

Protocol to ensure accountability for decisions made to expend funds for external legal fees and disbursements in defending Council Members in legal proceedings (Council Briefing Note July 26, 2021)

A. Duty to Defend

1. Acting in the best interests of The City of Calgary, the City Solicitor and General Counsel or delegate (through written or verbal delegation) will:
 - a. Review any legal matter involving and reported by a Member of Council in the context of:
 - i. Council Policy CC010: Indemnification of Members of City Council; and
 - ii. any applicable insurance policy, (collectively the "Policies").
 - b. Determine if in their opinion there is a duty to defend and if the legal matter falls within coverage of the Policies including:
 - i. consideration of whether the Member of Council holds the belief that they acted in good faith in the performance or intended performance of their functions, duties or powers under the *Municipal Government Act*, or any other enactment;
 - ii. where necessary, consultation with internal and external resources.
 - c. Where a duty to defend is determined to exist, determine appropriate legal resourcing considering:
 - i. subject matter;
 - ii. conflicts of interest; and
 - iii. internal resourcing constraints.
 - d. Communicate to the Member of Council any determination made in 1(b) and 1(c) as well as any limitations to such determination.
 - e. As legal matters progress, continuously review and reassess any determination made in 1(b) and 1(c), and communicate to the Member of Council any changes and associated consequences.

B. External Legal Counsel

1. Where it has been determined pursuant to A.1.c that external legal counsel is required, the City Solicitor and General Counsel or delegate (through written or verbal delegation) will, enter into a retainer agreement identifying the Member of Council as client, and requesting billings be forwarded to the Member of Council who will be responsible for reviewing such billings for accuracy. The City Solicitor and General Counsel or delegate

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(through written or verbal delegation) will maintain oversight of the matter to the extent possible.

2. Once invoices are approved by the Member of Council, the City Solicitor and General Counsel will receive a summary invoice only containing:
 - a. Name of law firm and lawyer;
 - b. Hourly rate;
 - c. Hours spent and by whom during billing period;
 - d. Total amount for billing period.
3. Provided the summary invoice aligns with the retainer agreement and the Member of Council invoice approval has been received, the City Solicitor and General Counsel or delegate (through written or verbal delegation) approve payment of the invoice.
4. The City Solicitor and General Counsel or delegate (through written or verbal delegation) will meet with the City Manager quarterly and as long as in the City Solicitor and General Counsel's sole discretion any relevant legal privilege can be maintained, provide the City Manager with a list of:
 - a. Ongoing legal matters:
 - i. the total number of active retainers and total amount expended year-to-date on external legal fees and disbursements; and
 - b. Concluded formal legal proceedings:
 - i. the number of legal proceedings, total amount expended on external legal fees and disbursements, and any related information in the public record.
5. The City Solicitor and General Counsel or delegate (through written or verbal delegation) will provide a briefing note to Council at the conclusion of any formal legal proceedings setting out the total amount expended on external legal fees and disbursements as long as in the City Solicitor and General Counsel's sole discretion any relevant legal privilege can be maintained.

C. Reimbursement

1. If applicable, at the conclusion of a legal matter, the City Solicitor and General Counsel or delegate (through written or verbal delegation) will determine any potential reimbursement

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in accordance with standard insurance practice as well as in consultation with the City Manager and supported by an external legal opinion.

D. Legal Privilege

1. All meetings, records, documents, invoices and correspondence related to implementation and application of this Protocol are subject to legal privilege relating to the individual Member of Council.