



It should be noted that some provisions of the *Local Government Act* are still in force, including s. 287.2 which deals with indemnification for damages, judgments and legal costs incurred as a result of legal proceedings or claims. The indemnification provisions were last revised in 2004 and provide as follows:

(1) *In this section:*

**"indemnification"** means the payment of amounts required or incurred

- (a) to defend an action or prosecution brought against a person in connection with the exercise or intended exercise of the person's powers or the performance or intended performance of the person's duties or functions,
- (b) to satisfy a judgment, award or penalty imposed in an action or prosecution referred to in paragraph (a), or
- (c) in relation to an inquiry under Part 2 of the *Inquiry Act*, or to another proceeding, that involves the administration of the municipality or the conduct of municipal business;

**"municipal official"** means

- (a) a current or former council member,
- (b) a current or former municipal officer or employee, or
- (c) a person who is or was a person referred to in section 287 (1) [immunity for individual municipal public officers], but only in relation to the exercise of powers or the performance of duties or functions for or on behalf of a municipality.

(2) A council may do the following:

- (a) by bylaw, provide for the indemnification of municipal officers in accordance with the bylaw;
- (b) by resolution in a specific case, indemnify a municipal official.

(3) As a limit on indemnification under subsection (2), a council must not pay a fine that is imposed as a result of a municipal officials' conviction for an offence that is not a strict or absolute liability offence.

(4) Sections 100 [disclosure of conflict] and 101 [restrictions on participation in a conflict] of the *Community Charter* do not apply to a council member who could be, or would be, indemnified under a bylaw or resolution under subsection (2).

(5) Subject to subsection (6), a council may not seek indemnity against a municipal official in respect of any conduct of the person that results in a claim for damages against the municipality.

(6) The restriction under subsection (5) does not apply if the court makes a finding in the action that the person has been guilty of dishonesty, gross negligence or malicious or willful misconduct.

The definition of "*municipal official*" in the above section includes members and former members of Council. The By-law specifically includes members of Council within its indemnity provisions so that an indemnity does not have to be given by a resolution of Council on a case by case basis.

This By-law also expands the scope of the indemnification contained in the Previous By-law to be consistent with the above-noted statutory provisions. Councillors, officers and employees are indemnified against payment of amounts such as legal costs required to defend an action, prosecution or claim arising out of their duties on behalf of the City. They are also indemnified for the amount of any judgment, award or penalty arising out of claims or prosecutions connected with their duties.

There are two limitations on the indemnification. The first is that the City cannot pay a fine that arises from a conviction of an offence which is not strict or absolute liability offence. For example, if a judge finds there is proof beyond a reasonable doubt that convicts an employee of an offence that requires mens rea, the City will not provide indemnification for the fine. Most offences involving City staff are absolute or strict liability offences. Examples of these offences include the discharge of contaminants into a watercourse.

The second exception is that the City can recover costs from a Councillor, officer or employee where that person has been guilty of dishonesty, gross negligence or malicious or wilful misconduct in the performance of his or her duties. The City may defend a person, however, if the evidence adduced in the action discloses gross negligence, the City could recover from the person any damages awarded against the City in the action.

## **CONCLUSION**

The By-law updates the Previous By-law to conform with the *Community Charter* and adds two new officer positions. The By-law provides appropriate new indemnity safeguards for Council and staff.

CRAIG MacFARLANE  
City Solicitor

CM:mlg  
Attach.

**APPENDIX A**

**CITY OF SURREY**

**BY-LAW NO. \_\_\_\_\_**

A by-law to establish Officer positions and to provide for the indemnification of the Officers, Employees and members of the Council of the City of Surrey.  
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WHEREAS the City Council, pursuant to Section 146 of the Community Charter must by by-law establish officer positions in relation to the duties prescribed under Sections 147, 148 and 149;

AND WHEREAS the City Council, pursuant to Section 187 of the Community Charter may provide for the indemnification of Municipal Officials referred to in Section 287.2 of the Local Government Act;

AND WHEREAS the City Council, pursuant to Section 287.2(2) of the Local Government Act may, by by-law, provide that the City will indemnify its officers, employees and members of Council against any claim for damages against an officer, an employee or a member of Council, arising out of the performance of their duties and, in addition, pay legal costs incurred in a court proceeding arising out of such claims;

AND WHEREAS the City Council, pursuant to Section 287.2(5) of the Local Government Act may, by by-law, provide that the City will not seek indemnity against its officers, employees and members of Council where the actions of those officers, employees, and members of Council result in a claim for damages against the City by a third party;

Under its statutory powers, including Section 146 of the Community Charter and Section 287.2 of the Local Government Act, the Council of the City of Surrey enacts the following provisions:

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**1. TITLE**

This By-law may be cited as the "Surrey Officer and Indemnification By-law, 2006, No. \_\_\_\_\_"

**2. DEFINITIONS**

In this By-law:

- (a) "City" means the City of Surrey;
- (b) "City Manager" means the Officer position of the city manager;
- (c) "City Solicitor" means the Officer position of the city solicitor;
- (d) "Clerk" means the Officer position of the city clerk;
- (e) "Community Charter" means the *Community Charter*, S.B.C. 2003, c. 26, as amended;
- (f) "Council" means the elected Council of the City;
- (g) "Employee" means an exempt or union employee of the City other than an Officer;
- (h) "General Manager, Engineering" means the Officer position of the engineering department;
- (i) "General Manager, Finance and Technology" means the Officer position of the City financial administration officer;
- (j) "General Manager, Human Resources" means the Officer position of the human resources department;
- (k) "General Manager, Parks, Recreation and Culture" means the Officer position of the parks, recreation and culture department;
- (l) "General Manager, Planning & Development" means the Officer position of the planning and development department;
- (m) "Indemnification" has the meaning set out in Section 287.2(1) of the Local Government Act;
- (n) "Local Government Act" means the *Local Government Act*, R.S.B.C. 1996, c. 323, as amended;

(o) "Municipal Official" has the meaning set out in Section 287.2(1) of the Local Government Act and includes Employees, Officers and members of Council; and

(o) "Officer" means a person holding a position set out in Section 3.1.

### **3. OFFICERS**

3.1 Pursuant to Section 146 of the Community Charter, the Officers of the City of Surrey shall be those persons holding the following positions:

- City Manager (Chief Administrative Officer),
- Acting City Manager (Acting Chief Administrative Officer),
- City Clerk (Corporate Officer),
- General Manager – Finance and Technology (Financial Officer),
- General Manager – Engineering,
- General Manager - Human Resources,
- General Manager – Parks, Recreation and Culture,
- General Manager – Planning & Development, and
- Manager - Legal Services (City Solicitor).

3.2 Selection of the City Manager may be made by Council and the selection of all other Officers of the City may be made by the City Manager, subject to Council approval.

3.3 Selection of the Acting City Manager may be made by the City Manager, subject to Council approval.

### **4. POWERS AND DUTIES**

#### **City Manager (Chief Administrative Officer):**

4.1 The City Manager shall have, in addition to the powers and duties prescribed by by-law or resolution, the Community Charter, the Local Government Act or any provincial statute, the following powers, duties and functions:

- (a) To provide overall management of the operations of the municipality;
- (b) To coordinate, direct and broadly supervise the implementation of policies and programs approved by Council;
- (c) To plan, coordinate, direct, supervise and control the day-to-day business affairs of the City in accordance with the policies and plans approved and established by Council;
- (d) To develop, establish and maintain comprehensive policies to direct the activities of all departments of the municipal service;

- (e) To receive, compile, consider, and present to Council recommendations arising from departmental operations which require Council approval, and to propose by-laws or resolutions arising from such recommendations;
- (f) To direct the preparation of, and to present to Council for consideration and approval, the annual budget and five year financial plan; and
- (g) To select department heads and Officers and to coordinate, motivate, direct and supervise these key officials and prescribe their duties and responsibilities.

**Acting City Manager (Acting Chief Administrative Officer):**

4.2 In the absence of the City Manager, the Acting City Manager shall have, in addition to the powers and duties prescribed by by-law or resolution, the Community Charter, the Local Government Act or any provincial statute, the following powers, duties and functions:

- (a) To provide overall management of the operations of the municipality;
- (b) To coordinate, direct and broadly supervise the implementation of policies and programs approved by Council;
- (c) To plan, coordinate, direct, supervise and control the day-to-day business affairs of the City in accordance with the policies and plans approved and established by Council;
- (d) To develop, establish and maintain comprehensive policies to direct the activities of all departments of the municipal service;
- (e) To receive, compile, consider, and present to Council recommendations arising from departmental operations which require Council approval, and to propose by-laws or resolutions arising from such recommendations;
- (f) To direct the preparation of, and to present to Council for consideration and approval, the annual budget and five year financial plan; and
- (g) To select department heads and Officers and to coordinate, motivate, direct and supervise these key officials and prescribe their duties and responsibilities.

**City Clerk (Corporate Officer):**

4.3 The City Clerk (Corporate Officer) shall have, in addition to the powers and duties prescribed by the City Manager, by by-law or resolution, the Community Charter, the Local Government Act or any other provincial statute, the following powers, duties and functions:

- (a) To ensure that accurate minutes of the meetings of the City and its committees are prepared and that the minutes, by-laws and other records of the business of the City and its committees are maintained and kept safe;

- (b) To ensure that access is provided to records of the City and its committees as required by law or authorized by the local government;
- (c) To certify copies of by-laws and other documents, as required or requested;
- (d) To administer oaths and take affirmations, declarations and affidavits required to be taken under the Community Charter or any other Act in relation to City matters;
- (e) To accept, on behalf of the City, notices and documents that are required or permitted to be given, served on, filed with or otherwise provided to the City; and
- (f) To keep the corporate seal, if any, and have it affixed to documents as required.

**General Manager – Finance and Technology (Financial Officer):**

4.4 The General Manager – Finance and Technology (Financial Officer) shall have, in addition to the powers and duties prescribed by the City Manager, by by-law or resolution, the Community Charter, the Local Government Act or any other provincial statute, the following powers, duties and functions:

- (a) To receive all money paid to the City;
- (b) To ensure the keeping of all funds and securities of the City;
- (c) To expend and disburse money in the manner referred to in Section 173 of the Community Charter;
- (d) To invest funds, until required, in investments referred to in Section 183 of the Community Charter;
- (e) To ensure that accurate records and full accounts of the financial affairs of the City are prepared, maintained and kept; and
- (f) To exercise control and supervision over all other financial affairs of the City.

**General Manager – Engineering:**

4.5 The General Manager – Engineering shall have powers and duties prescribed by the City Manager in addition to those powers, duties and responsibilities which may be specifically assigned to the Officer by by-law or resolution, the Community Charter, the Local Government Act or any other provincial statute.

**General Manager - Human Resources:**

4.6 The General Manager – Human Resources shall have powers and duties prescribed by the City Manager in addition to those powers, duties and responsibilities which may be



specifically assigned to the Officer by by-law or resolution, the Community Charter, the Local Government Act or any other provincial statute.

**General Manager – Parks, Recreation and Culture:**

- 4.7 The General Manager – Parks, Recreation and Culture shall have powers and duties prescribed by the City Manager in addition to those powers, duties and responsibilities which may be specifically assigned to the Officer by by-law or resolution, the Community Charter, the Local Government Act or any other provincial statute.

**General Manager – Planning & Development:**

- 4.8 The General Manager – Planning & Development shall have powers and duties prescribed by the City Manager in addition to those powers, duties and responsibilities which may be specifically assigned to the Officer by by-law or resolution, the Community Charter, the Local Government Act or any other provincial statute.

**City Solicitor:**

- 4.9 The City Solicitor shall have powers and duties prescribed by the City Manager in addition to those powers, duties and responsibilities which may be specifically assigned to the Officer by by-law or resolution, the Local Government Act or any other provincial statute.

**5. SUSPENSION OF OFFICERS**

Suspension of an Officer shall be in accordance with Section 151 of the Community Charter.

**6. TERMINATION**

Termination of employment of any Officer shall be in accordance with Section 152 of the Community Charter.

**7. INDEMNIFICATION**

- 7.1 The City will indemnify its Municipal Officials against payment of amounts required or incurred to defend an action, prosecution or claim brought against a Municipal Official in connection with the exercise or intended exercise of the person's powers or the performance or intended performance of the person's duties or functions including satisfaction of a judgment, award or penalty imposed in relation to the foregoing. The City will indemnify its Municipal Officials against amounts required or incurred in relation to an inquiry under Part 2 of the *Inquiry Act*, R.S.B.C. 1996, c. 224 or to any other proceeding that involves the administration of the municipality or the conduct of municipal business.

- 7.2 As a limit on Indemnification under section 7.1, no fine shall be paid by the City that is imposed as a result of a Municipal Official's conviction for an offence that is not a strict or absolute liability offence.
- 7.3 The City will not seek indemnity against its Municipal Officials where the actions or conduct of those Municipal Officials result in a claim for damages against the City by a third party, unless the Municipal Official has been guilty of dishonesty, gross negligence, or malicious or wilful misconduct.

**8. EFFECTIVE DATE**

This by-law shall come in force on the date of final adoption thereof.

**9. REPEAL**

The following By-law is hereby repealed:

"Surrey Establishment of Officer Positions and Officer and Employee Indemnification By-law, 2001, No. 14381".

PASSED THREE READINGS on the \_\_\_\_\_ day of \_\_\_\_\_, 2006.

RECONSIDERED AND FINALLY ADOPTED, signed by the Mayor and Clerk, and sealed with the Corporate Seal on the \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_MAYOR

\_\_\_\_\_CLERK