



Council Report

For the Meeting of October 19, 2023

To: Council **Date:** September 21, 2023
From: Tom Zworski, City Solicitor
Subject: Legal Fees for Responding to Code of Conduct Complaints

RECOMMENDATION

That Council consider giving three readings to Bylaw No. 23-087 *Indemnification for Officers, Employees and Members of Council Bylaw, Amendment Bylaw (No. 2)*.

EXECUTIVE SUMMARY

On August 3, 2023, Council instructed the City Solicitor to bring forward a bylaw containing a code of conduct for Council members and provided instructions regarding the contents of such bylaw. One of the directions included a provision for City payment of legal fees incurred by a Council member pertaining to a complaint.

The proposed bylaw implementing the new code of conduct for Council members is being presented to Council in a companion report. However, the provision dealing with legal fees associated with complaints has not been included in that bylaw. Instead, the City Solicitor recommends that any such provision be added to the existing bylaw dealing with indemnification of Council members.

The proposed amendment bylaw adds a specific provision dealing with indemnification for legal fees associated with responding to a code of conduct complaint, as directed by Council on August 3. In accordance with those directions, the bylaw provides for an automatic reimbursement of all legal fees associated with responding to a code of conduct complaint and includes an obligation to repay these fees to the City in the event the complaint is substantiated. If only part of the complaint is substantiated, the bylaw provides for repayment of only the fees associated with the substantiated part of the complaint or, if that is not readily ascertainable, a share of the fees that is proportionate to the substantiated part of the complaint taking into account seriousness of the complaint and effort involved in responding to it. This repayment obligation is automatic upon substantiation of the complaint and does not require a separate decision or determination by Council or anyone else. Where a complaint is substantiated but the breach of the code of conduct was trivial, inadvertent, or made because of an error in judgment made in good faith, the obligation to repay legal fees will only be triggered if Council rejects investigator's recommendation and imposes a sanction under the Code of Conduct Bylaw.

PURPOSE

The purpose of this report is to introduce amendments to the *Indemnification for Officers, Employees and Members of Council Bylaw* to address Council's instruction to provide a mechanism for reimbursement of legal expenses of a Council member responding to a complaint under the new code of conduct.

BACKGROUND

On August 3, 2023, Council has instructed the City Solicitor to bring forward a bylaw implementing a new code of conduct. Part of the Council motion sought inclusion in the code of conduct bylaw of provision for payment of legal fees:

...that the City will pay legal fees incurred by a Council member pertaining to a complaint, unless the complaint is substantiated in whole or in part in which case said legal fees will be proportionately returned to the City.

The City already has a bylaw that deals with indemnification of Council members: *Indemnification for Officers, Employees and Members of Council Bylaw*. Provisions dealing with reimbursement of legal expenses more appropriately belong in that bylaw than in the code of conduct bylaw.

ISSUES & ANALYSIS

The draft bylaw reflects the Council's motion and provides for indemnification of Council members for their solicitor and client costs incurred in responding to a code of conduct complaint. This indemnification is automatic and covers all legal costs without any limit or restriction. However, the bylaw requires the Council member to ensure that fees incurred are reasonable and proportionate to the nature of the complaint. It also requires the Council member to co-operate with the City in assessing the reasonableness of those costs, including if necessary in a proceeding under the *Legal Profession Act*.¹

The draft bylaw also includes a provision that requires the Council member to repay to the City the fees paid if the complaint is substantiated. In the event the complaint is only partially substantiated, the bylaw provides for repayment of the part of the legal fees associated with the substantiated part of the complaint only. Where that part of the fee is not easily ascertainable, only the part of the fee that is proportionate to the substantiated part of the complaint is repayable. This obligation to repay the fees arises automatically upon conclusion of the process under the code of conduct bylaw if the complaint or part of it is substantiated. No separate decision or consideration by Council is required.

The obligation to repay legal fees is not triggered, however, by a substantiated complaint if the investigator determines that the breach of the code of conduct was trivial, inadvertent or made through an error in judgment made in good faith such and recommends no sanction be imposed, unless Council rejects that recommendation and imposes a sanction under the Code of Conduct Bylaw.

¹ *Legal Profession Act* includes provisions for a client to challenge fees charged by their lawyer.
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CONCLUSIONS

Council directed inclusion of provisions for reimbursement of legal expenses related to responding to a code of conduct complaint. An amendment to the existing indemnity bylaw is proposed to implement this and it is recommended that Council give three readings to Bylaw No. 23-087 *Indemnification for Officers, Employees and Members of Council Bylaw, Amendment Bylaw (No. 2)*.

Respectfully submitted,

Tom Zworski
City Solicitor

Report accepted and recommended by the City Manager