

THE CITY OF VAUGHAN

BY-LAW

BY-LAW NUMBER XXX-2019

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

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

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

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

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

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

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

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

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

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

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

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

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

"Legal Proceeding" means:

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

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

- (iv) a complaint to a professional association.

But excludes

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

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

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

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

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

- e) Section 4 is deleted in its entirety.

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

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

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

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

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