



THE CORPORATION OF THE VILLAGE OF FRUITVALE BYLAW NO. 963, 2023

A Bylaw for the Indemnification of Municipal Officials

WHEREAS the *Local Government Act*, R.S.B.C. 2015, c. 1, as amended or re-enacted from time to time (the "*Local Government Act*"), Section 740 and 741, authorizes the Village to enact a bylaw to provide indemnity to municipal officers, employees and elected officials acting reasonably and in good faith in performing the duties and functions of their positions with the Village.

AND WHEREAS the *Officers, Employees and Council Indemnification Bylaw* No. 501, 1991 previously provided such indemnification and the Village wishes to replace Bylaw No. 501, 1991.

NOW THEREFORE the Council of the Corporation of the Village of Fruitvale in open meeting assembled enacts as follows:

1. TITLE

This Bylaw may be cited as "The Corporation of the Village of Fruitvale Indemnification Bylaw No. 963, 2023."

2. INTERPRETATION

In this bylaw:

"Indemnify" means to pay the amounts required or incurred:

- (a) to defend a Proceeding 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 judgment, award or penalty imposed in a Proceeding referred to in paragraph (a); or
- (c) in relation to a Proceeding, that involves the administration of the Village or the conduct of Village business.

but does not include a fine that is imposed as a result of a conviction for an offence, other than a strict or absolute liability offence;

"Municipal Official" means

- (a) a current or former member of Council;
- (b) a current or former employee or officer of the Village; or
- (c) 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 performance of duties or functions for or on behalf of the Village,

but does not include an independent service provider, professional advisor or contractor engaged by the Village from time to time on a fee for service basis;

"Proceeding" includes a claim, action, prosecution, hearing, application, investigation, or review before or by a court, tribunal or other investigating or regulatory agency or body, and without limiting the generality of the foregoing includes a proceeding as defined in the

Supreme Court Civil Rules, B.C. Reg. 168/2009, as amended, and an inquiry under the *Public Inquiry Act*, SBC 2007, c 9, as amended from time to time;

“Village” means the Corporation of the Village of Fruitvale; and

“Willful Misconduct” in relation to a Municipal Official, includes, without limitation, willfully acting contrary to the terms and conditions of his or her employment or to a lawful direction or order of a superior.

3. INDEMNIFICATION

- 3.1 Subject to the provisions of this Bylaw, the Village will Indemnify a Municipal Official against a Proceeding brought against or naming the Municipal Official, including reasonable legal costs and disbursements incurred by the Municipal Official as a result of or relating to the performance or the intended performance of the Municipal Official’s duties during their term of office or their employment with or service to the Village.
- 3.2 Despite section 3.1, if the Municipal Official intends for the Village to Indemnify them, then the Municipal Official shall:
- (a) promptly, after being served with a document initiating a Proceeding, whether such document has been served on the Municipal Official after the end of their term of office or their employment with or service to the City, delivers a copy of same to the Village’s Corporate Officer;
 - (b) does not admit or voluntarily assume any liability, enter into a settlement, or enter a guilty plea in the Proceeding except with the approval of Council consent in writing to the Village having sole discretion to:
 - (i) appoint and instruct legal counsel,
 - (ii) conduct all necessary investigations and reviews,
 - (iii) to negotiate and settle the Proceeding, and
 - (iv) provided that if the Municipal Official believes that their interest is in conflict with the interest of the Village, that the Municipal Official is entitled to retain and instruct independent legal counsel at reasonable rates approved by Council;
 - (c) assists in providing and securing information, evidence and witnesses; and
 - (d) cooperates with the Village and their legal counsel in the defense of the Proceeding, including giving evidence or statements in writing or orally.

4. EXCEPTIONS

- 4.1 The Council will not seek Indemnity or contribution from a Municipal Official in respect of any Proceeding which results in a claim for damages against the Village, except where a court of competent jurisdiction makes a finding that the Municipal Official:
- (a) has been guilty of dishonesty, gross negligence, malicious misconduct or Willful Misconduct;
 - (b) libeled or slandered a person or persons;
 - (c) not met their duty with respect to confidentiality under section 117 of the *Community Charter*, S.B.C. 2003, c. 26, as amended or re-enacted from time to time, or under any enactment applicable to privacy or confidentiality;
 - (d) been disqualified from holding office;
 - (e) been found guilty of an offence that is not strict liability or absolute liability offence.

4.2 In the event that the Village has Indemnified a Municipal Official and a court, tribunal or other investigative or regulatory agency or body makes a finding in a Proceeding that the Municipal Official has engaged in conduct that the City is not required to Indemnify pursuant to section 4.1, then the Municipal Official shall reimburse the Village for all amounts for which the Municipal Official was Indemnified by the Village and the Village shall have no further obligation to Indemnify the Municipal Official.

4.3 The provisions of this Bylaw shall not apply to:

- (a) any fine imposed as a result of a Municipal Official’s conviction for an offence that is not a strict or absolute liability offence;
- (b) the defense of a Municipal Official arising from a criminal proceeding;
- (c) a Proceeding where damages are claimed by the Village against a Municipal Public Officer;
- (d) a Proceeding where damages are claimed by a Municipal Official against the Village;
- (e) the provision or receipt of employment law or labour relations advice; or
- (f) a motion of censure by Village Council.

5. REPEAL

5.1 That “Officers, Employees and Council Indemnification Bylaw No. 501, 1991” is hereby repealed.

5.2 If any portion of this bylaw is declared ultra vires by the Court of Competent Jurisdiction, that portion shall be deemed to be severed from the bylaw to the extent that the remainder of the bylaw shall continue in full force and effect.

Read a first time this 8th day of January, 2024.

Read a second time this 8th day of January, 2024.

Read a third time this 5th day of February, 2024.

Reconsidered, finally passed and adopted this 4th day of March, 2024.

Mayor

Chief Administrative Officer

CERTIFIED a true copy of Bylaw No. 963, 2023, entitled “The Corporation of the Village of Fruitvale Indemnification Bylaw No. 963, 2023”.

DATED this 4th day of March, 2024.

Chief Administrative Officer