



AUDIT, FINANCE AND ADMINISTRATION COMMITTEE REPORT 19-015

9:30 a.m.

October 17, 2019

Council Chambers

Hamilton City Hall

Present: Councillors C. Collins (Chair), M. Wilson, B. Clark, M. Pearson, A. VanderBeek, L. Ferguson and J. Partridge

Absent: Councillor B. Johnson – Personal

THE AUDIT, FINANCE AND ADMINISTRATION COMMITTEE PRESENTS REPORT 19-015, AND RESPECTFULLY RECOMMENDS:

1. Grant's Sub-Committee - Clerk's Report 19-003 - September 23, 2019 (Item 7.2)

That the Grant's Sub-Committee – Clerk's Report 19-003, be received.

2. Fair Wage Policy and Fair Wage Schedule Complaints Annual Report (FCS19082) (City Wide) (Item 7.3)

That Report FCS19082, respecting the Fair Wage Policy and Fair Wage Schedule Complaints Annual Report, be received.

3. Tax and Rate Operating Budget Variance Report as at July 31, 2019 - Budget Control Policy Transfers (FCS19055(a)) (City Wide) (Item 9.1)

(a) That, in accordance with the "Budgeted Complement Control Policy", 2019 complement adjustments, including changing complement type and transferring complement from one department / division to another with no impact on the levy, as outlined in Appendix "A" to Audit, Finance & Administration Report 19-015, be approved; and,

(b) That, in accordance with the "Budgeted Complement Control Policy", 2019 extensions of temporary positions with 24-month terms or greater, with no impact on the levy, as outlined in Appendix "B" to Audit, Finance & Administration Report 19-015, be approved.

4. Shoreline Protection Consulting Assignments (FCS19076 / PW19087) (Wards 1, 2, 5 and 10) (Item 10.1)

(a) That in accordance with By-law 17-064 Procurement Policy, Procurement Policy #5.4, and upon Federal approval of funding from the Disaster Mitigation and Adaptation Fund, that staff be directed to proceed with a

Council – October 23, 2019

modified Request for Proposals to consultancy firms specializing in coastal engineering for implementation of the Disaster Mitigation and Adaptation Funding project for Shoreline Protection Measures; and,

- (b) That the General Manager of the Public Works Department or designate be authorized to negotiate and execute all agreements and any ancillary documents required to implement this project in a form satisfactory to the City Solicitor.

5. Hamilton Submission to Attorney General Study of Joint & Several Liability (FCS19085) (City Wide) (Item 10.2)

- (a) That Report FCS19085, respecting the Hamilton Submission to Attorney General Study of Joint & Several Liability be received; and,
- (b) That a letter, similar to the draft version attached as Appendix “C” to Audit, Finance & Administration Report 19-015, on behalf of the City of Hamilton from the Mayor be sent to the Office of the Ministry of the Attorney General prior to November 1, 2019.

6. Funding for CANUSA through the Recreation Division Operating Budget from the City Enrichment Fund (Item 11.1)

WHEREAS, prior to the 2019 City Enrichment Fund intake, the Executive Committee for CANUSA Hamilton met with Recreation staff as well as the Ward 6 Councillor to express their desire to ensure annual static funding from the City of Hamilton in support of the annual planning and implementation of the CANUSA Games;

WHEREAS, before 2015, CANUSA was not required to make a formal application, but rather, received annual operating funds. The CANUSA organizing committee has requested to return to fixed annual support from the City of Hamilton based on previous funding levels;

WHEREAS, during the 2019 City Enrichment Fund intake, the Grants Sub-Committee had approved funding to CANUSA in the amount of \$38,202;

THEREFORE, BE IT RESOLVED:

- (a) That \$30,284 be transferred from the City Enrichment Fund (Sports & Active Lifestyles Program) to the operating budget of the Recreation Division to form the annual base budget to support the CANUSA games; and,
- (b) That an enhancement of \$10,916, to increase the annual base budget of funding to CANUSA Hamilton (from \$30,284 to \$41,200) to support the annual CANUSA games at the current level, be submitted through the Recreation Divisions 2020 operating budget for consideration.

FOR INFORMATION:

(a) CHANGES TO THE AGENDA (Item 2)

The Committee Clerk advised of the following change to the agenda:

8. PUBLIC HEARINGS / DELEGATIONS (Item 8)

8.1(a) Staff Supporting Documentation in reference to Item 8.1 - Richard Ferguson, respecting a recent incident regarding water use at his property

The agenda for the October 17, 2019 Audit, Finance and Administration Committee meeting was approved, as amended.

(b) DECLARATIONS OF INTEREST (Item 3)

There were no declarations of interest.

(c) APPROVAL OF MINUTES OF PREVIOUS MEETING (Item 4)

(i) October 3, 2019 (Item 4.1)

The Minutes of the October 3, 2019 meeting of the Audit, Finance and Administration Committee were approved, as presented.

(d) CONSENT ITEMS (Item 7)

(i) Advisory Committee Minutes: (Item 7.1)

The following Advisory Committee Minutes, were received:

- (1) Committee Against Racism - Minutes - June 25, 2019 (Item 7.1(a))
- (2) Committee Against Racism – Minutes - July 23, 2019 (Item 7.1(b))

(e) PUBLIC HEARINGS / DELEGATIONS (Item 8)

(i) Richard Ferguson, respecting a recent incident regarding water use at his property (Approved October 3, 2019) (Item 8.1)

Richard Ferguson was not present when called upon.

(ii) Staff Supporting Documentation respecting Richard Ferguson, and a recent incident regarding water use at his property (Added Item 8.1(a))

The Staff supporting documentation respecting Richard Ferguson, and a recent incident regarding water use at his property, was received.

(f) STAFF PRESENTATIONS (Item 9)

(i) Tax and Rate Operating Budget Variance Report as at July 31, 2019 - Budget Control Policy Transfers (FCS19055(a)) (City Wide) (Item 9.1)

Brian McMullen, Director, Financial Planning Administration and Policy, addressed the Committee respecting Tax and Rate Operating Budget Variance Report as at July 31, 2019 - Budget Control Policy Transfers, with the aid of a presentation.

The presentation respecting Tax and Rate Operating Budget Variance Report as at July 31, 2019 - Budget Control Policy Transfers, was received.

A copy of the presentation is available on the City's website at www.hamilton.ca or through the office of the City Clerk.

For further disposition of this matter, refer to Item 3.

(g) PRIVATE AND CONFIDENTIAL (Item 14)

(i) October 3, 2019 – Closed Minutes (Item 14.1)

- (a) The Closed Session Minutes of the October 3, 2019 Audit, Finance and Administration meeting, were approved as presented; and,
- (b) The Closed Session Minutes of the October 3, 2019 Audit, Finance and Administration meeting, remain confidential.

(h) ADJOURNMENT (Item 15)

There being no further business, the Audit, Finance and Administration Committee adjourned at 10:07 a.m.

CARRIED

Respectfully submitted,

Councillor Collins, Chair
Audit, Finance and Administration
Committee

Angela McRae
Legislative Coordinator
Office of the City Clerk

CITY OF HAMILTON
BUDGETED COMPLEMENT ADJUSTMENT SCHEDULE

STAFF COMPLEMENT CHANGE

Complement adjustments as per the Budgeted Complement Control Policy including transfers to another division or department

ITEM #	TRANSFER FROM				TRANSFER TO			
	Department	Division	Position Title ⁽¹⁾	FTE	Department	Division	Position Title ⁽¹⁾	FTE
1	Planning & Economic Development	Licensing Bylaw Services	Clerk	1.00	Corporate Services	Customer Service and Provincial Offences Administration	Customer Contact Centre Representative	1.00
	Explanation: Customer Service work transferred from PED to Corporate Services as part of the Call Consolidation process							
2	Planning & Economic Development	Transportation Planning and Parking	Clerk	1.00	Corporate Services	Customer Service and Provincial Offences Administration	Customer Contact Centre Representative	1.00
	Explanation: Customer Service work transferred from PED to Corporate Services as part of the Call Consolidation process							
3	Planning & Economic Development	Transportation Planning and Parking	School Crossing Guard	0.50	Corporate Services	Financial Planning, Administration and Policy	Financial Assistant II	0.50
	Explanation: The transfer of 0.5 FTE will assist with the creation of a 0.5 FTE in the F&A group taking over work from HMPS.							
4	Planning & Economic Development	General Manager Office	Sr Advisor West Harbour Waterfront	1.00	Planning & Economic Development	Economic Development	Sr Advisor West Harbour Waterfront	1.00
	Explanation: Transfer of Sr Advisor position from General Manager's Office to Economic Development.							
5	Planning & Economic Development	LRT	Sr Project Manger	1.00	Public Works	Engineering Services	Sr Project Manger	1.00
6	Planning & Economic Development	LRT	3 Construction Inspectors	3.00	Public Works	Engineering Services	3 Construction Inspectors	3.00
7	Planning & Economic Development	LRT	2 Project Managers	2.00	Public Works	Engineering Services	2 Project Managers	2.00
	Explanation: Positions are reporting to PW- transferring to appropriate department.							
8	Public Works	Hamilton Water	Lab Techn	1.00	Public Works	Hamilton Water	Project Manager	1.00
	Explanation: Requesting approval to convert Lab Techn position grade I to Project Manager grade 6. Differential will be absorbed in Operating budget. No net levy impact.							
9	Public Works	Energy, Fleet & Facilities	Stadium Mtce Coord	1.00	Public Works	Energy, Fleet & Facilities	Facility Mtce Tech-Electrician	1.00
	Explanation: Requesting approval to convert vacant Stadium Maintenance Tech position grade H to a Facility Maintenance Tech Electrician grade J. Differential will be absorbed in Operating budget by reduced contracted services. No net levy impact.							
10	Public Works	Energy, Fleet & Facilities	Building Coordinator	1.00	Public Works	Energy, Fleet & Facilities	Refrig A/C Tech Fac Mtce	1.00
	Explanation: Requesting approval to convert vacant Building Coordinator Grade H to a Refrigeration A/C Technician Facilities Maintenance Grade J. Differential will be absorbed by the Operating budget by reduction in contracted outside services. No net levy impact.							

CITY OF HAMILTON BUDGETED COMPLEMENT ADJUSTMENT SCHEDULE

STAFF COMPLEMENT CHANGE

Complement adjustments as per the Budgeted Complement Control Policy including transfers to another division or department

ITEM #	TRANSFER FROM				TRANSFER TO			
	Department	Division	Position Title ⁽¹⁾	FTE	Department	Division	Position Title ⁽¹⁾	FTE
11	Public Works	Environmental Services	Waste Collection Operator	1.00	Public Works	Environmental Services	Waste Collection Investigator	1.00
	Explanation: Requesting approval to convert the Waste Collection Operation position into a Waste Collection Investigator position from a C5 Grade F to a C5 Grade I. No net levy impact.							
12	Healthy & Safe Communities	Hamilton Fire Department	Application Analyst - Fire	2.00	Corporate Services	Information Technology	Application Analyst - Fire	2.00
13	Healthy & Safe Communities	Hamilton Fire Department	Radio Technician	1.00	Corporate Services	Information Technology	Radio Technician	1.00
14	Healthy & Safe Communities	Hamilton Fire Department	RF (radio frequency) Systems Specialist	1.00	Corporate Services	Information Technology	RF (radio frequency) Systems Specialist	1.00
15	CityHousing Hamilton		Manager of Business Services	1.00	Corporate Services	Information Technology	Manager of Business Services	1.00
16	CityHousing Hamilton		Northgate Support Technician	1.00	Corporate Services	Information Technology	Northgate Support Technician	1.00
17	CityHousing Hamilton		Applications Developer	1.00	Corporate Services	Information Technology	Applications Developer	1.00
18	Healthy & Safe Communities	Recreation	Supervisor of Technology	1.00	Corporate Services	Information Technology	Supervisor of Technology	1.00
19	Healthy & Safe Communities	Recreation	Legend Administrator	2.00	Corporate Services	Information Technology	Legend Administrator	2.00
20	Healthy & Safe Communities	Ontario Works	System Support Technician	4.00	Corporate Services	Information Technology	System Support Technician	4.00
	Explanation: IT Centralization as per report FCS17091.							
21	Corporate Services	Customer Service and Provincial Offences Administration	Court Admin Clerk	1.00	Corporate Services	Customer Service and Provincial Offences Administration	Coordinator of Court Services	1.00
	Explanation: Requesting approval to convert vacant Court Admin Clerk position grade H to Coordinator of Court Services grade 4 to support Bill 177. Differential will be absorbed by operating budget. No net levy impact.							

Note - Complement transfers include the transfer of corresponding budget.

(1) - If a position is changing, the impact of the change is within 1 pay band unless specified.

CITY OF HAMILTON
BUDGETED COMPLEMENT TEMPORARY EXTENSION SCHEDULE

TEMPORARY POSITION EXTENSIONS

Extensions to temporary positions with terms of 24 months or greater as per the Budgeted Complement Control Policy

ITEM #	TRANSFER FROM				TRANSFER TO			
	Department	Division	Position Title	FTE	Department	Division	Position Title	FTE
1	Public Works	Transit	Senior Project Manager	Temp	Public Works	Transit	Senior Project Manager	Temp
	Explanation: Temporary position with a 24 month term expiring December 2019, requesting approval for additional 4 month extension. Position back-filling an SPM on an assignment that is being recovered. No net levy impact.							
2	Corporate Services	Financial Planning, Administration and Policy	Financial Coordinator	Temp	Corporate Services	Financial Planning, Administration and Policy	Financial Coordinator	Temp
	Explanation: Temporary position with a 24 month term expiring November 2019, requesting approval for an extension of up to 12 months to support development and changes due to Bill 108. No net levy impact.							
3	City Manager's Office	Human Resources	Return to Work Specialist	Temp	City Manager's Office	Human Resources	Return to Work Specialist	Temp
	Explanation: Temporary position with a 24 month term expiring October 2019, requesting approval for an extension of 7 months to continue back-filling a permanent Specialist on assignment to Fire. The assignment continues to be successful and has contributed to a demonstrable decrease in absenteeism. No net levy impact.							
4	City Manager's Office	CMO Admin	Project Manager	Temp	City Manager's Office	CMO Admin	Project Manager	Temp
	Explanation: Temporary position expiring December 2019. Requesting approval for an extension of Project Manager City Lab to match program extension approved via CM19003, expiring May 31, 2022. No net levy impact.							

DRAFT

16 October 2019

The Honourable Doug Downey
Attorney General of Ontario
McMurtry Scott Building, 11th Floor
720 Bay Street
Toronto, ON
M7A 2S9

Dear Attorney General Downey,

Re: Joint & Several Liability Study

As the Mayor of the City of Hamilton, I extend thanks from our entire municipal organization for the opportunity to provide details of Hamilton's experience with joint and several liability.

The approach to handling liability claims in the City of Hamilton is rooted in fairness. City Council has provided Risk Management Services with a mandate to compensate claimants equitably when our investigation indicates a legal liability to do so. To that end we are in complete agreement with the commentary from the Association of Municipalities Ontario (AMO) in their submission to you of October 1, 2019, stating:

Municipal governments accept the responsibility to pay for their fair share of a loss. Always. Making it right and paying a fair share are the cornerstones of our legal system. Citizens expect nothing less of their local governments.

Where liability claims are concerned, joint and several liability exists in contrast to the good intentions of Ontario municipalities. Not only do municipalities pay far more than a fair share in claims resolution, be it through negotiation or court judgment, cost of risk as a whole is significantly inflated. "Cost of risk" encompasses claims payments, claims reserves, insurance costs, and all related administrative costs to managing risk.

An examination of Safranyos et al v City of Hamilton, which is Hamilton's most recent experience with a judicial application of joint and several liability, illustrates clearly how a disproportionate financial burden is placed on what is considered to be a "deep pockets" defendant.

Plaintiff motorist Safranyos, with four children in her vehicle, attempts to turn right onto a four-lane roadway, failing to recognize the excessive speed of an oncoming motorist. A collision ensues. Safranyos is familiar with the intersection and has negotiated this

maneuver many times previously. Allegations against Hamilton focus on the absence of a stop line on the pavement and intersection sightlines, both of which were clearly of secondary influence compared to the actions of both motorists. The trial judge assessed partial liability of 25% against Hamilton, and 25% against the speeding motorist. Hamilton's attempts at appeal were unsuccessful. The speeding co-defendant was successful on appeal and had the action against him dismissed. With no contribution from the speeding co-defendant and only a \$1,000,000 policy limit contribution from Safranyos, a claims expense of approximately \$15,000,000 was the ultimate result for Hamilton and its insurer.

Safranyos is merely one example where a trial outcome has resulted in an onerous financial burden for Hamilton and its insurers due the disproportion created by the presence of joint and several liability. Your office will no doubt be hearing similar accounts of trial judgments and associated disproportionate claims expenses from municipalities across Ontario. The AMO correspondence referenced earlier discusses a number of the more newsworthy cases from recent years. There is no shortage of examples establishing the extreme financial risk of trying a case for Ontario municipalities. In this regard the scales of justice are clearly not balanced.

While it may be possible to calculate the sum total of disproportionate claims payments made by Ontario municipalities and their insurers relative to trial judgments over the years, it would be folly to attempt to calculate the impact of joint and several liability on day to day claims handling, file reserving, and out of court settlements. Suffice it to say, the impact is constant, severe, and obvious in light of the risks of going to trial and factors in virtually all claims handling decisions. The presence of joint and several liability hangs over the heads of risk managers, municipal lawyers, elected officials, and insurers like the sword of Damocles. As a result, claims handling has become an exercise in financial management as opposed to an analysis of municipal law. Plaintiff lawyers are of course well aware of the risk issues arising from joint and several liability and apply it consistently as leverage in file negotiation.

If we look at the Safranyos case in hindsight, the fact circumstance unquestionably justified a vigorous defence by any reasonable analysis of law. Driver error was clearly the significant cause of this unfortunate accident. The intersection did not have a notable accident history, and the allegation of insufficient sightlines seemed dubious at best. An offer to settle capable of appealing to the plaintiffs was not seriously considered for all the above reasons, yet, in hindsight, settling the matter for \$10,000,000 would have brought considerable savings to Hamilton and the insurer.

Judgments like Safranyos and those discussed in the AMO submission have made Ontario municipalities risk adverse in terms of using court for defensible positions with the lack of balance and fairness built into joint and several liability. Consequently, settling claims, often at very high dollar values, has become the lesser of two evils.

The impact of joint and several liability on the municipal insurance market for Ontario municipalities is harsh. Presently the world market is in a hard cycle, largely due to the problematic emerging influence of:

- climate change
- terrorism
- cyber crime
- environmental impairment
- rapidly rising damage awards
- shrinking market

The state of the world market is exacerbated in Ontario by the continued presence of joint and several liability. In fact, Ontario is one of the few jurisdictions remaining in North America to have unrestricted joint and several liability legislation. A majority of states in the United States have moved away from the strict scheme which still exists in Ontario, as have a number of provinces. Accordingly, the number of insurers willing to underwrite Ontario municipalities has been in slow decline over the last 10 years, drastically reducing competition. Municipalities of all sizes and levels of service, even those with solid loss ratios, are experiencing increases far exceeding the rate of inflation.

Municipalities, like Hamilton, where a full range of services is provided, including transit, police, and public health, are particularly exposed to the significant rate increases.

City of Hamilton General Liability Premium Increase 2000-2019

- Compound premium increases of \$1,612,000 over the last 5 years / Premium 72% higher than 2014
- Compound premium increases of \$1,612,000 over the last 10 years / Premium 72% higher than 2009
- Compound premium increases of \$4,078,000 over the last 20 years / Premium 540% higher than year 2000

City of Hamilton Total Insurance Premium Increase 2000-2019

- Compound premium increase of \$5,569,000 (\$) over the last 5 years / Premium 75% higher than 2014
- Compound premium increases of \$6,145,000 (\$) over the last 10 years / Premium 91% higher than 2009
- Compound premium increases of \$15,030,000 over the last 20 years / Premium 404% higher than year 2000

The cost of insurance represented 0.3% of the City's budget in the year 2000. In 2019, at 0.7%, the amount of budget devoted to insurance premiums has more than doubled. In a market situated to stay hard for the foreseeable future the percentage will surely increase.

Consequently, a greater amount will be removed each year from available funds for the provision of municipal services.

Ontario municipalities are united in their commitment to paying their fair share of a loss. These same municipalities also understand the need to ensure that accident victims receive fair compensation. Joint and several liability is often cited as a necessary means to ensure fair compensation. It is important to understand, however that the concept of joint and several liability was born of a time when few, if any, social support mechanisms were in place to assist accident victims. Modern times in Ontario have seen the development of accident benefit programs, universal healthcare, employer benefit plans, private benefit plans, title insurance, and workers compensation programs. Joint and several legislation in Ontario exists largely as an anachronism, the primary beneficiaries being not accident victims but personal injury lawyers.

Discussions with staff at all levels in Hamilton illustrate clearly that joint and several liability creates unreasonable and elusive challenges for the entire organization. Sound policies and procedures followed with all due diligence operationally are not sufficient to protect municipalities from large, disproportionate liability losses. Financial staff scramble to find funds for losses, reserves, and insurance premiums. Elected officials scramble to control tax rates in the face of the rising cost of risk. Public Works staff scramble to constantly align policies and procedures to recent case law. Risk Managers scramble to explain confounding losses and to keep the organization abreast of new exposures. Lawyers scramble to provide defenses in an unbalanced, unpredictable legal environment.

Accident victims deserve to be compensated fairly. Determining fairness; however, requires a sound and logical assessment, one which carefully considers the positions of all stakeholders. It stands against reason that damage judgments are rising exponentially in comparison to the inflation rate. It stands against reason that strict joint and several liability legislation continues to exist in a time when numerous social support mechanisms are in place. It stands against reason that jury trials are not permitted for trials involving municipal defendants. It stands against reason that municipalities are considered as "deep pocket" entities when funding shortfalls exist in all areas of municipal service provision.

To level the playing field for Ontario municipalities, the City of Hamilton offers the following:

1. In recognition of the fact that municipalities are not "deep pocket" defendants, full proportionate liability to replace joint and several liability.
2. Minimum automobile liability coverage increased to \$2,000,000.
3. Make jury trials available to municipal defendants.
4. Implement a cap for economic loss awards.

5. A compensation fund for accident victims when defendants are unable to fund reasonable compensation to their proportionate level.
6. In recognition of the fact that the primary cause of 90% of all serious motor vehicle accidents is driver error, an increased commitment to safety initiatives such as Vision Zero.
7. Establish a provincial and municipal working group to consider input from all stakeholders and to put forward recommendations to the Attorney General.

Again, I extend thanks from our entire municipal organization at the City of Hamilton for the opportunity to provide details of our particular experience with joint and several liability. I am available at your convenience to discuss any questions or concerns you may have with our submission.

The City of Hamilton looks forward to assisting your office however it can in finding a reasonable alternative to joint and several liability, an alternative that will fairly compensate victims while not placing an unmanageable, disproportionate financial burden on municipalities.

Sincerely,

Mayor Fred Eisenberger
(Insert standard sign-off)