

CITY OF PORT COQUITLAM

City of Port Coquitlam Indemnification Bylaw

Bylaw No. 4307

A Bylaw to provide for the indemnification of City Officials of the City of Port Coquitlam

The Council of the Corporation of the City of Port Coquitlam enacts as follows:

1. CITATION

This Bylaw is cited as “City of Port Coquitlam Indemnification Bylaw, 2023, No.4307”.

2. REPEAL

“City of Port Coquitlam Indemnification Bylaw 1998, No. 3185” is hereby repealed.

3. INTERPRETATION AND DEFINITIONS

- 3.1 Unless otherwise provided in this Bylaw, words and phrases used herein have the same meanings as in the *Community Charter, Local Government Act, and Interpretation Act*.
- 3.2 A reference in this Bylaw to a statute refers to a statute of the Province of British Columbia, and a reference to any statute, regulation, or bylaw refers to that enactment, as amended or replaced from time to time.
- 3.3 Words in the singular include the plural, and gender specific terms include all genders and corporations.
- 3.4 Headings in this Bylaw are for convenience only and must not be construed as defining or in any way limiting the scope or intent of this Bylaw.
- 3.5 In this Bylaw, unless the context requires otherwise:

City means the City of Port Coquitlam;

City Official means;

- (a) a member of the City Council, either present or former;
- (b) a member of a City standing or select committee who is not also a member of Council;
- (c) an officer or employee of the City, either present or former;
- (d) an election official; and
- (e) a volunteer who participates in the delivery of services by the City under the supervision of an officer or employee of the City.

But only in relation to the exercise of powers or performance of duties or functions for or on behalf of the City.

Does not include an independent service provider, professional advisor or contractor engaged by the City from time to time on a fee for service basis.

Indemnify 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 judgement, award or penalty imposed in an action or prosecution referred to in paragraph (a) ; or
- (c) in relation to an inquiry under the *Public Inquiry Act*, Chapter 9, or to another proceeding, that involves the administration or the conduct of City business.

But does not extend to a fine that is imposed as a result of a conviction for an offence, other than a strict or absolute liability offence.

Proceeding has the meaning given in the *Supreme Court Civil Rules*, B.C. Reg 168/2009, and includes a claim, hearing, application, investigation and review before or by a court, tribunal or other investigating or regulatory body or agency.

Reasonable legal costs means the reasonable costs, including disbursements, incurred by a City Official or by the City in seeking, retaining, and engaging legal counsel in respect of a matter for which indemnification is provided under this Bylaw, as determined by the Chief Administrative Officer or the City's legal counsel.

Wilful misconduct in relation to a City Official includes, without limitation, wilfully acting contrary to the terms and conditions of their employment or to a lawful direction or order of a superior.

4. INDEMNIFICATION

- 4.1 Subject to Section 5 of this Bylaw, the City will indemnify a City Official in relation to, and from and against an action, prosecution or proceeding brought against or involving the City, including reasonable legal costs, provided that the City Official:
- (a) advises the City, at the earliest opportunity, if the City Official becomes aware of an actual or potential action, prosecution or proceeding for which an indemnity may be claimed under this Bylaw;
 - (b) provides to the City, within 48 hours after receipt, every notice of civil claim, originating application, letter or other document relating to an action, prosecution or proceeding, for which an indemnity may be claimed under this Bylaw;
 - (c) cooperates fully without interference in the defence, settlement, negotiation or management of any action, prosecution or proceeding, to the satisfaction of the Chief Administrative Officer or the City's legal counsel.

- (d) Does not admit liability, assume fault or settle or compromise any action, prosecution or proceeding, without prior approval from the Chief Administrative Officer or the City's legal counsel;
- (e) Makes such attendances and provide such documents, statements and information and do all such things as requested by the Chief Administrative Officer or the City's legal counsel;
- (f) Consents in writing or otherwise, that the City shall have complete discretion to defend, manage, settle, compromise or otherwise resolve the action, prosecution or proceeding, including by:
 - (i) appointment and instruction of legal counsel;
 - (ii) assumption of the defence or management of any action, prosecution or proceeding;
 - (iii) conduct of all necessary investigations and reviews;
 - (iv) compromise or settlement of any action, prosecution or proceeding; and
 - (v) payment or satisfaction of any judgement, award or penalty imposed in connection with the action, prosecution or proceeding.

5. LIMITS ON INDEMNIFICATION

- 5.1 Where a court, tribunal or other investigating or regulating agency or body, makes a finding in an action, prosecution or proceeding that a City Official who has been indemnified, or is seeking indemnification, under this Bylaw, has:
- (a) been guilty of dishonesty, gross negligence, malicious or wilful misconduct;
 - (b) wilfully acted contrary to the terms of their employment;
 - (c) wilfully acted contrary to the lawful direction or order given by a person in authority over the City Official;
 - (d) libeled or slandered a person or persons;
 - (e) not met the duty to respect confidentiality under Section 117 of the *Community Charter*;
 - (f) been disqualified from holding office under section 111 of the *Community Charter*; or
 - (g) been guilty of an offence that is not a strict or absolute liability,
- the City's duty to indemnify under Section 4 of this Bylaw shall cease and the City Official shall reimburse the City for all amounts expended by the City in the conduct of the City Official's representation or defence, and the City shall not be obligated to pay any judgement, award or penalty imposed in such action, prosecution or proceeding.
- 5.2 The City will not indemnify a City Official for any legal costs incurred in relation to:
- (a) the provision or receipt of employment law or labour relations advice;

- 5.3 The City will not seek an indemnity against a City Official in respect of any conduct of the City Official that results in a claim for damages against the City, unless the court makes a finding in the action that the City Official has been guilty of dishonesty, gross negligence or malicious or wilful misconduct.
- 5.4 Nothing in this Bylaw precludes a City Official from applying, pursuant to Section 740(2)(a)(ii) of the *Local Government Act*, for a Council resolution to indemnify the City Official in a specific case.

6.1 If any part, section, subsection, clause or sub-clause of this Bylaw is, for any reason held to be invalid by the decision of a court of competent jurisdiction, such decision does not affect the validity of the remaining parts of this Bylaw.

READ A FIRST TIME this _____ day of _____, 2023

READ A SECOND TIME this _____ day of _____, 2023

READ A THIRD TIME this _____ day of _____, 2023

Corporate Officer