



The Corporation of the City of Courtenay

Bylaw No. 3151

A bylaw to provide for the indemnification of municipal officials.

WHEREAS section 740 of the Local Government Act provides that a municipal council may, by bylaw, provide that the municipality will indemnify municipal officials in respect of certain matters in accordance with the bylaw.

NOW THEREFORE the Council of the City of Courtenay, in open meeting assembled, enacts as follows:

Citation

1. This Bylaw shall be cited as “**Indemnification Authorization Bylaw No. 3151, 2024**”.

Definitions

2. In this Bylaw:

- (a) “City” means the City of Courtenay;
- (b) “Code” means the *City of Courtenay Code of Conduct*; and
- (c) “Municipal Official” means
 - (i) a current or former City council member;
 - (ii) a current or former City officer or employee; and
 - (iii) a person who is or was a person referred to in section 738(1) of the *Local Government Act*, but only in relation to the exercise of powers or the performance of duties or functions for or on behalf of the City.

3. This Bylaw does not apply to:

- (a) claims for a fine imposed on a person upon conviction for a criminal offence;
- (b) a municipal official who refuses to cooperate with the City, including the City’s legal counsel, agents, and representatives, in relation to the action, prosecution or proceeding, including to secure information, evidence and witnesses and in the defense of an action or prosecution;
- (c) a municipal official, in relation to the conduct that is the subject matter of the claim, who:
 - (iv) is guilty of gross negligence, malicious or willful misconduct, or a criminal act;
 - (v) has willfully acted contrary to the terms of their employment;
 - (vi) has willfully acted contrary to a lawful direction or order of a supervisor; or
 - (vii) has not acted in the honest performance of their duties.

- (d) claims that do not arise in connection with a Municipal Official's exercise or intended exercise of their powers or the performance or intended performance of their duties;
 - (e) any proceedings or complaints made under the Code, in relation to which current council members may seek indemnification under the Code;
 - (f) defamation claims against a council member; and
 - (g) proceedings to disqualify a council member from office brought pursuant to the *Community Charter*.
4. Subject to section 3, the City shall indemnify Municipal Officials by paying all amounts required or incurred:
- (a) to defend an action or prosecution 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,
 - (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 the *Public Inquiry Act*, or to another proceeding, that involves the administration of the City or the conduct of City business.
5. For clarity:
- (a) in accordance with section 740(3) of the *Local Government Act*, as a limit on indemnification under section 3, the City shall not pay a fine that is imposed as a result of a Municipal Official being convicted of an offence that is not a strict or absolute liability offence; and
 - (b) in accordance with section 740(6) of the *Local Government Act* and despite section 3, the City may seek indemnity against a Municipal Official in respect of any conduct of the person that results in a claim for damages against the municipality if a court makes a finding in the action that the person has been guilty of dishonesty, gross negligence or malicious or willful misconduct.
6. Where indemnity is or may be claimed under this Bylaw, the Municipal Official shall:
- (a) promptly after being served with a document initiating an action, prosecution or proceeding, deliver a copy of such document to the City's Corporate Officer;
 - (b) not admit or assume liability, enter into a settlement or enter a guilty plea except with the approval of the City;
 - (c) consent in writing to the City having sole discretion to appoint and instruct legal counsel, to conduct all necessary investigations and to negotiate and settle the action, prosecution or proceeding; and

- (d) co-operate with the City and appointed legal counsel in relation to the action, prosecution or proceeding, including to secure information, evidence and witnesses and in the defense of an action or prosecution.

Read a first time this 17th day of July, 2024.

Read a second time this 17th day of July, 2024.

Read a third time this 17th day of July, 2024.

Adopted this [day] day of [month], [year]

Mayor Bob Wells

Corporate Officer