

THE CORPORATION OF THE TOWN OF AMHERSTBURG

BY-LAW NO. 2014-76

**By-law respecting the protection of municipal employees and members of Council of the Corporation of the Town of Amherstburg against liability incurred while acting on behalf of the Municipality**

**WHEREAS**, Section 279, of the Municipal Act, 2001, (subject to Section 14 of the Municipal Conflict of Interest Act), authorizes Council to pass by-laws for paying any damages or costs awarded against the Members of Council or of any local board thereof or expenses incurred by them as a result of any action or other proceeding arising out of acts or omissions done or made by them in their capacity as members of Council or officers of the municipality or local board including while acting in the performance of any statutory duty or for paying any sum required in connection with the settlement of any action or other proceeding and for assuming the cost of defending any such person in such an action or other proceeding.

**AND WHEREAS**, Section 279 of the Municipal Act 2001, authorizes Council to pass by-laws to protect employees of a municipality against risks that may involve liability on the part of the employee and for paying any damages or costs awarded against the employees or expense incurred by the employee as a result of any action or other proceeding arising out of acts or omissions done or made by them in their capacity as employees, including while acting in the performance of any statutory duty or for paying any sum required in connection with the settlement of an action or other proceeding and for assuming the cost of defending the employee in such an action or other proceeding.

**NOW THEREFORE**, The Council of the Town of Amherstburg enacts as follows:

**1. DEFINITIONS**

(1) In this by-law unless a contrary intention appears:

- (a) **"Action or proceeding"** means an action or proceeding referred to in Section 2 of this by-law.
- (b) **"Municipality"** means the the Town of Amherstburg.
- (c) **"Employee"** means any salaried officer, or any other person in the employ of the Municipality or any local board thereof.
- (d) **"Member of Council" or "member"** shall mean a member of the Council of the Municipality including the Mayor, Deputy Mayor and Councillors.
- (e) **"Local board"** means a local board as defined in the *Municipal Act*.

**2. INDEMNIFICATION**

(1) The Municipality shall indemnify any member of Council or employee in the manner and to the extent provided by Section 3 in respect of any civil, criminal or administrative action or proceeding, including appeals by a third party for acts or omissions arising out of the scope of the employee's or member's employment or office if,

- (a) they acted honestly and in good faith with a view to the best interests of the Municipality; and
- (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, they had reasonable grounds for believing that his or her conduct was lawful.

(2) In the event that any determination is required as to whether a member or an employee meets the requirements of this Section, the advice and assistance of a qualified solicitor shall be obtained by the municipality.

### **3. MANNER AND EXTENT OF INDEMNIFICATION**

(1) The Municipality shall indemnify a person who meets the requirements of Section 2 by:

- (a) assuming the cost of defending such person in an action or proceeding;
- (b) paying any damages or costs, including a monetary penalty, awarded against such person as a result of an action or proceeding;
- (c) paying, either by direct payment or by reimbursement, any expenses reasonably incurred by such persons as a result of an action or proceeding, with the following exceptions:
  - i) legal fees for advice on potential conflict of interest will continue to be dealt with through the Council Compensation and Travel Policy, where a maximum \$500 limit applies;
  - ii) if a member or employee wishes to seek legal advice on a Town related matter not covered by the Municipality's insurance company, and also wishes to be indemnified for such fees, the member or employee must first filter the matter through the Council body for approval to qualify for indemnification;
  - iii) where the direct payment or reimbursement of any expenses incurred are for legal fees the Municipality's insurance company will not cover, the following limitation applies:
    - Maximum limit for reimbursement = \$2,500
- (d) indemnification of any member or employee in the above stated circumstances does not apply to payment of fees, fines, penalties, or orders of restitution that may be awarded or ordered by a court, as a result of any finding of guilt as against that member or employee.

### **4. PERSONS SERVED WITH PROCESS**

(1) Where a member or an employee is served with any process issued out of or authorized by any court, administrative tribunal or other administrative investigative or quasi-judicial body, other than a subpoena, in connection with any action or proceeding they shall:

- (a) unless he or she is the head of a department, forthwith deliver the process or a copy thereof to the head of the department for which the employee works or to a person designated by the department head to receive such process, who in turn shall deliver a copy thereof to the Chief Administrative Officer; or,
- (b) if he or she is the head of a department or a member of the Municipal Council, forthwith deliver the process or a copy thereof to the Chief Administrative Officer, or,
- (c) any member shall forthwith deliver the process or a copy, thereof to the Chief Administrative Officer.

### **5. LAWYER RETAINED BY THE MUNICIPALITY'S INSURERS**

(1) Notwithstanding any provision of this by-law to the contrary, any lawyer retained by the Municipality's insurers from time to time to defend the Municipality in any action or proceeding shall represent a member or an employee with respect to that action or proceeding unless the Municipality instructs such person otherwise.

(2) Subject to Section 8 hereof, the Municipality shall have the right to select and retain the lawyer to represent a member or an employee and shall:

- (a) advise such person of the lawyer selected to represent them; and
- (b) advise Council of the final disposition of the matter.

(3) The Municipality shall retain the right to approve and/or deny the settlement of any action or proceeding against a member or employee being defended on behalf of the Municipality.

#### 6. DUTY TO CO-OPERATE

An employee or member of Council involved in any action or proceeding shall:

- a) co-operate fully with the Municipality and any lawyer retained by the Municipality to defend such action or proceeding;
- b) make available to such lawyer all information and documentation relevant to the matter as are within his or her knowledge, possession or control; and,
- c) shall attend at all proceedings when requested to do so by such lawyer.

#### 7. FAILURE TO COMPLY WITH BY-LAW

If an employee or member of Council fails or refuses to comply with the provision of this by-law, the Municipality shall not be liable to assume or pay any of the costs, damages, expenses or sums mentioned in Section 3 of this by-law.

#### 8. CONFLICT

The Municipality may from time to time maintain different policies of insurance for members of Council and employees. In the event of conflict between this by-law and the terms of any such policy of insurance in place from time to time, the terms of such policy or policies of insurance shall prevail.

#### 9. EXECUTIVE ACTS AUTHORIZED

The Council of the Town of Amherstburg shall be notified, in all circumstances, at the immediate next meeting of Council, in closed session of any action or proceeding that has been commenced against any member of Council or employee. The Mayor and Clerk are hereby authorized and directed to do all the things necessary, including executing any necessary documents under the seal of the Municipality to give effect to this by-law according to its true intent and meaning.

#### 10. REIMBURSEMENT

Where a member or employee has been indemnified by the Municipality, the amount of the indemnifications shall be reduced by the amount of any costs or damages recovered, and where indemnification has been paid, prior to any recovery by the member or employee, any costs or damages received shall first be paid to the Municipality up to the amount of the indemnification.

11. This By-law shall come into full force and effect on the passing thereof.

Read a first, second and third time and finally passed this 14<sup>th</sup> day of July, 2014.

  
MAYOR - Wayne Hurst

  
CLERK - Paula Parker