

BRIEFING

C2023-1358

Attachment 2

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Item # 7.2.1

Law and Legislative Services Briefing to

Combined Meeting of Council

2021 July 26

ISC: UNRESTRICTED

C2021-1138

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PURPOSE OF BRIEFING

At the February 8, 2021 Combined Meeting of Council, the City Solicitor Bylaw 48M2000 was amended by Council to clarify the powers, duties and functions delegated to the City Solicitor and General Counsel.

Council also directed:

“... the City Manager and City Solicitor to develop a protocol to ensure accountability for decisions made to expend funds for external legal fees and disbursements in defending Council Members in legal proceedings, including reimbursement of such funds where appropriate, and report back to Council no later than the end of July 2021.”

To discharge the duties under the City Solicitor Bylaw and implement Council Policy CC010 (Indemnification of Members of City Council), the City Solicitor and General Counsel has a well established practice in place. This practice has been formalized into a written protocol (attached) and includes quarterly meetings with the City Manager. This protocol was developed by the City Solicitor to guide the discharge of duties previously delegated through the City Solicitor Bylaw, and does not require Council approval. This protocol has been prepared and approved by the City Solicitor, reviewed and endorsed by the City Manager and has been implemented.

SUPPORTING INFORMATION

None

ATTACHMENT(S)

1. Attachment 1 – Protocol

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 (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:

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. 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 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.