIONER:</p> <p>The current by-law limits coverage to acts or omissions 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. This limitation is only required to apply to the Integrity Commissioner and those officers who act under its instruction(s) pursuant to section 223.6(6) of the Municipal Act. However, in the current by-law, this section applies the limitation to all employees in all legal proceedings even though such limitation is not required.</p>	<p>Respectfully, we disagree with the need for making submissions and therefore bogging down staff resources. This is a policy statement of Council. If there is indication of bad faith, it will likely come out in the course of the proceeding. There is no decision authority conferred to the City Solicitor. In any event, denial of coverage under the Indemnification By-law is an important decision that would require clear justification to avoid a judicial challenge.</p> <p>Agreed that from a strictly legal perspective, there is no requirement of Council to include this limitation of indemnification. However, it is our understanding that this clause was introduced over a year ago to be consistent with other municipalities and to demonstrate the public policy objective of not indemnifying for bad faith behaviour. This is also consistent with general insurance policy coverage.</p>	
<p>Section 2(3) – (8)</p> <p>(3) If an Eligible Person qualifies for indemnification in a Legal Proceeding under this By-law, the City will assume carriage of the Legal Proceeding on behalf of the Eligible Person, unless the City Solicitor determines that the City cannot represent the Eligible Person. For greater certainty, the City shall not assume carriage of a Legal Proceeding referred to in 1(h)(iii) or 1(h)(iv) above.</p> <p>(4) Where the City Solicitor determines that the City cannot represent the Eligible Person, the City Solicitor may request that the Eligible Person retain independent legal counsel and be indemnified for legal fees in accordance with this By-law.</p> <p>(5) The City Solicitor shall have the right to request that an Eligible Person obtain their own legal counsel at any time during the course of the Legal Proceeding if the City Solicitor is of the opinion that it is no longer appropriate for the City to defend and represent, or to continue to defend and represent the Eligible Person.</p> <p>(6) Where the City</p>	<p>Delete sections 2(3)-2(8) in their entirety.</p> <p>This section means that an eligible person must be represented by the City unless the City Solicitor thinks the City cannot represent the eligible person.</p> <p>DENIAL OF NATURAL JUSTICE AND PROCEDURAL FAIRNESS:</p> <p>This denies the eligible person their fundamental right embedded in the law of procedural fairness and natural justice to choose their own lawyer. It will also bog down the resources of the City. Eligible persons must, in my opinion, be given the right to select the representation they believe best suits them and who has their best interests at heart.</p>	<p>These subsections are intended to ensure an appropriate level of litigation management and control when the City is paying for defences. We recommend keeping these sections in the proposed bylaw.</p> <p>Subsection (3) represents our general approach to insurance litigation defence. In our view, it is also the sensible approach to ensure that when the City is paying all costs of litigation, that it takes steps to avoid unnecessary increases in defence costs by involving multiple legal counsel, absent the existence of a clear conflict in representation.</p> <p>Legal counsel representing the City and other Eligible Persons have a professional duty to represent all parties fairly and completely. The representing lawyers (both internal and external counsel) owe a professional duty to represent all parties’ interests, not one to the exclusion of the other.</p> <p>Given that the City has the obligation to indemnify the Eligible Person – including any cost awards, it would automatically be in the City’s interest that the best defence is afforded to both the City and the Eligible Person. The reverse is not necessarily true, as the Eligible Person’s interest is strictly his/hers, and the City has less control over the defence while still having the obligation to pay. Ultimately, this is up to Council whether it wishes to diminish this control.</p> <p>Please also note that the City’s insurer has the right to select litigation counsel and the indemnified persons and the City have the obligation to cooperate or risk losing coverage. These are fundamental tenets of insurance coverage and this by-law is intended to ensure that the City’s insurance coverage is not diluted as a result of individual actions.</p>	<p>Similar sections are found in other municipal by-laws.</p> <p>In particular, the requirement for the City to assume the defence on behalf of an Eligible Person is a standard clause found in many Indemnification By-laws: York Region Toronto, Mississauga, Markham, Hamilton, Caledon, and London.</p> <p>The additional requirements for indemnification contained in sections 2(3)-2(8) are also found in other municipalities’ by-laws. For instance, the City’s draft indemnification By-law allows the City Solicitor to request an individual obtain their own legal counsel if there is a legal conflict. For comparison, the York Region By-law confirms that if a conflict of interest arises in a proceeding, the individual may retain their own counsel. The Regional Solicitor has “sole discretion” to make this decision, and his/her decision on the matter is final.</p>

<p>assumes the defence of a Legal Proceeding on behalf of an Eligible Person, the Eligible Person shall co-operate with the City and assist the City in the defence of the Legal Proceeding, as required by the City. This includes providing timely and fulsome responses to requests for information and attending the proceedings and meetings, as required.</p> <p>(7) Where an Eligible Person fails to co-operate and assist the City in accordance with section 2(6), the City Solicitor may determine that it would be inappropriate for the City to defend and represent, or continue to defend and represent, the Eligible Person, and the Eligible Person will no longer qualify for indemnification in respect of the Legal Proceeding.</p> <p>(8) If the City defends and represents the Eligible Person in a Legal Proceeding, the City shall not be responsible for any legal or other costs incurred by the Eligible Person unless such expenses have been pre-approved by the City Solicitor.</p>	<p>What if the eligible person is not happy with the representation or attention they are receiving from the City Solicitor? – In accordance with this section, they would be forced to continue to use the City Solicitor in their defence, or face not having coverage, this is unacceptable.</p> <p>INHERENT CONFLICT OF INTEREST AND IMPROPER ROLE OF THE CITY SOLICITOR:</p> <p>It is generally accepted that the City Solicitor must, in accordance with his/her rules of professional conduct, take in the interests of the <u>Corporation</u> over any eligible person. Therefore, in a vast majority of cases, there will be an inherent conflict of interest if the City Solicitor is charged with defending an eligible person in a proceeding because the City Solicitor’s <u>only</u> obligation is to the corporation.</p> <p>A good example is the current Miele claim where the City and many councillor’s interests are not aligned.</p> <p>COMPLICATION BECAUSE COUNCIL WILL DIRECT PROCEEDINGS:</p> <p>Since the City Solicitor must act in accordance with direction from council, Council will be conducting the proceeding.</p> <p>IMPACT ON CITY RESOURCES:</p> <p>This will also bog down resources in the City’s legal department for individual eligible persons whereas the focus of the City’s legal department must be in the furtherance of the <u>City’s</u> interests.</p> <p>REQUIRED SHARING OF INFORMATION:</p> <p>Pursuant to section 2(6) eligible persons are required to provide information to the City that they would otherwise only share with their personal representative. Eligible persons should not be required to share personal information with City staff in order to have coverage.</p>	<p>If an individual is unhappy with the representation that they are receiving, this can be discussed with the lawyers on the file and escalated to the City Solicitor or insurer to determine if the issues are such that separate representation is required. However, there can be many reasons why an individual is unhappy with the litigation approach, and the cause of such discontent may or may not be reasonable. While each file shall be reviewed on a case-by-case basis, in our view, it is important that the City maintain a general level of control in the management of litigation that it is paying for.</p> <p>Inherent conflict – this is the reason why there are instances when the City cannot represent an individual and separate representation is required (e.g. Code of Conduct complaints). Subsections (4) and (5) provide for that. For most litigation, the City and the Eligible Person have common interests. Also, the By-law provides coverage for pecuniary losses of the Eligible Person, which further solidifies the common interest. As a result, in most cases, it is appropriate for one set of counsel to act for both parties. In the Miele claim, where there is a conflict of interest, the individual defendants are represented by individual counsel.</p> <p>Staff can confirm that assuming the defence of a legal proceeding on behalf of an individual does not bog down the resources of the City. In most cases where an individual is named in a legal proceeding, the City of Vaughan is also named. This means that increase in workload to defend both parties is minimal. In contrast, coordinating multiple sets of counsel on a matter raises both legal costs and complications. Further, the insurer has the right to appoint counsel and may not always be willing to pay for multiple sets of counsel where representation by one lawyer is possible.</p> <p>Subsection (6) is important – we require the cooperation of the person receiving the benefit of a defence and indemnification to cooperate with the City to ensure that we can manage the litigation effectively. The duty to cooperate is also a fundamental basis to receive insurance coverage.</p>	<p>Section 2(6) requires an Eligible Person to cooperate in the defence of a Legal Proceeding. This section is intended to ensure that the lawyer defending the City and the Eligible Person have all necessary information required to advance a defence on behalf of the parties. This section is also standard across other Indemnification By-laws (York Region, Caledon, London, Toronto, Mississauga, Hamilton, Markham).</p>
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<p>Section 3(2)</p> <p>3(2) Upon receipt of a request for indemnification, the City Solicitor shall provide a written response within 10 business days of delivery of the request.</p>	<p>Revise section 3(2) as follows:</p> <p>Upon receipt of a request for indemnification, the City Solicitor shall provide a written response within 10 business days of delivery of the request. Coverage shall be provided if:</p> <p>(a) the requestor is an Eligible Person; and (b) the coverage requested is a proceeding.</p> <p>Otherwise, coverage shall be denied.</p> <p>BY-LAWS MUST BE <u>OBJECTIVE</u> NOT SUBJECTIVE:</p> <p>In my opinion, by-laws of this type cannot, and should not be subjective – and the current section requires a subjective analysis of what was in the mind of the eligible person when the act complained of occurred.</p> <p>BY-LAWS MUST BE CLEAR AND THE APPLICATION MUST BE REPEATABLE – THEREFORE CLEAR AND OBJECTIVE CRITERIA FOR COVERAGE MUST BE SET OUT:</p> <p>I believe that, Indemnification By-laws must have criteria and if met, coverage must be provided. In other words, anyone should be able to review the by-law and determine if they meet the pre-conditions for coverage. This is the case if the criteria to determine coverage is objective.</p> <p>My proposed revisions create an objective set of criteria that can be applied and will result in a repeatable outcome.</p>	<p>A similar section is found in the current Indemnification By-law as section 5. As our respectful opinion differs on the exclusion clauses, we do not recommend revising this section for the reasons as stated above.</p> <p>It is our respectful opinion that the By-law has the appropriate balance from an objectivity perspective. Section 3(2) is a written acknowledgement from the City Solicitor to confirm indemnification. The additional wording would only be applicable if Council wishes to expand the scope of indemnification as noted above.</p>	<p>Addressed above.</p>
<p>Sections 3(4)(a) and 3(5)</p> <p>3(4) Any Advance Payment made by the Corporation is subject to: (a) A cap of \$25,000 if the Advance Payment is not assumed or paid for by the Corporation’s insurer;</p> <p>3(5) If an Eligible Person wishes to seek Advance Payment for an amount exceeding \$25,000 as provided in section 3(4)(a), the City Solicitor shall bring a report to Council for direction.</p>	<p>Delete sections 3(4)(a) and 3(5) in their entirety.</p> <p>ARBITRARY CAP ON ONES RIGHT TO DEFEND THEMSELVES TO THE FULL EXTENT OF THE LAW:</p> <p>The proposed By-law caps the amount of indemnification to \$25,000.00. It seems to me that this is an arbitrary restriction on ones right to defend themselves, especially where their interests are not aligned with the City’s (for instance in the Miele Claim) to the full extent of the law in a proceeding and I understand that it is not required by law. Ones ability to defend themselves to the full extent of the law should not be determined by the City Solicitor or Council.</p> <p>For example, in Miele claim, damages can be substantial if allegations are found to be valid. What if the City chose to limit indemnification to a fraction of the amount needed to cover the cost damages? Should employees be put to this risk? Currently eligible persons could be liable for millions of dollars through no fault of their own.</p> <p>I agree that eligible persons should not be permitted to act unreasonably in their defence and therefore run up improper legal bills. I am given to understand that, this is best addressed through a referral of the bills to an independent person with the requisite qualifications/knowledge to determine if such legal expenses are appropriate. The courts in Ontario</p>	<p>We recommend keeping these sections in the proposed by-law.</p> <p>Please note that the \$25,000 cap is for Advance Payment, and not as a cap for overall litigation. And it is only applicable for matters not covered by the City’s insurer (e.g. Code of Conduct complaints).</p> <p>It is open to Council to increase this amount. Staff can provide the following context to inform Council’s decision:</p> <ul style="list-style-type: none">• The ability to allow advance payment up to \$25,000 was a consideration posed by the Integrity Commissioner in her Report to Council, dated February 11, 2020.• Until June 2019, indemnification for legal fees related to Code of Conduct investigations were limited to \$5,000.• As set out above, matters that are covered by the insurance company are not subject to the \$25,000 cap. The Miele claim is an insurance claim.• Relying on a Court Assessment Officer as the sole method of enforcing a budget will severely limit the City’s ability to manage legal expenses. Making an application to the Court Assessment Officer requires staff to obtain Council approval, prepare application	<p>Other municipalities also use spending “caps” as a method to control indemnification expenses. For instance, the City of Toronto limits indemnification for matters where a Member of Council is charged under a statute or sued in a civil proceeding to \$25,000. In the event the \$25,000 is spent before the legal matter is finished, further requests are referred to the Executive Committee for consideration and recommendation to Council.</p> <p>York Region also states that individuals may receive advance payment of legal fees for certain regulatory offences to \$15,000 and gives the Regional Solicitor sole discretion to determine whether advance payment is appropriate.</p> <p>The City of Mississauga requires the City Solicitor to seek direction from Council “to determine whether a cap should be imposed” if the City</p>

	<p>already have this function through a ‘Court Assessment Officer’. This is a fair and independent way to ensure that eligible persons do not unduly overcharge the City and will effectively reign in legal expenses.</p> <p>Section 5(6) ensures the City only pays reasonable legal costs as may be assessed by a Court Assessment Officer and the City will only be responsible for the amount found to be reasonable by this independent person with requisite expertise. Section 5(7) requires monthly invoices so the City Solicitor can determine the appropriateness of the amounts and can refer to the court assessment officer where required. This provides adequate protection for the City from run away legal fees.</p> <p>Section 3(5) is not required if section 3(4)(b) is deleted and therefore, it should be removed if section 3(4)(b) is removed.</p>	<p>materials, pay filing fees (approximately \$100), attend a hearing, etc. This is also complicated by the fact that applications to the Assessment Officer must be received within 1 month of receiving the bill, otherwise the City will be required to seek approval from a judge. While the Court Assessment Office is one tool to help manage legal spend, it is costly and ineffective as the sole tool.</p> <ul style="list-style-type: none">Ultimately it is up to Council to determine whether to advance more than \$25,000 prior to the decision being rendered. As noted in the proposed by-law, any requests for Advance Payment over \$25,000 shall be brought forward to Council for Council’s decision.	<p>Solicitor believes that the individual will require more than \$250,000 for indemnification.</p>
<p>Section 3(4)(b)</p> <p>3(4) Any Advance Payment made by the Corporation is subject to:</p> <p>(b) the requirement to reimburse the City, as set out in sections 5(2), 5(3), and 5(4); and</p>	<p>Revise section 3(4)(b) as follows:</p> <p>(b) the requirement to reimburse the City, as set out in sections 5(2), <u>and</u> 5(3), and 5(4);</p> <p>As will be discussed below, it is my opinion that section 5(2) is not appropriate as for the reasons set out. Therefore, reference to 5(4) should be deleted simply for to adjust for renumbering when section 5(2) is deleted.</p>	<p>This comment largely relates to section 5(2), which is addressed below.</p>	<p>Addressed below.</p>
<p>Sections 3(7) – 3(9)</p> <p>(7) A written request for indemnification referred to in Section 3.0(1) may include a request for approval of a lawyer chosen by the Eligible Person, or may request that the City Solicitor suggest three lawyers.</p> <p>(8) Where a request for indemnification seeks approval of a lawyer chosen by the Eligible Person, the response by the City Solicitor shall also:</p> <p>(a) approve the request to retain the lawyer chosen by the Eligible Person; or</p> <p>(b) deny the request and suggest three lawyers of the Corporation’s choice who could represent the Eligible Person in the Legal Proceeding at issue.</p> <p>(9) Where the City Solicitor has suggested three lawyers, the Eligible Person shall select from the list and shall notify the City Solicitor of the selection, within 5 calendar days of receipt.</p>	<p>Delete sections 3(7) – 3(9) in their entirety.</p> <p>This section gives the City Solicitor the right to determine who the eligible person chooses to defend him/her or to provide him/her with legal advice.</p> <p>DENIAL OF NATURAL JUSTICE AND PROCEDURAL FAIRNESS:</p> <p>This denies the eligible person their fundamental right embedded in the law of procedural fairness and natural justice to choose their own lawyer. Eligible persons must, in my opinion, be given the right to select the representation they believe has the requisite skill and knowledge, best suites them, and who has their best interests at heart.</p>	<p>These provisions are found in the current Indemnification By-law at section 6.</p> <p>As noted above, given the insurer’s right to appoint legal counsel, it is important that there is an ability to appoint counsel by the City. It is also our respectful opinion that it is in the City’s interest to have some level of control of legal counsel should the need arises. An Eligible Person’s request for counsel approval being rejected will be rare, as there is an obligation for the City to act fairly, but this section provides the City with appropriate protection should the need arise.</p> <p><i>Option for Code/MCIA proceedings:</i></p> <p>For proceedings where the City is not involved but which are subject to indemnification, such as Code of Conduct and MCIA proceedings, staff suggests that there is no need to obtain approval of legal counsel. Rather, there is only a requirement to ensure that the rates and invoices submitted are reasonable (e.g. commensurate with the experience/market rate of counsel and work conducted).</p> <p>Staff will make this amendment to the revised by-law.</p>	<p>Staff can confirm that the requirement for the City Solicitor to approve an individual’s legal counsel (which applies when there is a conflict between the City or when it would be inappropriate for the City to represent the individual) is standard in many Indemnification By-laws: York Region, City of Toronto’s Municipal Code, Mississauga, Markham, Hamilton, and Caledon. The City of London also requires that the individual be represented by the insurance company’s counsel in the context of insured claims.</p>
<p>Section 5(1)(a)</p> <p>5(1) The Corporation shall provide indemnification to an Eligible Person as follows under this By-law:</p>	<p>Delete section 5(1)(a) in its entirety.</p> <p>This section states that the City will assume carriage of the defence of the eligible person in a proceeding. I object to this section for the same reasons I</p>	<p>These comments relate to the Eligible Person’s ability to retain their own counsel and are addressed above.</p>	<p>Addressed above.</p>

<p>(a) Assume carriage of the defence on behalf of the Eligible Person or pay the actual and reasonable expenses of defending such Eligible Person in the Legal Proceeding; and/or,</p>	<p>object to section 3(7) – 3(9).</p> <p>DENIAL OF NATURAL JUSTICE AND PROCEDURAL FAIRNESS:</p> <p>This denies the eligible person their fundamental right embedded in the law of procedural fairness and natural justice to choose their own lawyer. I believe that eligible persons must, be given the right to select the representation they believe best suits them and who has their best interests at heart.</p>		
<p>Section 5(2)</p> <p>5(2) If it is determined in a Legal Proceeding that an Eligible Person’s acts or omissions giving rise to the Legal Proceeding did not:</p> <p>(a) arise out of acts or omissions done or made by the Eligible Person in his or her capacity as an Eligible Person; or</p> <p>(b) were not done or not made in good faith; or</p> <p>(c) were not based on the reasonable belief that such acts or omissions were lawful and in the best interests of the Corporation,</p> <p>the Eligible Person shall not be eligible for indemnification under this By-law, and shall be required to reimburse the Corporation for all funds paid on the Eligible Person’s behalf pursuant to this By-law within 90 days of such a determination.</p>	<p>Delete section 5(2) in its entirety.</p> <p>This section states expenses occurred in a Legal Proceeding will not be covered if it is determined that the act or omission giving rise to the Legal Proceeding <u>did not</u> [sic]: (b) were not done or not made in good faith; or (c) were not based on the reasonable belief that such acts or omissions were lawful and in the best interests of the corporation.</p> <p>It is my understanding that in most cases a court in a proceeding will not make this determination. In such a case – who would make the determination? Will the city take part in the hearing to request a court make such determination even where it is not relevant to the proceedings? This section should be removed for vagueness, for the potential financial impact on the City, and for mere impracticality.</p> <p>It is my belief that legal expenses incurred must be covered so long as such coverage does not offend the law. There is no requirement at law to provide for this limitation.</p>	<p>This section is similar to the sections noted above with respect to the obligation to act in good faith before indemnification is applicable. The discussions above apply. Please note that similar sections are also found in the current Indemnification By-law. In the current By-law, the City Manager, in consultation with the City Solicitor or designate, decides whether the Eligible Person’s acts were made in good faith or on the reasonable belief that the acts were lawful and in the best interest of the corporation.</p> <p>The <i>Municipal Act</i> and the MCIA set the rules for indemnification in municipalities. For indemnification to be allowed, the acts in question must have been properly done in the course of the individual’s official duties. This means that where an individual’s conduct is contrary to the performance of the individual’s duties, indemnification is not allowed. Bad faith acts, unlawful acts, and other actions are outside of an individual’s performance of their duties and should therefore not be eligible for indemnification. In our view, it further clarifies that such actions or omissions are outside of the Eligible Person’s capacity as a member or employee. As such, staff recommend that the above section should be kept in the By-law.</p> <p>Additionally, as discussed above, insurance companies will not provide coverage for actions taken in bad faith or criminal acts. This language is in line with our insurance coverage.</p>	<p>As discussed above, many other by-laws require that actions be taken in good faith for an individual to receive indemnification. For instance, York Region does not provide indemnification where the individual “acted in bad faith” or the subject “actions or omissions were not within the individual’s good faith performance of his or her duties.” As mentioned above, the City of Toronto’s Municipal Code, as well as By-laws from Mississauga, Markham, London, Hamilton, and Caledon all include “good faith” requirements.</p>
<p>Section 5(3)(c)</p> <p>5(3) An Eligible Person is not entitled to indemnification under this By-law and must reimburse the Corporation for any legal fees paid by the Corporation in respect of a Legal Proceeding if:</p> <p>(c) In the case of a Code Complaint, where a contravention has been found, unless:</p> <p>(i) the contravention has occurred by reason of inadvertence; or</p> <p>(ii) the contravention has occurred by reason of a bona fide error in judgment; or</p> <p>(iii) the referral of the matter is</p>	<p>This section states expenses occurred in defence of a code complaint will not be covered if the IC finds a contravention unless it is determined that the violation: (i) occurred through inadvertence; (ii) occurred by reason of a bona fide error in judgement; (iii) the referral was frivolous or vexatious, or (iv) where the investigation is stopped and investigation is terminated.</p> <p>Firstly, subsections 5([3])(c)(iii) and 5([3])(c)(iv) seem to be in error as these are circumstances where, by their very nature, no contravention of the code can be found so they must be deleted for that reason.</p> <p>Respecting subsections 5([3])(c) generally, it is my opinion that legal expenses incurred in defence of a code investigation must be covered, so long as such coverage does not offend the law. There is no requirement at law to provide for this limitation.</p>	<p>Please note that this section is proposed to reflect the eligibility considerations as put forward by the Integrity Commissioner in her report to Committee of the Whole (2) on March 9, 2020.</p> <p>Agreed – amendments to the proposed Indemnification By-law will be made accordingly.</p> <p>With respect to the general comment on 5(3)(c), technically there is no direct law that prohibits indemnification for violation of Code of Conduct. However, it is arguable whether a <u>deliberate</u> contravention of the Code of Conduct can be considered as an act within the Eligible Person’s capacity as a member of council or local board. All City employees and Members of Council and Local Boards are required to comply with</p>	<p>The City of Mississauga does not indemnify an individual for MCIA proceedings where the individual has been found not to have contravened the MCIA.</p> <p>The City of Markham also does not indemnify Members of Council where the member has contravened the Code of Conduct.</p>

<p>(iv) frivolous, vexatious or not made in good faith and the Integrity Commissioner dismisses the complaint without an investigation, or determines that there are no grounds or insufficient grounds for an investigation; or where it becomes apparent in the course of an investigation that there are insufficient grounds to continue the investigation, the Integrity Commissioner terminates the investigation and dismisses the complaint.</p>		<p>their respective Code of Conduct in performing their duties. If an individual has violated the applicable Code of Conduct and it was found that the violation was not done so by inadvertence or in error, an argument could be made that they have acted outside of the scope of their duties.</p>	
<p>Sections 5(5)(a) and 5(5)(c)</p> <p>The City Solicitor, acting reasonably, may request or impose one or all of the following:</p> <p>(a) Budgets for anticipated legal expenses; and/ or</p> <p>(b) Status Updates in respect of the progress of the proceedings; and/or</p> <p>(c) A limit on quantum of indemnification.</p>	<p>Delete sections 5(5)(a) and 5(5)(c) in their entirety.</p> <p>Current section allows City to set budgets capping legal costs.</p> <p>ARBITRARY CAP ON ONES RIGHT TO DEFEND THEMSELVES TO THE FULL EXTENT OF THE LAW:</p> <p>It seems to me that this is an arbitrary restriction on ones right to defend themselves, especially where their interests are not aligned with the City’s (for instance in the Miele Claim) to the full extent of the law in a proceeding and is not required by law. One’s ability to defend themselves to the full extent of the law should not be determined by the City Solicitor or Council. In this case, it is determined by the City Solicitor or Council because they have the right to deny financial coverage.</p> <p>For example, in the Miele claim, damages can be substantial if allegations are found to be valid. What if the City chose to limit indemnification to a fraction of the amount needed to cover the cost damages? Should employees be put to this risk? Currently eligible persons could be liable for millions of dollars through no fault of their own.</p> <p>I agree that eligible persons should not be permitted to act unreasonably in their defence and therefore run up improper legal bills. In my opinion, this is best addressed through a referral of the bills to an independent person to determine if such legal expenses are appropriate. I understand that the courts in Ontario already have this function through a ‘court assessment officer’. This is a fair and independent way to ensure that eligible persons do not unduly overcharge the City and will effectively reign in legal expenses.</p> <p>Section 5(6) ensures the City only pays reasonable legal costs as may be assessed by a Court Assessment Officer</p>	<p>These subsections are found in the current Indemnification By-law and are in accordance our general approach to litigation management.</p> <p>Staff agree that subsection (c) could benefit from a clarification that quantum of indemnification is in respect of <i>legal fees</i>, and the by-law will be amended accordingly.</p> <p>In terms of litigation budget, lawyers are routinely asked for budget in litigation and other matters – it allows for legal budgeting and assessment of the City’s financial exposure.</p> <p>These requirements (e.g. budgets and potential to limit indemnification) are a flow-through of the insurance company’s basic rights. Without these cost control mechanisms, the City/insurance company’s exposure to legal costs is dramatically increased, and insurance companies are unlikely to agree to insure the City if such broad exposure exists.</p> <p>It is important to note that all decisions regarding indemnification and budgets for legal matters must be <u>reasonable and in good faith</u>. If the City Solicitor arbitrarily denies indemnification or arbitrarily restricts legal budgets, that in itself is subject to another legal proceeding. Decisions about indemnification are therefore made based on reasonableness, fairness, principles of law, and with the understanding that improperly withholding indemnification will have negative consequences for the City.</p> <p>As discussed above, while the use of the Court Assessment Officer is one tool that is available to the City to control costs, if it is the only tool then the City will be unable to manage legal spend in cases where indemnification is provided. This would also not be acceptable to the insurer.</p>	<p>These types of provisions are also very common in Indemnification By-laws. For example, the York Region By-law states “The Regional Solicitor shall have the right to require and approve work plans, periodic budgets, status reporting and/or any other management of legal counsel that the Regional Solicitor deems to be appropriate.” As mentioned above, York Region also states that individuals may receive advance payment of legal fees for certain regulatory offences to \$15,000 and gives the Regional Solicitor sole discretion to determine whether advance payment is appropriate.</p> <p>The City of Toronto’s Indemnification Policy for Members of Council also provides cost control measures. The City of Toronto’s Municipal Code (which applies to indemnification of employees) confirms that "The City shall have the right to assess any account rendered by counsel acting for any employee in the defence of an action."</p> <p>The City of Mississauga allows the City Solicitor to “set a reasonable global upset limit for legal costs” and also “establish reasonable hourly rates”. It also requires the City Solicitor to seek direction from Council if the indemnification of an</p>

	<p>and the City will only be responsible for the amount found to be reasonable by this independent person with requisite expertise. Section 5(7) requires monthly invoices so the City Solicitor can determine the appropriateness of the amounts and can refer to the court assessment officer where required. This provides adequate protection for the City from run away legal fees.</p>		<p>Eligible Person is expected to be over \$250K.</p> <p>The City of Markham also allows the City Solicitor to impose periodic budgets and workplans and review invoices.</p> <p>The Town of Caledon allows for a “reasonable global upset limit for legal costs” and for limits on hourly rates.</p> <p>The City of Brampton similarly provides the ability to reasonably limit indemnification expenses.</p>
<p>Section 5(6)</p> <p>5(6) If there is a dispute between the City Solicitor, acting reasonably, and the Eligible Person with respect to the account for legal expense payments, the City Solicitor may require that such account for reimbursement be assessed by a Court Assessment Officer prior to payment by the Corporation.</p>	<p>Add the following to the end of section 5(6):</p> <p>“The Corporation shall have the right to limit the amount which it will reimburse, or provide Advance Payment, to the amount arrived at by the Court Assessment Officer”</p> <p>This ensures that the City has the authority to limit reimbursements to the amount assessed by a Court Assessment officer. This strengthens the City’s control over runaway legal expenses.</p>	<p>Agreed, and this will be included in the revised by-law.</p>	<p>N/A</p>
<p>Section 6(1)(a)</p> <p>6(1) If an Eligible Person who has been approved to receive indemnification fails or refuses to comply with any of the provisions of this By-law, or in the event of one or more of the following:</p> <p>(a) the Eligible Person or his or her lawyer takes a step which is unnecessary, or otherwise prejudicial to the conduct of the Legal Proceeding, as determined by the City Solicitor; or</p>	<p>Delete section 6(1)(a) in its entirety.</p> <p>Current section allows City to set budgets capping legal costs.</p> <p>It appears to me that this section allows the City solicitor to deny coverage if the Solicitor does not agree with a legal step taken by the employee.</p> <p>This amounts to permitting the City solicitor to dictate legal steps taken. This section may be inappropriate as it may place the City solicitor in a conflict of interest (where the interests of the City and employee are not the same – for instance in the case of the Miele Claim), and may require the sharing of privileged legal strategy so the City Solicitor can determine the appropriateness of the action taken – this may require that the eligible person to reveal their legal strategy as sharing of this information may be determined to be a waiver of solicitor client privilege.</p> <p>Using the Miele claim as an example, the City Solicitor is required to defend its client (the City) and take all measures legally available to her to defend the City. If this by-law is passed as is, the City Solicitor would be permitted, by law, to limit the defence of the co-defendants by denying coverage of a legal step proposed to be taken which he/she believes is unnecessary, but which the lawyer hired to defend the eligible persons deems to be necessary. There is no appeal of this decision.</p>	<p>This section is currently found in the City’s Indemnification By-law. In our opinion, this section should remain in the by-law.</p> <p>This section is intended to ensure that Eligible Persons receiving the benefit of indemnification from the City do not take steps that are unnecessary or otherwise prejudice the City’s position. In our respectful opinion, this is critical to litigation management.</p> <p>In our respectful opinion, the City should not have to pay for unnecessary legal expenses, or to pay for lawyers who take positions that would cause the City to incur further costs by prejudicing the City in furtherance of an Eligible Person’s position. The intent of the Indemnification By-law is to protect the Eligible Person’s pecuniary losses; but it should not be done by exposing the City to further pecuniary losses that are unnecessary or inappropriate.</p> <p>An insurer may also refuse to pay for legal expenses that are unnecessary or prejudicial to their position, especially when they are paying for the Eligible Person’s legal expenses.</p> <p>For matters under insurance coverage, the insurance company has significant influence on the steps to be taken in a legal proceeding. If the suggested edits are adopted and an Eligible Person takes steps contrary to what the insurance company believes is necessary, it may deny coverage and the City may be required to pay for such steps out of pocket.</p> <p>Also as noted above, it is a fundamental principle that this by-law be administered in good faith and fairly. If the City acts unfairly or seeks to limit indemnification in bad faith, the City will be open to a</p>	<p>Such provisions are common in municipal indemnification By-laws.</p> <p>For example, the City of Markham confirms that Council may choose not to indemnify an individual if they “took a step which was unnecessary or otherwise prejudicial to the conduct of the covered action or proceeding”.</p> <p>The City of Mississauga will not pay costs, damages, expenses, etc. If the individual (or their counsel) took a “step which was unnecessary or otherwise prejudicial to the conduct of the Legal Proceeding, as determined by the City Solicitor”.</p>

		claim. As such, exclusions to indemnification are not imposed lightly and without reasons.	
<p>Section 6(1)(b)</p> <p>6(1) If an Eligible Person who has been approved to receive indemnification fails or refuses to comply with any of the provisions of this By-law, or in the event of one or more of the following:</p> <p>(b) the quantum of indemnification exceeds the Budget referred to in section 5(5); or</p>	<p>Delete section 6(1)(b) in its entirety.</p> <p>The current section allows the setting of limits to the City budget thereby capping legal costs.</p> <p>ARBITRARY CAP ON ONES RIGHT TO DEFEND THEMSELVES TO THE FULL EXTENT OF THE LAW:</p> <p>Again, this is an arbitrary restriction on ones right to defend themselves, especially where their interests are not aligned with the City's (for instance in the Miele Claim) to the full extent of the law in a proceeding and is not required by law. One's ability to defend themselves to the full extent of the law should not be determined by the City Solicitor or Council.</p> <p>I agree that eligible persons should not be permitted to act unreasonably in their defence and therefore run up improper legal bills. In my opinion, this is best addressed through a referral of the bills to an independent person to determine if such legal expenses are appropriate. The courts in Ontario already have this function through a 'court assessment officer'. This is a fair and independent way to ensure that eligible persons do not unduly overcharge the City and will effectively reign in legal expenses.</p> <p>Section 5(6) ensures the City only pays reasonable legal costs as may be assessed by a Court Assessment Officer and the City will only be responsible for the amount found to be reasonable by this independent person with requisite expertise. Section 5(7) requires monthly invoices so the City Solicitor can determine the appropriateness of the amounts and can refer to the court assessment officer where required. This provides adequate protection for the City from run away legal fees.</p>	<p>Please note that this is part of the current City's Indemnification By-law. This follows from the ability under the by-law to impose a limit of indemnification.</p> <p>Please see comments above.</p> <p>Please note that the Indemnification By-law does not limit one's ability to defend themselves in a court of law. Rather, it imposes a budget limitation on the spending such that the City will only be responsible up to a certain amount. This is similar to the City's insurance policy, which has a cap. Any claim that exceeds the coverage will be at the City's own expense.</p> <p>It is up to Council to decide whether it wishes to allow for indemnification without any quantum limits.</p>	<p>This section was part of the pre-existing Indemnification By-law. Examples of other By-laws which include budget requirements or limits on indemnification amounts are discussed above.</p>
<p>Section 6(1)(c)</p> <p>6(1)If an Eligible Person who has been approved to receive indemnification fails or refuses to comply with any of the provisions of this By-law, or in the event of one or more of the following:</p> <p>(c) the maximum amount of indemnification approved has been paid, or</p>	<p>Delete section 6(1)(c) in its entirety.</p> <p>The current section allows the setting of the City budget thereby capping legal costs.</p> <p>ARBITRARY CAP ON ONES RIGHT TO DEFEND THEMSELVES TO THE FULL EXTENT OF THE LAW:</p> <p>This is an arbitrary restriction on ones right to defend themselves, especially where their interests are not aligned with the City's (for instance in the Miele Claim) to the full extent of the law in a proceeding and is not required by law. Ones ability to defend themselves to the full extent of the law should not be determined by the City Solicitor or Council.</p> <p>I agree that eligible persons should not be permitted to act unreasonably in their defence and therefore run up improper legal bills. In my opinion, this is best addressed through a referral of the bills to an independent person to determine if such legal expenses are appropriate. The courts in Ontario already have this function through a 'court assessment officer'. This is a fair and independent way to ensure that eligible persons do</p>	<p>This is currently found in the City's Indemnification By-law and follows from the ability of the City to impose a cap on the indemnification. Please see staff's response above.</p>	<p>Please see above.</p>

	<p>not unduly overcharge the City and will effectively reign in legal expenses.</p> <p>Section 5(6) ensures the City only pays reasonable legal costs as may be assessed by a Court Assessment Officer and the City will only be responsible for the amount found to be reasonable by this independent person with requisite expertise. Section 5(7) requires monthly invoices so the City Solicitor can determine the appropriateness of the amounts and can refer to the court assessment officer where required. This provides adequate protection for the City from run away legal fees.</p>		
<p>Section 6(1)(d)</p> <p>6(1) If an Eligible Person who has been approved to receive indemnification fails or refuses to comply with any of the provisions of this By-law, or in the event of one or more of the following:</p> <p>(d) the Eligible Person commences a counterclaim, crossclaim, third party claim, application for judicial review, or other proceeding related to the Legal Proceeding for which reimbursement is sought, without first obtaining prior approval from the City Solicitor,</p> <p>then the Corporation shall not be liable to assume or pay any of the costs, damages, expenses, monetary penalty or other sums as set out in this By-law.</p>	<p>Delete section 6(1)(d) in its entirety.</p> <p>Requires City approval for an appeal, crossclaim, counterclaim, third-party claim, judicial review, etc.</p> <p>Eligible persons should not be required to get the consent of the City for these matters which are related to receiving the best defence possible.</p> <p>DENIAL OF PROCEDURAL FAIRNESS AND NATURAL JUSTICE:</p> <p>In order to ensure that justice is served, the eligible persons must be permitted to take all legal options they deem necessary in their own defence. To me this provision may act to effectively limit the options one can take. This arbitrary limit is unfair and not required.</p> <p>If the concern meant to be addressed is the legal fees, we can address this in the by-law through the ability to have the fees assessed by a Court Assessment Officer.</p> <p>POTENTIAL FOR CONFLICT:</p> <p>This section is inappropriate, may place the City solicitor in a conflict of interest (where the interests of the City and employee are not the same – for instance in the case of the Miele Claim), and may require the sharing of privileged legal strategy. If, for instance councillors were found to have offended the law in the Miele Claim, but the City was let off, the City Solicitor may be bound by her/his duty to the City to deny the councillors right to appeal, because any such appeal could open the City back up to being found to have been offside.</p>	<p>Section 6(1)(d) is found in the current City Indemnification By-law (the only addition is the reference to an application for judicial review).</p> <p>The principle of the Indemnification By-law is to protect against pecuniary losses of a person. In other words, it is intended to cover fees and awards arising out of a claim/proceeding against the Eligible Person (part of a defence). The initiation of appeals, judicial reviews, cross claims etc. are initiating processes. The Eligible Person takes on the position of the plaintiff or applicant/appellant. While counterclaim, cross claims and third-party claims can be effective as part of the overall defence, there should be consideration given to overall litigation management. Appeals and judicial review are initiating processes that are outside the scope of protection afforded in the Indemnification By-law. Council approval is required for those initiating processes.</p> <p>Decisions about appeals, counterclaims, etc. lead to significant financial implications for the City and its insurance company. It is important that due process is followed to ensure consistent and effective management of City resources. Council and the insurer (if applicable) must be made aware of the financial implications, and agree to incur such expenses, before any decisions are made.</p> <p>As mentioned above, these types of sections are also a flow through of the insurer's basic rights. The insurer has notification requirements included in policies, and often decisions about appeals, crossclaims, counterclaims, are made with the insurer's approval.</p> <p>Again, all decisions regarding indemnification must be made reasonably and in good faith. The City (and its insurer) must be able to make decisions about legal proceedings if the City/insurance company are bearing the cost.</p>	<p>These types of requirements are very common in municipal Indemnification By-laws. For instance, the York Region indemnification gives the Regional Solicitor sole discretion to determine whether an appeal should be commenced and whether the cost of the appeal will be borne by the Region.</p> <p>The City of London provides the City with the final authority to approve settlement for indemnified matters.</p> <p>The City of Markham also requires an individual to obtain approval from the City Solicitor before a counterclaim, crossclaim, third party claim, etc. is made.</p> <p>The City of Mississauga confirms it will not pay costs/damages for a matter if the individual or their counsel “initiated a counterclaim, crossclaim, third party claim, or other proceeding...”.</p> <p>The City of Toronto's Municipal Code states that all decisions about the defence of a proceeding (including decisions about counterclaims and third-party claims) shall be made by the City.</p>
<p>Section 7</p> <p>(7)Notwithstanding other provisions of this Bylaw, where a person seeks to appeal or bring an application for judicial review with respect to a judgment or decision in a Legal Proceeding covered by this By-law, the Corporation shall have the sole discretion to determine whether the</p>	<p>Delete section 7 in its entirety</p> <p>This amounts to permitting the City solicitor to dictate legal steps to taken.</p> <p>DENIAL OF PROCEDURAL FAIRNESS AND NATURAL JUSTICE:</p> <p>Ones ability to defend themselves to the full extent of the law should not be determined by the City Solicitor or Council. Under the MCIA, if a councillor is found to violate and wish to appeal the decision, the City Solicitor should not</p>	<p>This section is found in the current City Indemnification By-law.</p> <p>This section is written such that it is the <u>Corporation</u> (i.e. Council) that has the sole discretion to determine whether an appeal or judicial review will be covered by the by-law. The City Solicitor does not have any delegated authority under this section.</p>	<p>Addressed above.</p> <p>In addition, staff note that the City of Toronto's Municipal Code also confirms that the City shall have sole discretion to determine whether to represent an individual in an appeal and whether to pay related costs.</p> <p>Similarly, the City of</p>

<p>expenses of the appeal or judicial review will be covered by this By-law. If an individual pursues an appeal or application for judicial review without representation by the Corporation and is successful in that appeal, the Corporation shall have sole discretion to determine whether the Eligible Person shall be indemnified for his or her legal expenses.</p>	<p>have the right to deny coverage so the eligible person would be required to pay out of their own expense in order to defend themselves to the full extent of the law.</p> <p>POTENTIAL FOR CONFLICT:</p> <p>This section is inappropriate, may place the City solicitor in a conflict of interest (where the interests of the City and employee are not the same – for instance in the case of the Miele Claim), and may require the sharing of privileged legal strategy. If, for instance councillors were found to have offended the law in the Miele Claim, but the City was let off, the City Solicitor may be bound by his/her duty to the City to deny the councillors right to appeal, because any such appeal could open the City back up to being found to have been offside.</p>		<p>Markham retains the ability to determine whether an appeal should be commenced in a proceeding.</p>
<p>Section 8(2)</p> <p>8(2) Nothing in this By-law shall prevent the City Solicitor from bringing a report to Council to seek direction on any matter related to indemnification.</p>	<p>Revise section 8(2) as follows:</p> <p>“Nothing in this By-law shall prevent the City Solicitor or Member of Council from bringing a report to Council to seek direction on any matter related to indemnification.</p> <p>This allows a member of council to also bring a matter to council as required.</p>	<p>This amendment is not strictly necessary because members of Council always have rights to bring matters before Council. The only reason why this section is put in is to provide clarity that despite the authorization given in the by-law, the City Solicitor could seek direction from Council before exercising such discretion. Technically it is not required as notwithstanding any delegation of authority, the City Solicitor can bring a report to council to seek instructions any time, and the section was included only to provide clarity.</p>	<p>N/A</p>
<p>Section 10(c)</p> <p>This By-law comes into force on the day it is passed. For greater certainty:</p> <p>(c) For ongoing Legal Proceedings in which an Eligible Person was required to retain their own counsel, including Code Complaints filed with the Integrity Commissioner prior to the enactment of this By-law where a final disposition has not been rendered, the provision of this By-law will apply.</p>	<p>Revise 10(c) as follows:</p> <p>For ongoing Legal Proceedings in which an Eligible Person was required to retain their own counsel, including Code Complaints filed with the Integrity Commissioner prior to the enactment of this By-law where a final disposition has not been rendered, or where final accounts have not been settled, the provision of this By-law will apply.</p> <p>Extends coverage to those instances where final accounts have not been settled.</p>	<p>As this section only deals with ongoing Legal Proceedings, i.e. where there is no final disposition of the matter, there would not be any final accounts rendered. Final accounts would only be settled when the Legal Proceeding is complete and a final disposition is made, and that it is no longer “ongoing”. As such, we do not believe that the amendment is necessary.</p>	<p>N/A</p>

THE CITY OF VAUGHAN

BY-LAW

BY-LAW NUMBER XX-2020

A By-law to provide for the indemnity and defence of members of council, members of local boards, and employees of the Corporation against loss or liability incurred while acting on behalf of the Corporation, and to repeal By-law 91-2011, as amended.

WHEREAS Section 8 of the *Municipal Act, 2001*, S.O. 2001, c. 25 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 279(1) of the *Municipal Act, 2001*, as amended, provides that a municipality may, subject to certain limitations, act as an insurer and protect present and former members of council, local boards, employees, and officers from risk that may involve pecuniary loss or liability on the part of those individuals;

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 283(2) of the *Municipal Act, 2001* as amended, provides that a municipality may only pay the expenses of members of council, local boards, employees, and officers if the expenses are of those persons in their capacity as members, officers or employees, among other considerations;

AND WHEREAS Section 223.3(6) of the *Municipal Act, 2001*, as amended, provides that a municipality shall indemnify and save harmless the Integrity 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 the Integrity Commissioner is authorized under sections 223.4 and 223.4.1 of the *Municipal Act, 2001* to conduct inquiries as it relates to the Code of Ethical Conduct for Members of Council and local boards and the *Municipal Conflict of Interest Act*;

AND WHEREAS Section 8 of the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.

50, as amended, allows an elector, an Integrity Commissioner of a municipality or a person demonstrably acting in the public interest to apply to a judge for a determination of the question of whether a member, or former member, has contravened section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*.

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

NOW THEREFORE the Council of The Corporation of the City of Vaughan enacts as follows:

Section 1 - Definitions and Interpretation

- (1) In this By-law, unless a contrary intention appears,
 - (a) “Advance Payment” means payment by the Corporation of actual and reasonable legal fees incurred by an Eligible Person in the course of defending the Legal Proceeding, in advance of a final disposition of the Legal Proceeding;
 - (b) “Code” means the Code of Ethical Conduct for Members of Council and Local Boards, as amended;
 - (c) “Code Complaint” means a formal or informal complaint made to the Integrity Commissioner, and includes an inquiry under section 223.4 or 223.4.1 of the *Municipal Act, 2001*.
 - (d) “Corporation” means The Corporation of the City of Vaughan;
 - (e) “City Solicitor” means the City Solicitor of the Corporation, or designate;
 - (f) “City Manager” means the City Manager of the Corporation, or designate;
 - (g) “Eligible Person” means any of the following persons of the Corporation:
 - (i) a current or former member of Council;
 - (ii) a current or former member of a local board;
 - (iii) the current or former Integrity Commissioner, including any person acting under the instructions of the Integrity Commissioner;
 - (iv) the current or former Lobbyist Registrar;
 - (v) current or former officers and employees.

(h) "Legal Proceeding" means:

- (i) a civil proceeding or administrative action, including but not limited to an action, application, motion, hearing, trial; or
- (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; or
- (iii) a proceeding brought under section 8 of the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M. 50, as amended (the "MCIA"); or
- (iv) a Code Complaint; or,
- (v) a complaint to a professional association;

But excludes:

- (vi) any proceeding commenced by the Corporation;
- (vii) any proceeding in which the Corporation is a party adverse in interest; or
- (viii) any proceeding under the *Municipal Elections Act*, 1996, S.O. 1996, c. 32, Sched., as amended.

Section 2 - Indemnification of Eligible Persons

- (1) Subject to the provisions of this By-law, the Corporation shall indemnify an Eligible Person, and his or her heirs and legal representatives, in respect of any Legal Proceeding arising out of acts or omissions done or made by the Eligible Person:
 - (a) in his or her capacity as an Eligible Person, including those acts or omissions arising from the performance of any statutory duty imposed by any general or special Act; and
 - (b) acting in good faith and based on the reasonable belief that such acts or omissions were lawful and in the best interests of the Corporation or local board as applicable.
- (2) The Corporation shall reimburse members of Council and local boards 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.
- (3) If an Eligible Person qualifies for indemnification in a Legal Proceeding under this By-law, the City will assume carriage of the Legal Proceeding on behalf of the Eligible Person, unless the City Solicitor determines that the City cannot

represent the Eligible Person. For greater certainty, the City shall not assume carriage of a Legal Proceeding referred to in 1(h)(iii) or 1(h)(iv) above.

- (4) Where the City Solicitor determines that the City cannot represent the Eligible Person, the City Solicitor may request that the Eligible Person retain independent legal counsel and be indemnified for legal fees in accordance with this By-law.
- (5) The City Solicitor shall have the right to request that an Eligible Person obtain their own legal counsel at any time during the course of the Legal Proceeding if the City Solicitor is of the opinion that it is no longer appropriate for the City to defend and represent, or to continue to defend and represent the Eligible Person.
- (6) Where the City assumes the defence of a Legal Proceeding on behalf of an Eligible Person, the Eligible Person shall co-operate with the City and assist the City in the defence of the Legal Proceeding, as required by the City. This includes providing timely and fulsome responses to requests for information and attending the proceedings and meetings, as required.
- (7) Where an Eligible Person fails to co-operate and assist the City in accordance with section 2(6), the City Solicitor may determine that it would be inappropriate for the City to defend and represent, or continue to defend and represent, the Eligible Person, and the Eligible Person will no longer qualify for indemnification in respect of the Legal Proceeding.
- (8) If the City defends and represents the Eligible Person in a Legal Proceeding, the City shall not be responsible for any legal or other costs incurred by the Eligible Person unless such expenses have been pre-approved by the City Solicitor.

Section 3 - Process to Request Indemnification

- (1) If an Eligible Person is required to obtain their own legal representation pursuant to section 2, or if the Eligible Person is seeking to be reimbursed for legal expenses pursuant to section 2(2), he or she may make a written request for indemnification,
 - (a) to the City Solicitor; or,
 - (b) where the City Solicitor is the person seeking indemnification, to the City Manager; or
 - (c) where both the City Manager and the City Solicitor are named as parties in the legal proceeding giving rise to the request, to Council.
- (2) Upon receipt of a request for indemnification, the City Solicitor shall provide a written response within 10 business days of delivery of the request.

Advance Payment

- (3) A written request referred to in section 3(1) may include a request for Advance Payment of actual and reasonable legal fees. In the absence of such a request

for Advance Payment, payment of legal fees shall be made after a final disposition of the Legal Proceeding or the completion of the matter referred to in section 2(2) as appropriate (where a final disposition includes termination or settlement of a Legal Proceeding).

- (4) Any Advance Payment made by the Corporation is subject to:
 - (a) A cap of \$25,000 if the Advance Payment is not assumed or paid for by the Corporation's insurer;
 - (b) the requirement to reimburse the City, as set out in sections 5(2), 5(3), and 5(4); and
 - (c) the condition that, if repayment of legal fees is required under this Bylaw, that repayment shall be made within 90 days of the final disposition of the Legal Proceeding.
- (5) If an Eligible Person wishes to seek Advance Payment for an amount exceeding \$25,000 as provided in section 3(4)(a), the City Solicitor shall bring a report to Council for direction.
- (6) If at any point the Eligible Person wishes to deviate from the repayment obligations to repay the City within 90 days, the Eligible Person shall make a request to the City Solicitor who shall bring the matter to Council to seek direction and approval.

Approval of Lawyer

- (7) A written request for indemnification referred to in section 3(1) may include a request for approval of a lawyer chosen by the Eligible Person, or may request that the City Solicitor suggest three lawyers.
- (8) Notwithstanding section 3(7), in the case of proceedings referred to in section 1(h)(iii) or 1(h)(iv), the Eligible Person shall not require approval of their lawyer by the City.
- (9) Where a request for indemnification seeks approval of a lawyer chosen by the Eligible Person, the response by the City Solicitor, acting reasonably, shall also:
 - (a) approve the request to retain the lawyer chosen by the Eligible Person; or
 - (b) deny the request and suggest three lawyers of the Corporation's choice who could represent the Eligible Person in the Legal Proceeding at issue.
- (10) Where the City Solicitor has suggested three lawyers, the Eligible Person shall select from the list and shall notify the City Solicitor of the selection, within 5 calendar days of receipt.

Section 4 - Eligible Persons Served with Process

- (1) Subject to section 4(2), where an Eligible Person is served with any document which initiates a Legal Proceeding, he or she shall forthwith deliver the document to the City Solicitor.
- (2) Where a Member of Council or local board receives a Code Complaint the Member of Council or local board may request permission from the Integrity Commissioner to disclose the existence and general nature of the complaint to the City Solicitor in support of their request for indemnification under this By-law.

Section 5 - Manner and Extent of Indemnification

- (1) The Corporation shall provide indemnification to an Eligible Person as follows under this By-law:
 - (a) Assume carriage of the defence on behalf of the Eligible Person or pay the actual and reasonable expenses of defending such Eligible Person in the Legal Proceeding; and/or,
 - (b) pay any damages or costs, including any monetary penalty, or award against such Eligible Person as a result of a Legal Proceeding; and/or,
 - (c) pay, either by direct payment or by reimbursement, any expenses reasonably incurred by the Eligible Person as a result of a Legal Proceeding or a request for payment of fees under section 3; and/or,
 - (d) pay any sum required in connection with the settlement of a Legal Proceeding, provided that the City Solicitor approves the terms of the settlement;

to the extent that such costs, damages, expenses, monetary penalty, other award or other sums related to the Legal Proceeding are not assumed, paid or reimbursed under any provision of the Corporation's insurance for the benefit and protection of such person against any liability incurred by him or her.

- (2) If it is determined in a Legal Proceeding that an Eligible Person's acts or omissions giving rise to the Legal Proceeding:
 - (a) did not arise out of acts or omissions done or made by the Eligible Person in his or her capacity as an Eligible Person; or
 - (b) were not done or not made in good faith; or
 - (c) were not based on the reasonable belief that such acts or omissions were lawful and in the best interests of the Corporation,

the Eligible Person shall not be eligible for indemnification under this By-law, and shall be required to reimburse the Corporation for all funds paid on the Eligible Person's behalf pursuant to this By-law within 90 days of such a determination.

- (3) An Eligible Person is not entitled to indemnification under this By-law and must reimburse the Corporation for any legal fees paid by the Corporation in respect of a Legal Proceeding if:
 - (a) the Eligible Person is convicted of an offence in the case of a Legal Proceeding under section 1(h)(ii); or
 - (b) In the case of a proceeding brought under section 8 of the *MCIA*, the member of Council or local board has been found to have contravened section 5, 5.1 or 5.2 of the *MCIA*; or
 - (c) In the case of a Code Complaint, where a contravention has been found, unless:
 - (i) the contravention has occurred by reason of inadvertence; or
 - (ii) the contravention has occurred by reason of a bona fide error in judgment.
- (4) If an Eligible Person receives a payment through a costs award or settlement in respect of a Legal Proceeding for which the City has indemnified the Eligible Person, such amounts must be paid to the City upon receipt by the Eligible Person.
- (5) The City Solicitor, acting reasonably, may request or impose one or all of the following:
 - (a) Budgets for anticipated legal expenses; and/or
 - (b) Status Updates in respect of the progress of the proceedings; and/or
 - (c) A limit on quantum of indemnification for legal fees.
- (6) If there is a dispute between the City Solicitor, acting reasonably, and the Eligible Person with respect to the account for legal expense payments, the City Solicitor may require that such account for reimbursement be assessed by a Court Assessment Officer prior to payment by the Corporation. The Corporation shall have the right to limit the amount which it will reimburse, or provide Advance Payment, to the amount arrived at by the Court Assessment Officer.
- (7) The City Solicitor shall be provided with copies of the statements of account on a monthly basis, which shall outline all fees and disbursements, and shall be provided with information relating to these accounts, as may be requested from

time to time, in order to determine reasonableness of the account before any payment would be made.

Section 6 - Failure to Comply with By-law / Exclusions

- (1) If an Eligible Person who has been approved to receive indemnification fails or refuses to comply with any of the provisions of this By-law, or in the event of one or more of the following:
 - (a) the Eligible Person or his or her lawyer takes a step which is unnecessary, or otherwise prejudicial to the conduct of the Legal Proceeding, as determined by the City Solicitor; or
 - (b) the quantum of indemnification exceeds the Budget referred to in section 5(5); or
 - (c) the maximum amount of indemnification approved has been paid, or
 - (d) the Eligible Person commences a counterclaim, crossclaim, third party claim, application for judicial review, or other proceeding related to the Legal Proceeding for which reimbursement is sought, without first obtaining prior approval from the City Solicitor,

then the Corporation shall not be liable to assume or pay any of the costs, damages, expenses, monetary penalty or other sums as set out in this By-law.

Section 7 - Appeal

- (1) Notwithstanding other provisions of this Bylaw, where a person seeks to appeal or bring an application for judicial review with respect to a judgment or decision in a Legal Proceeding covered by this By-law, the Corporation shall have the sole discretion to determine whether the expenses of the appeal or judicial review will be covered by this By-law. If an individual pursues an appeal or application for judicial review without representation by the Corporation and is successful in that appeal, the Corporation shall have sole discretion to determine whether the Eligible Person shall be indemnified for his or her legal expenses.

Section 8 - Executive Acts Authorized

- (1) The City Solicitor is authorized to execute any necessary documents on behalf of the Corporation in order to give effect to this By-law according to its true intent and meaning.
- (2) Nothing in this By-law shall prevent the City Solicitor from bringing a report to Council to seek direction on any matter related to indemnification.

Section 9 – Repeal

- (1) By-law 91-2011, as amended, is hereby repealed.

Section 10 - Force and Effect

- (1) This By-law comes into force on the day it is passed. For greater certainty:
- (a) For ongoing Legal Proceedings where the Corporation has assumed the defence of the matter on behalf of an Eligible Person, the City will continue to defend the Legal Proceeding on the Eligible Person's behalf, subject to the terms of this By-law.
 - (b) For all Legal Proceedings where indemnification was authorized under Bylaw 91-2011, as amended, those existing indemnification approvals will continue under this By-law, and be subject to the terms of this By-law.
 - (c) For ongoing Legal Proceedings in which an Eligible Person was required to retain their own counsel, including Code Complaints filed with the Integrity Commissioner prior to the enactment of this By-law where a final disposition has not been rendered, the provision of this By-law will apply.

Enacted by City of Vaughan Council this 21st day of April, 2020.

Hon. Maurizio Bevilacqua, Mayor

Todd Coles, City Clerk

Authorized by Item No. 8 of
Report No. 17 of the Committee
of the Whole
Adopted by Vaughan City
Council on April 21, 2020

Attachment # 6

COMMUNICATION : C 4
C.W. (2) : APRIL 21, 2020
ITEM NO. : 7

From: Clerks@vaughan.ca
To: [Britto, John](#)
Subject: FW: [External] Submission Draft Indemnification By-law - Committee of the Whole Meeting April 21, 2020
Date: Monday, April 20, 2020 2:16:42 PM

From: Coles, Todd <Todd.Coles@vaughan.ca>
Sent: Monday, April 20, 2020 12:31 PM
To: Clerks@vaughan.ca
Subject: Fwd: [External] Submission Draft Indemnification By-law - Committee of the Whole Meeting April 21, 2020

From: Mackenzie Ridge Rate Payers Association <mackenzieridgerpa@gmail.com>
Sent: Monday, April 20, 2020 12:27 PM
To: Coles, Todd; council@vaughan.ca
Cc: Mackenzie Ridge Rate Payers Association
Subject: [External] Submission Draft Indemnification By-law - Committee of the Whole Meeting April 21, 2020

Submission to Council: Draft Indemnification By-law

This Indemnification By-law is more than generous and should be approved as is. To pursue amendments or changes that are costly or unnecessary during these difficult times, shows a blatant disregard for Vaughan taxpayers who are suffering both financially and personally, making many sacrifices during this pandemic.

Councillors need to keep in mind that these are challenging times for us all in terms of sickness, death, and the financial challenges many of my neighbours are facing regarding unemployment and various economic hardships. To ask for amendments or changes now, is quite unconscionable, when there are those who cannot pay municipal property taxes, their basic utilities, and other expenses without a steady or reliable income.

Overall, the draft Indemnification By-law is generous enough as is and should not be amended to create more financial or other burdens on Vaughan taxpayers.

Sincerely,

Robert A. Kenedy, PhD
President of the MacKenzie Ridge Ratepayers Association
Associate Professor
Department of Sociology
238 McLaughlin College
York University
4700 Keele Street
Toronto, Ontario M3J 1P3

[REDACTED]

From: [Coles, Todd](#)
To: Clerks@vaughan.ca; [Britto, John](#)
Cc: [Leung, Isabel](#)
Subject: Fwd: [External] Item 4:7 INDEMNIFICATION BY-LAW AMENDMENTS FOR MEMBERS OF COUNCIL
Date: Tuesday, April 21, 2020 6:33:51 AM

From: Richard Lorello [REDACTED]
Sent: Tuesday, April 21, 2020 12:07 AM
To: Maurizio Bevilacqua; Mario Ferri; City of Vaughan; Linda D. Jackson; Marilyn lafrate; Tony Carella; Rosanna DeFrancesca; Sandra Racco; Alan Shefman
Cc: Todd Coles
Subject: [External] Item 4:7 INDEMNIFICATION BY-LAW AMENDMENTS FOR MEMBERS OF COUNCIL

Good morning Mr. Coles.

Please post this communication as it relates to the April 21, 2020, 2pm Committee of the Whole meeting.

<https://pub-vaughan.escribemeetings.com/Meeting.aspx?Id=c140b4ea-a112-472c-af6f-bc2d55f5d09c&Agenda=Agenda&lang=English&Item=17>

Good morning Mayor and Members of Council

I find that the consideration of this item at this time is highly questionable and after reviewing the proposed Indemnification By-law, I could not help but feel revolted and repulsed at the consideration of the proposed By-law during these unprecedented times of suffering during a global pandemic which has taken a hard toll on Vaughan residents in so many ways.

The consideration of this item which inherently benefits Members of Council financially demonstrates a sense of entitlement, poor judgement, a high degree of self interest and insensitivity during a time when many taxpayers feel great concern and anxiety for their own financial stability, health and welfare, including the loss of friends and family as the world continues to find medical and economic solutions to the pandemic.

Let history record that within the context of a dangerous global pandemic where thousands of people in Vaughan, across the country and around the world who are facing medical distress, financial distress and instability, Vaughan Council found it necessary to make it a priority to consider a By-law that will be financially beneficial for themselves, effectively providing funds in advance to cover personal legal costs, at the expense of Vaughan taxpayers.

Let us also consider that as Council considers giving themselves a financial parachute through this By-law, Members of Council will not see any disruption to their own remuneration, at a time when thousands of taxpayers will in reality not have any financial parachute and will see significant financial disruption and hardship, to the point where meeting mortgage payments, property taxes and grocery bills will be difficult if not impossible for many as a result of COVID-19. The average taxpayer does not have the luxury to grant themselves a financial parachute.

The consideration of this item not only demonstrates insensitivity, but it also demonstrates a level of thoughtless disrespect for taxpayers and the general public during this very difficult time. It should not have to be said that this is not "business as usual".

I respectfully request that Council defer this item indefinitely until a future time when the threat of pandemic has passed and when the general public is no longer facing the threat of financial hardship, contracting a dreaded illness or worse yet, the loss of friends or family. It is highly unusual for any level of government to be considering items such as this while a crushing pandemic is far from being resolved. **NOW IS NOT THE TIME!**

Further to my review, I also see that Regional Councillor / Deputy Mayor Mario Ferri went to great lengths to propose amendments to the By-law to protect his own financial interests, but fails to make any amendments to ensure that the By-law protects the interest of the taxpayer. The amendments proposed by Councillor Ferri seem highly one-sided. Specifically, the proposed By-law in question lacks the proper mechanisms to ensure that the taxpayer is fully protected against the loss of funds resulting from the possibility of delinquent Members of Council who fail to repay funds that they were not entitled to.

The By-law requires stronger mechanisms in order for the City to be able to collect funds from delinquent Councillors who fail to repay money that was advanced to them where it is subsequently determined that the individual is not entitled to indemnification in accordance with the By-law or ordered by a court to pay. There should be no discussion of advancing funds to any Member of Council without a mechanism for the City to collect the funds should a Councillor fail to repay.

Should Members of Council continue to consider and approve this By-law, I would strongly recommend that the taxpayer be kept whole by amending the By-law to add the following;

1. Where it is subsequently determined that a Member of Council is not entitled to indemnification in accordance with the By-law and fails to repay funds owing to the City after the stated 90 day repayment deadline, that staff be automatically empowered to seek an immediate court order to recoup funds by way of a wage garnishment or liens against a Councillors assets.
2. Where a Member of Council fails to be re-elected, where the garnishment of wages is no longer an option and the Member of Council still has outstanding funds owing to the City, that City staff be empowered to withhold any

outstanding funds owed to the City from any severance payments or expenses owed to the Councillor. Where the outstanding funds owed to the City surpasses the severance payment, that staff be empowered to seek a court order for the balance of the outstanding funds.

I make these recommendations due to a very important lesson learned by the City. It is important to note our experience with Regional Councillor Linda Jackson's failure to pay funds owed to the City resulting from a court order dating back to her term as Mayor between 2006 through 2010. As of January 2019, these funds remained outstanding and it is my understanding that there is still a balance outstanding. In the interest of the taxpayer, we cannot allow this to repeat itself in future and now is the time to adopt remedies to ensure that it does not happen in future.

Regards
Richard T. Lorello

THE CITY OF VAUGHAN

BY-LAW

BY-LAW NUMBER XX-2020

A By-law to provide for the indemnity and defence of members of council, members of local boards, and employees of the Corporation against loss or liability incurred while acting on behalf of the Corporation, and to repeal By-law 91-2011, as amended.

WHEREAS Section 8 of the *Municipal Act, 2001*, S.O. 2001, c. 25 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 279(1) of the *Municipal Act, 2001*, as amended, provides that a municipality may, subject to certain limitations, act as an insurer and protect present and former members of council, local boards, employees, and officers from risk that may involve pecuniary loss or liability on the part of those individuals;

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 283(2) of the *Municipal Act, 2001* as amended, provides that a municipality may only pay the expenses of members of council, local boards, employees, and officers if the expenses are of those persons in their capacity as members, officers or employees, among other considerations;

AND WHEREAS Section 223.3(6) of the *Municipal Act, 2001*, as amended, provides that a municipality shall indemnify and save harmless the Integrity 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 the Integrity Commissioner is authorized under sections 223.4 and 223.4.1 of the *Municipal Act, 2001* to conduct inquiries as it relates to the Code of Ethical Conduct for Members of Council and local boards and the *Municipal Conflict of Interest Act*;

AND WHEREAS Section 8 of the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.

50, as amended, allows an elector, an Integrity Commissioner of a municipality or a person demonstrably acting in the public interest to apply to a judge for a determination of the question of whether a member, or former member, has contravened section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*.

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

NOW THEREFORE the Council of The Corporation of the City of Vaughan enacts as follows:

Section 1 - Definitions and Interpretation

- (1) In this By-law, unless a contrary intention appears,
 - (a) "Advance Payment" means payment by the Corporation of actual and reasonable legal fees incurred by an Eligible Person in the course of defending the Legal Proceeding, in advance of a final disposition of the Legal Proceeding;
 - (b) "Code" means the Code of Ethical Conduct for Members of Council and Local Boards, as amended;
 - (c) "Code Complaint" means a formal or informal complaint made to the Integrity Commissioner, and includes an inquiry under section 223.4 or 223.4.1 of the *Municipal Act, 2001*.
 - (d) "Corporation" means The Corporation of the City of Vaughan;
 - (e) "City Solicitor" means the City Solicitor of the Corporation, or designate;
 - (f) "City Manager" means the City Manager of the Corporation, or designate;
 - (g) "Eligible Person" means any of the following persons of the Corporation:
 - (i) a current or former member of Council;
 - (ii) a current or former member of a local board;
 - (iii) the current or former Integrity Commissioner, including any person acting under the instructions of the Integrity Commissioner;
 - (iv) the current or former Lobbyist Registrar;
 - (v) current or former officers and employees.

(h) "Legal Proceeding" means:

- (i) a civil proceeding or administrative action, including but not limited to an action, application, motion, hearing, trial; or
- (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; or
- (iii) a proceeding brought under section 8 of the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M. 50, as amended (the "MCIA"); or
- (iv) a Code Complaint; or,
- (v) a complaint to a professional association;

But excludes:

(vi) ~~any proceeding commenced by the Corporation~~ any proceeding commenced by the Corporation against an Eligible Person directly, where the Corporation is fully successful;

~~(vii) any proceeding in which the Corporation is a party adverse in interest; or~~

~~(viii)~~ (vii) any proceeding under the *Municipal Elections Act*, 1996, S.O. 1996, c. 32, Sched., as amended.

Section 2 - Indemnification of Eligible Persons

(1) Subject to the provisions of this By-law, the Corporation shall indemnify an Eligible Person, and his or her heirs and legal representatives, in respect of any Legal Proceeding arising out of acts or omissions done or made by the Eligible Person except where it is determined in a Legal Proceeding that an Eligible Person's acts or omissions giving rise to the Legal Proceeding:

(a) did not arise out of acts or omissions done or made by the Eligible Person in his or her capacity as an Eligible Person; or

(b) were not done or not made in good faith; and,

(c) were not based on the reasonable belief that such acts or omissions were lawful and in the best interests of the Corporation.;

~~(1)~~ :

~~(a) in his or her capacity as an Eligible Person, including those acts or omissions arising from the performance of any statutory duty imposed by any general or special Act; and~~

~~acting in good faith and based on the reasonable belief that such acts or omissions were lawful and in the best interests of the Corporation or local board as applicable.~~

- (2) The Corporation shall reimburse members of Council and local boards 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.
- (3) If an Eligible Person qualifies for indemnification in a Legal Proceeding under this By-law, the Eligible Person shall be entitled to representation of their choice except in circumstances where the City's insurer denies the Eligible Person's request for independent legal counsel, in which case sections 2(4)-2(9) apply.
- ~~(3)~~(4) ~~The~~ City will assume carriage of the Legal Proceeding on behalf of the Eligible Person, unless the City Solicitor determines that the City cannot represent the Eligible Person. For greater certainty, the City shall not assume carriage of a Legal Proceeding referred to in 1(h)(iii) or 1(h)(iv) above.
- ~~(4)~~(5) Where the City Solicitor determines that the City cannot represent the Eligible Person, the City Solicitor may request that the Eligible Person retain independent legal counsel and be indemnified for legal fees in accordance with this By-law.
- ~~(5)~~(6) The City Solicitor shall have the right to request that an Eligible Person obtain their own legal counsel at any time during the course of the Legal Proceeding if the City Solicitor is of the opinion that it is no longer appropriate for the City to defend and represent, or to continue to defend and represent the Eligible Person.
- ~~(6)~~(7) Where the City assumes the defence of a Legal Proceeding on behalf of an Eligible Person, the Eligible Person shall co-operate with the City and assist the City in the defence of the Legal Proceeding, as required by the City. This includes providing timely and fulsome responses to requests for information and attending the proceedings and meetings, as required.
- ~~(7)~~(8) Where an Eligible Person fails to co-operate and assist the City in accordance with section 2(6), the City Solicitor may determine that it would be inappropriate for the City to defend and represent, or continue to defend and represent, the Eligible Person, and the Eligible Person will no longer qualify for indemnification in respect of the Legal Proceeding.
- ~~(8)~~(9) If the City defends and represents the Eligible Person in a Legal Proceeding, the City shall not be responsible for any legal or other costs incurred by the Eligible Person unless such expenses have been pre-approved by the City Solicitor.

Section 3 - Process to Request Indemnification

- (1) If an Eligible Person is required to obtain their own legal representation pursuant to section 2, or if the Eligible Person is seeking to be reimbursed for legal expenses pursuant to section 2(2), he or she may make a written request for indemnification,
- (a) to the City Solicitor; or,
 - (b) where the City Solicitor is the person seeking indemnification, to the City Manager; or
 - (c) where both the City Manager and the City Solicitor are named as parties in the legal proceeding giving rise to the request, to Council.

(2) Upon receipt of a request for indemnification, the City Solicitor shall provide a written response within 10 business days of delivery of the request. Coverage shall be provided if:

- (a) the requestor is an Eligible Person; and
- (b) the coverage requested is a proceeding.

Otherwise, coverage shall be denied.

Advance Payment

~~(2)~~(3) A written request referred to in section 3(1) may include a request for Advance Payment of actual and reasonable legal fees. In the absence of such a request for Advance Payment, payment of legal fees shall be made after a final disposition of the Legal Proceeding or the completion of the matter referred to in section 2(2) as appropriate (where a final disposition includes termination or settlement of a Legal Proceeding).

~~(3)~~(4) Any Advance Payment made by the Corporation is subject to:

- (a) A cap of \$~~250~~,000 if the Advance Payment is not assumed or paid for by the Corporation's insurer;
- (b) the requirement to reimburse the City, as set out in sections 5(2), 5(3), and 5(4); and
- (c) the condition that, if repayment of legal fees is required under this Bylaw, that repayment shall be made within 90 days of the final disposition of the Legal Proceeding.

~~(4)~~(5) If an Eligible Person wishes to seek Advance Payment for an amount exceeding \$~~250~~,000 as provided in section 3(4)(a), the City Solicitor shall bring a report to

Council for direction.

- ~~(5)~~(6) If at any point the Eligible Person wishes to deviate from the repayment obligations to repay the City within 90 days, the Eligible Person shall make a request to the City Solicitor who shall bring the matter to Council to seek direction and approval.

Approval of Lawyer

- ~~(6)~~(7) A written request for indemnification referred to in section 3(1) may include a request for approval of a lawyer chosen by the Eligible Person, or may request that the City Solicitor suggest three lawyers.

- ~~(7)~~(8) Notwithstanding section 3(7), in the case of proceedings referred to in section 1(h)(iii) or 1(h)(iv), the Eligible Person shall not require approval of their lawyer by the City.

- ~~(8) — Where a request for indemnification seeks approval of a lawyer chosen by the Eligible Person, the response by the City Solicitor, acting reasonably, shall also:~~

~~(a) — approve the request to retain the lawyer chosen by the Eligible Person; or~~

~~(b) — deny the request and suggest three lawyers of the Corporation's choice who could represent the Eligible Person in the Legal Proceeding at issue.~~

- (9) Where the City Solicitor has suggested three lawyers, the Eligible Person shall select from the list and shall notify the City Solicitor of the selection, within 5 calendar days of receipt.

Section 4 - Eligible Persons Served with Process

- (1) Subject to section 4(2), where an Eligible Person is served with any document which initiates a Legal Proceeding, he or she shall forthwith deliver the document to the City Solicitor.
- (2) Where a Member of Council or local board receives a Code Complaint the Member of Council or local board may request permission from the Integrity Commissioner to disclose the existence and general nature of the complaint to the City Solicitor in support of their request for indemnification under this By-law.

Section 5 - Manner and Extent of Indemnification

- (1) The Corporation shall provide indemnification to an Eligible Person as follows under this By-law:

(a) Assume carriage of the defence on behalf of the Eligible Person or

pay the actual and reasonable expenses of defending such Eligible Person in the Legal Proceeding; and/or,

- (b) pay any damages or costs, including any monetary penalty, or award against such Eligible Person as a result of a Legal Proceeding; and/or,
- (c) pay, either by direct payment or by reimbursement, any expenses reasonably incurred by the Eligible Person as a result of a Legal Proceeding or a request for payment of fees under section 3; and/or,
- (d) pay any sum required in connection with the settlement of a Legal Proceeding, provided that the City Solicitor approves the terms of the settlement;

to the extent that such costs, damages, expenses, monetary penalty, other award or other sums related to the Legal Proceeding are not assumed, paid or reimbursed under any provision of the Corporation's insurance for the benefit and protection of such person against any liability incurred by him or her.

- (2) If it is determined in a Legal Proceeding that an Eligible Person's acts or omissions giving rise to the Legal Proceeding:

- (a) did not arise out of acts or omissions done or made by the Eligible Person in his or her capacity as an Eligible Person; or
- (b) were not done or not made in good faith; ~~and~~or
- (c) were not based on the reasonable belief that such acts or omissions were lawful and in the best interests of the Corporation,

the Eligible Person shall not be eligible for indemnification under this By-law, and shall be required to reimburse the Corporation for all funds paid on the Eligible Person's behalf pursuant to this By-law within 90 days of such a determination.

- (3) An Eligible Person is not entitled to indemnification under this By-law and must reimburse the Corporation for any legal fees paid by the Corporation in respect of a Legal Proceeding if:

- (a) the Eligible Person is convicted of an offence in the case of a Legal Proceeding under section 1(h)(ii); or
- (b) In the case of a proceeding brought under section 8 of the *MCIA*, the member of Council or local board has been found to have contravened section 5, 5.1 or 5.2 of the *MCIA*; ~~or~~

~~(c) In the case of a Code Complaint, where a contravention has been found, unless:~~

- ~~(i) the contravention has occurred by reason of inadvertence;~~
- ~~or~~

~~the contravention has occurred by reason of a bona fide error in judgment.~~

~~b.~~; or

- (4) If an Eligible Person receives a payment through a costs award or settlement in respect of a Legal Proceeding for which the City has indemnified the Eligible Person, such amounts must be paid to the City upon receipt by the Eligible Person.
- (5) If required by the City's Insurer, City Solicitor, acting reasonably, may request or impose one or all of the following:
- (a) Budgets for anticipated legal expenses; and/or
 - (b) Status Updates in respect of the progress of the proceedings; and/or
 - (c) A limit on quantum of indemnification for legal fees.

Where one or all of the above is required, Council must approve the action taken by the City Solicitor.

- (6) If there is a dispute between the City Solicitor, acting reasonably, and the Eligible Person with respect to the account for legal expense payments, the City Solicitor may require that such account for reimbursement be assessed by a Court Assessment Officer prior to payment by the Corporation. The Corporation shall have the right to limit the amount which it will reimburse, or provide Advance Payment, to the amount arrived at by the Court Assessment Officer.
- (7) The City Solicitor shall be provided with copies of the statements of account on a monthly basis, which shall outline all fees and disbursements, and shall be provided with information relating to these accounts, as may be requested from time to time, in order to determine reasonableness of the account before any payment would be made.

Section 6 - Failure to Comply with By-law / Exclusions

- (1) If an Eligible Person who has been approved to receive indemnification fails or refuses to comply with any of the provisions of this By-law, or in the event of one or more of the following:
- ~~(a) the Eligible Person or his or her lawyer takes a step which is unnecessary, or otherwise prejudicial to the conduct of the Legal Proceeding, as determined by the City Solicitor; or~~
 - ~~(b)~~ (a) the quantum of indemnification exceeds the Budget referred to in section 5(5); or
 - ~~(c)~~ (b) the maximum amount of indemnification approved has been paid; ~~or~~
 - ~~(d) the Eligible Person commences a counterclaim, crossclaim, third~~

~~party claim, application for judicial review, or other proceeding related to the Legal Proceeding for which reimbursement is sought, without first obtaining prior approval from the City Solicitor,~~

then the Corporation shall not be liable to assume or pay any of the costs, damages, expenses, monetary penalty or other sums as set out in this By-law.

Section 7 – Appeal

- ~~(1) Notwithstanding other provisions of this Bylaw, where a person seeks to appeal or bring an application for judicial review with respect to a judgment or decision in a Legal Proceeding covered by this By-law, the Corporation shall have the sole discretion to determine whether the expenses of the appeal or judicial review will be covered by this By-law. If an individual pursues an appeal or application for judicial review without representation by the Corporation and is successful in that appeal, the Corporation shall have sole discretion to determine whether the Eligible Person shall be indemnified for his or her legal expenses.~~

Section 78 - Executive Acts Authorized

- (1) The City Solicitor is authorized to execute any necessary documents on behalf of the Corporation in order to give effect to this By-law according to its true intent and meaning.
- (2) Nothing in this By-law shall prevent the City Solicitor or Member of Council from bringing a report to Council to seek direction on any matter related to indemnification.

Section 9 – Repeal

- (1) By-law 91-2011, as amended, is hereby repealed.

Section 10 - Force and Effect

- (1) This By-law comes into force on the day it is passed. For greater certainty:
 - (a) For ongoing Legal Proceedings where the Corporation has assumed the defence of the matter on behalf of an Eligible Person, the City will continue to defend the Legal Proceeding on the Eligible Person's behalf, subject to the terms of this By-law.
 - (b) For all Legal Proceedings where indemnification was authorized under Bylaw 91-2011, as amended, those existing indemnification approvals will continue under this By-law, and be subject to the terms of this By-law.
 - (c) For ongoing Legal Proceedings in which an Eligible Person was required to retain their own counsel, including Code Complaints filed with the Integrity Commissioner prior to the enactment of this By-law where a final disposition has not been rendered, the provision of this By-law will apply.

Enacted by City of Vaughan Council this 21st day of April, 2020.

Hon. Maurizio Bevilacqua, Mayor

Todd Coles, City Clerk

Authorized by Item No. 8 of
Report No. 17 of the Committee
of the Whole
Adopted by Vaughan City
Council on April 21, 2020