

MOTION ON NOTICE

2. Reimbursement of Councillor's Legal Costs for Code of Conduct Complaints Where Vancouver City Council Member is Not at Fault

Submitted by: Councillor De Genova

WHEREAS

1. The City of Vancouver Corporate Policy SUBJECT: Code of Conduct CATEGORY: Employment POLICY NUMBER: AE-028-01 in section (8) titled Breaches, Complaint Handling and Disciplinary Action (the "Code of Conduct") states:

"General:

8.1 Council officials, Advisory Body Members and Staff are to abide by the requirements of the Vancouver Charter and this Code of Conduct, and shall endeavor to resolve interpersonal disputes in good faith.

Council Officials

8.2 Alleged breaches of this Code of Conduct by Council Officials shall be submitted in a written complaint addressed to the Mayor and/or the City Manager within six (6) months of the last alleged breach. In the event that the Mayor is the subject of, or is implicated in a complaint, the complaint shall be addressed to the Deputy Mayor.

8.3 Upon receipt of a complaint under Section 8.2, the Mayor or Deputy Mayor shall, within thirty (30) days, appoint an independent third party identified and agreed between the Complainant(s) and Respondent(s) as having the necessary professional skills, knowledge and experience to investigate the complaint (the "Third Party Investigator"). The Third Party Investigator:

8.3.1 May conduct a preliminary assessment of the complaint, at the conclusion of which the Investigator may determine to continue the investigation or make a written recommend that the complaint be dismissed as unfounded, beyond jurisdiction or unlikely to succeed;

If the Third Party Investigator determines to continue the complaint, the Third Party Investigator shall:

8.3.2 Conduct an independent and impartial investigation of the complaint in a manner that is fair, timely, confidential and otherwise accords with the principles of due process and natural justice;

8.3.3 Provide an investigation update within ninety (90) days of his or her appointment to the Mayor or Deputy Mayor, as applicable, and to the Complainant and the Respondent;

8.3.4 Provide a written, confidential report (the "Report") of the findings of the investigation, including findings as to whether there has been a breach of this Code of Conduct, to the Mayor or Deputy Mayor, as applicable, and to the Complainant and the Respondent; and

8.3.5 Provide recommendations in the Report as to the appropriate resolution of the complaint, which recommendations may include:

a) dismissal of the complaint; or

b) public censure of a Council Official or Officials for misbehaviour or a breach of this Code of Conduct;

c) a requirement that a Council Official or Officials apologize to any person adversely affected by a breach of this Code of Conduct;

d) counselling of a Council Official or Officials, and/or

e) such other recommendations as are deemed appropriate in the professional judgment of the Third Party Investigator.”;

2. The Code of Conduct allows any person, including staff, the public and/or any other elected official to file a complaint against another elected official;
3. Any and all complaints must be dealt with by the Mayor or Deputy Mayor by appointing a “Third Party Investigator”;
4. Section 8.3 of the Code of Conduct requires the Third Party Investigator to have the necessary professional skills, knowledge and experience to investigate the complaint and, pursuant to Section 8.3.2, must conduct the investigation in accordance with the legal principles of “due process and natural justice”;
5. Accordingly, a practicing lawyer with significant experience conducting workplace investigations is typically appointed by the Mayor under the Code of Conduct to be the Third Party Investigator;
6. Since the process is a formal legal investigation, Council members very often need legal advice when named as a Respondent and would also benefit from legal advice when considering making a complaint as a Complainant under the Code of Conduct;
7. Since this a formal legal process involving interests separate from the City’s, the City’s in-house legal counsel are not permitted to provide legal advice to individual Councillors in these matters;
8. Thus, Councillors have in the past and continue to incur legal costs on legal counsel in defending Code of Conduct complaints, whether or not such complaints are dismissed by the Third Party Investigator. Councillors quite rightly decide that it is in their best interests to have proper legal advice on such matters even though they must bear such

costs personally and even where they are of the view that the complaint is without merit;

9. These legal costs can be significant and arise solely from a Councillor faithfully carrying out their duties as a Councillor. Where the complaint is dismissed, it can be a financial hardship for a Councillor to bear the legal costs of defending a complaint that may have been motivated solely by personal or political reasons;
10. As with other expenses incurred by Councillors in the course of faithfully carrying out their duties such legal costs should be recoverable by Councillors subject to appropriate financial limits and conditions on eligibility.

THEREFORE BE IT RESOLVED

- A. THAT Council instruct the City Solicitor to draft and bring back for approval and enactment, an amendment (the "By-law Amendment") to the Mayor and Councillor Expenses By-law No. 11529 to do the following:
 - i) Add a new Part 7.1 Entitled "Mayor and Councillor Code of Conduct Legal Costs";
 - ii) Provide for reimbursement to Mayor and Council (an "elected official") of an amount up to but not exceeding \$10,000 of an "Eligible Code of Conduct Expense";
 - iii) Provide that an "Eligible Code of Conduct Expense" be any amount paid personally by an elected official to their legal counsel for legal services provided directly with respect to a Code of Conduct complaint filed by or against that elected official as the "Complainant" or "Respondent";
 - iv) Provide that the "Eligible Code of Conduct Expense" is only eligible if the "Third Party Investigator" rules in favour of the elected official:
 - i. Where the elected official is the Complainant, the Third Party Investigator recommends any of the actions outlined in Sections 8.3.5(b) through (e) [public censure, apology, counselling, or other]
 - ii. Where the elected official is the Respondent the Third Party Investigator makes a preliminary assessment and recommends that the complaint be dismissed as unfounded, beyond jurisdiction, or unlikely to succeed or proceeds to conduct the investigation and recommends that the complaint be dismissed.

- v) Provide that nothing in the Mayor and Councillor Expenses By-law No. 11529 will preclude an elected official from seeking reimbursement for any amounts not reimbursed under Part 7.1 from Council through the normal discretionary indemnification process provided for under Section 180 of the *Vancouver Charter*.

- B. THAT the By-law Amendment allow claims for any Eligible Code of Conduct Expense incurred on or after November 5, 2018, to be recoverable.

- C. THAT reimbursement for any Eligible Code of Conduct Expense be made in accordance with Part 8 [Claiming Expenses] of the Mayor and Councillor Expenses By-law No. 11529.

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