CITY OF HAMILTON
CORPORATE SERVICES DEPARTMENT
Legal and Risk Management Services Division

TO:	Mayor & Members General Issues Committee
COMMITTEE DATE:	August 9, 2021
SUBJECT/REPORT NO:	2021 Property and Liability Insurance Renewal Report (LS21027) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	John McLennan (905) 546-2424 Ext. 5736
SUBMITTED BY: **SIGNATURE:**	Mike Zegarac General Manager, Finance and Corporate Services

RECOMMENDATION

(a) That the Liability and Property Insurance coverage for the term January 1, 2021, to January 1, 2022, be renewed through Arthur J. Gallagher Canada Ltd. and Marsh Canada Ltd. at a cost of $10,148,551 (net of taxes)

(b) That the 2021 Risk Management Property and Liability budget shortfall of $2,085,121 be funded through the 2021 year-end surplus or Tax Stabilization Reserve (110046)

(c) That the General Manager, Finance and Corporate Services, be authorized and directed to execute all associated documents related to the renewals of the Liability and Property Insurance coverage for the terms January 1, 2021, to January 1, 2022, through Marsh Canada Ltd., in a form satisfactory to the City Solicitor, on behalf of the City of Hamilton;

(d) That five (5) permanent FTE be approved effective January 2022, namely two litigation solicitors, a law clerk, a legal assistant and a Risk Management assistant, and that the annual compensation costs totalling $645,000 be cost recovered from City Departments and appropriate Boards and Agencies commencing in 2022 and;

(e) That the one-time costs of $29,000 related to equipment and materials in support of the additional complement be funded from the Unallocated Capital Reserve (108020).

EXECUTIVE SUMMARY

The difficult insurance market conditions detailed in last year's insurance renewal report (LS20010) have continued. In most types of coverage, conditions have worsened, particularly for commercial consumers. Compounding the impact of a hard market is the fact that the City's liability claims experience over the last 10 years shows a pattern of unprofitability for any prospective insurer.

The City's insurance broker has confirmed that in an already limited competitive marketplace, no other potential insurers are interested in the City account. With no reasonable alternative options at this time, staff and the City's insurance broker of record (Gallagher) are recommending renewal of the City's insurance program with the current insurers, and a further increase in the liability deductible to mitigate the premium increase as much as reasonably possible. The increase in deductible will mean the City will face extra claim costs up to the higher deductible limit.

Staff and the City's insurance broker of record are recommending a program of coverages which will see a total insurance premium increase of $2,085,121 (25.9%) based on budgeted amounts. Liability deductible options ranging from $2,500,000 to $5,000,000 were presented to the City. It is not an option for the City to remain at the $1,500,000 liability deductible level.

A review of the liability claims experience of the past 10 years, with all amounts converted into present day values, showed the $5,000,000 deductible to be the most favourable option in terms of basic Total Cost of Risk in the event future claims are similar.

Staff will be providing a separate report focusing on Enterprise Risk Management (ERM) for the General Issues Committee meeting of September 22, 2021 to support the effort in mitigating future claims and insurance costs.

Alternatives for Consideration – see Page 10

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: The 2021 premium of $10,148,551 (net of taxes) will be funded through the 2021 Risk Management Services Budget. The total 2020 insurance premium expense was $8,281,904 (net of taxes). The 2021 renewal represents an increase of $1,866,647 (22.5%) in insurance premiums based on actuals.

The 2021 Insurance Premium budget is $8,063,430 (net of taxes). The resultant shortfall of $2,085,121 (net of taxes) is recommended to be funded through the 2021 Operating Budget Surplus or Tax Stabilization Reserve (110046)

The City was not offered the option to remain at its current $1,500,000 deductible on the first layer of liability coverage. The lowest deductible option offered was $2,500,000.

The deductible/premium options presented to the City for the first layer of liability coverage of $5,000,000 are as follows:

Deductible	**Premium**
$2,500,000	$3,640,000
$3,500,000	$2,790,523
$5,000,000	$1,930,000

A review of the liability claims experience of the past 10 years, with all amounts converted into present day values, showed the $5,000,000 deductible to be the most favourable option in terms of basic Total Cost of Risk in the event future claims follow a similar pattern.

The following table illustrates a Cost of Risk (premium + claims expense) comparison of deductible options offered by Marsh using the City's claims experience over the last 10 years. Dollar figures have all been adjusted to present day values. The lowest cost of risk for each year is highlighted in yellow.

Total Cost of Risk (TCR) Deductible Comparison			
Deductible	**$2,500,000**	**$3,500,000**	**$5,000,000**
Premium	**$3,640,000**	**$2,790,000**	**$1,930,000**
2011 TCR	$6,130,000	$5,280,000	$4,420,000
2012 TCR	$4,097,000	$3,247,000	$2,387,000
2013 TCR	$8,213,000	$8,483,000	$10,423,000
2014 TCR	$12,977,000	$13,888,000	$13,920,000
2015 TCR	$4,552,000	$3,702,000	$2,842,000
2016 TCR	$4,983,000	$4,133,000	$3,273,000
2017 TCR	$6,085,000	$5,235,000	$4,375,000
2018 TCR	$6,515,000	$6,715,000	$6,319,000
2019 TCR	$5,358,000	$4,508,000	$3,648,000
2020 TCR	$0	$0	$0

With the exception of the two outlier claims years of 2013 and 2014, the costs avoided in applying a $5,000,000 deductible are steady and material. Compared against a $2,500,000 deductible, the costs avoided averaged a steady $1,700,000 annually. Compared against a $3,500,000 deductible, the costs avoided averaged a steady $800,000 annually. The costs avoided figures more than adequately cover the costs associated with the incremental staffing recommendations.

In addition to the premium costs, the higher deductibles will tend to result in larger in-house claims expenses as the City will be responsible for claims and defence costs up to the amount of the recommended deductibles. Control and mitigation of in-house claims costs will continue to come through the diligent claims and litigation handling efforts of Legal and Risk Management Services staff. Mitigation of future claims and insurance costs will be pursued through an enhanced approach to Enterprise Risk Management, discussed below, and aided by assistance offered through the broker and insurer to municipal clients. Impacts on the budget for claims expense will depend on the number and value of claims going forward.

Staffing: An effective response to larger and higher volume of claims will require additional staff to meet litigation needs and requirements, mitigate claims expenses and develop additional in-house legal expertise to limit external legal counsel costs to the greatest extent possible. In addition, effective staff response will support a migration to an Enterprise Risk Management approach and improve the City’s risk profile for future insurance procurements.

The increased liability deductible on top of last year’s increase means the City will continue to handle higher volumes and larger claims in-house, with resulting increases in workload and greater need for a more effective litigation response. The pandemic has slowed litigation, but the effect is temporary as timelines have re-started and courts move to re-open. Additional Legal and Risk Management staff will be needed for effective litigation response and the greater volume of work in larger claims; to respond to early and more extensive document collection, case analysis and the preparation needed from initial steps through to mediations or trials. Substantial claims often require teams of staff to effectively respond, so the addition of staff will support larger teams need for sizable litigation claims. Last year’s report (LS20010) recommended a phased approach, adding four permanent FTE in 2021, and a future assessment of costs and needs. The substantial deductible increase under this report is the basis to add further staff, with the recommendation for five permanent FTE, comprised of two litigation lawyers, a litigation clerk, a legal assistant, and a Risk Management Assistant to support claims handling. See Legal Implications for more detail.

Total annual cost of the five recommended FTE is $645,000. In addition to the compensation costs are associated one-time costs for equipment and furniture of $29,000. The staffing will begin in 2022 and will be allocated to Departments and agencies through claims costs. Permanent FTE are recommended because experience with contract staff has shown that it is difficult to attract and retain knowledgeable staff needed for the high level of service provided to the City.

Legal: Litigation involves timely and extensive fact and document collection, case assessments, compliance with multiple, and often strict, deadlines in the Rules of Civil Procedure, or as imposed by Courts for overall effectiveness. The City is most often a defendant, which requires significant preparation to effectively respond to claims supported by plaintiff's counsel, which includes case preparations, discovery obligations, and trial readiness. Legal disadvantages will occur through insufficient resourcing levels, adding delays, legal risks and exposure to the City for added claim costs, and/or increased external counsel expense. The development of in-house expertise with direct knowledge of City operations is recommended as the most effective approach to ensure quality assurance and cost minimization.

HISTORICAL BACKGROUND

The City has acquired its parcel of insurance coverages through Marsh Canada Limited (formerly JLT) since 2011. Previously, dating back to amalgamation, insurance was acquired through the Frank Cowan Company. The move to JLT was the result of a full market review in which JLT was the successful bidder, at approximately $800,000 lower than the next lowest bidder. In April 2019, Marsh & McLennan Companies, Inc. purchased JLT.

Arthur J. Gallagher Canada Limited (formerly Pearson Dunn Insurance Inc.) is currently the City's broker of record. Each year the broker searches the market with available insurers and oversees the placement of the City's insurance program as part of their contract duties. Marsh Canada Ltd. (formerly Jardine Lloyd Thompson Inc.) is a Managing General Agent who specializes in insuring municipal entities. A Managing General Agent is a party who is authorized by various insurers to act as an intermediary to accept placements from insurance brokers such as Gallagher.

Appendix B to Report LS21027 shows the last 5 years of coverages and related premiums acquired by the City through Marsh and confirms the market hardening as it impacts on municipal premiums. Similar premium increases and limited availability of insurers are issues which have been faced by all municipalities over the last few years.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

N/A

RELEVANT CONSULTATION

Negotiation and discussions with insurers were conducted in association with the City's Broker of Record and insurer.

Comparator municipalities and other types of public sector entities were consulted.

Finance & Administration was consulted regarding funding sources.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

The premium increases for 2021 reflect the hard market trend that commenced in the latter part of 2018 and which has continued to worsen. Staff made inquiries through its broker, and directly with other municipalities, and determined substantial increases were occurring in the insurance market for several reasons, and in particular with municipal and public entity coverages. Direct comparisons with other municipalities are difficult due to differences in services and claims experiences and varying renewal dates when increases have been applied in other municipalities.

Liability coverage increases within the City's program can be attributed mainly to:

(a) The continued hardening of the global insurance market, primarily due to the combination of weather related catastrophic losses pairing with lower returns in the investment market.

(b) The present insurer's assessments of the City's claims history and exposures, which meant no other insurers were willing to quote for the City's 2021 coverage.

(c) Potential insurers' awareness of a number of high profile claims, or potential claims, including concerns with the Red Hill Valley Parkway.

(d) The principle of joint and several liability (1% rule) continuing to exert immense pressure on claims reserving and handling.

A hard insurance market is characterized by a high demand for insurance coverage and a reduced supply. Insurers impose strict underwriting standards and issue a limited number of policies. Premiums are high and insurers are disinclined to negotiate terms.

A number of different factors affect insurance pricing, but the following are common contributors to the hardening market:

(a) Catastrophic losses - Floods, tornadoes, hurricanes, wildfires and other disasters are increasingly common and devastating. Years of costly disasters like these have compounded losses for insurers, driving up the cost of coverage overall.

(b) Claims costs - The frequency and severity of claim cost increases over time in accordance with population and municipal service growth. One reason for this is that settlement and verdicts for bodily injury claims are steadily rising. This extends litigation and significantly raises the cost to defend a claim. Additionally, advances in health care have made treatment more effective, and people are living longer, fuller lives even after a serious accident. While life expectancy is a positive trend, it has had an impact on compensatory damages and benefits.

(c) Underwriting standards - Insurers are struggling to overcome underwriting losses, especially given how low interest rates have remained in recent times. This has made carriers more cautious, and many are restricting the classes of businesses and lines of insurance they are willing to underwrite.

(d) Investment return - Nearly every insurance carrier uses the funds it receives from premiums to invest in other markets. However, reduced interest rates have negatively impacted profitability, and carriers have a reduced their appetite for risk as a result.

(e) Reinsurance - Reinsurance is coverage for insurance companies, and which is subject to the same difficult market. Carriers often buy reinsurance for risks they can’t or don’t wish to retain fully. However, reinsurance is becoming more expensive to obtain, which is causing carriers to increase their rates.

In addition to the presence of the hard global market, there are also the factors specific to Ontario municipalities, namely:

(a) Ontario’s system of no fault auto insurance which requires payments to be made regardless of fault. Most HSR passengers are “first party” insured whenever they ride a bus.

(b) The continued presence of the legal principle of “joint and several” liability, also known as the “1% rule,” whereby a plaintiff may recover all the damages from any of the defendants in a claim regardless of their individual share of liability.

Current legislation directs that a person injured by two or more negligent parties may collect full damages from any one of the negligent parties even if that party was only found 1% responsible for damages. As such, if the City is found by the courts to be even 1% responsible for a claim, it can be made to incur greater costs or even the entire costs of a claim if the other negligent parties are unable to pay their share. The resulting exposure is a factor in court awards and settlement considerations.

Ontario municipalities continue to lobby the provincial government for joint and several liability reform. As recently as 2019 the Ministry of the Attorney General requested input from municipalities on the subject of potential reform. The City provided an extensive submission which contained the following practical suggestions for reasonable reform:

- In recognition of the fact that municipalities are not “deep pocket” defendants, full proportionate liability to replace joint and several liability
- Minimum automobile liability coverage increased to $2,000,000
- Make jury trials available to municipal defendants
- Implement a cap for economic loss awards
- A compensation fund for accident victims when defendants are unable to fund reasonable compensation to their proportionate level
- 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 initiative such as Vision Zero
- Establish a provincial and municipal working group to consider input from all stakeholders and to put forward recommendations to the Attorney General

To date, over two years since the Attorney General’s request for submissions, there has been no move to reform liability to address municipal concerns and risks.

(c) The high risk associated with being a public body with perceived “deep pockets” in an increasingly litigious society.

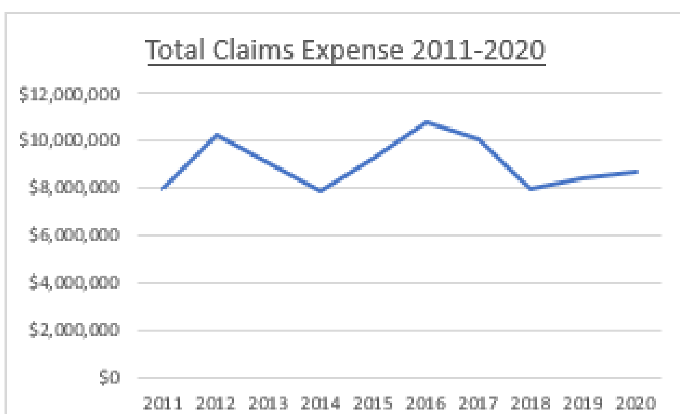
(d) Jurisprudence with expanding grounds for the finding of liability resulting in an ongoing expectation of a higher standard of care.

(e) Damage awards are getting larger. Court awards for severe bodily injury claims have increased dramatically in the last few years. These awards are primarily driven by the costs of providing future care for catastrophically injured persons. As the severity of awards increases so too does the exposure to municipalities who are, again, perceived to have deep pockets.

(f) The overall cost of claims has continued to rise at a rate in excess of premium growth. Individual claims are becoming more complex resulting in more time to manage the claim with more detailed investigation, more experts and more legal time involved in the process. Even if the municipality is not liable for damages there are significant costs associated with simply defending claims.

(g) Municipal liability claims can have a “long tail,” which refers to claims that take a long time to become known and/or to settle. For example, the proximate cause for a claim may be in place years before damage occurs, such as building defects that may come to light many years after construction. Claims from previous years are more difficult to manage as pertinent information is not always readily available. These types of claims will often take a longer time to resolve once in place. While the time limit for starting legal claims was shortened to two years for most claims, an ultimate limitation period of fifteen years provides the “long tail” potential and adds to insurers perception of risk that determines availability of coverage and cost of premiums.

Control of claim costs is ongoing. Legal and Risk Management Services, in conjunction with various client departments, has had a number of successes in controlling loss when a frequency becomes apparent. The reductions in claims expenses for sidewalk trip and falls, sewer back-ups, police pursuits, and waterfall incidents serve as prime examples in this regard. The in-house Claims Expense for 2020 totalled $8,707,774, which marks the third consecutive year of reduction (6%) against the previous 5 year average. The following chart illustrates Claims Expense totals over the last 10 years:



Insurance comparisons to other municipalities are difficult. Services vary as do appetites for risk, deductible levels, and limits. Premium increases have been seen by all other municipalities contacted, but year-over-year increases varied including on renewal dates. The City of Hamilton is very clearly a “full service” municipality with police, paramedic, fire, transit, water treatment, public health, and power generation all within the exposure portfolio along with the more basic municipal services.

Virtually all of Ontario’s 440 municipalities will experience premium increases with their 2021 renewals, regardless of claims experience. Insurance industry information indicates an average increase between 20%-30% for Ontario municipalities in 2021, however, there are cases of increases near and above 100%.

ALTERNATIVES FOR CONSIDERATION

Similar to the 2020 renewal, viable alternatives for coverage from other providers are not an option for the 2021 renewal. Traditionally and in the last several years, the insurance market available to municipal entities has been limited. Municipal operations pose a unique challenge to insurers who generally prefer to concentrate their expertise on one sector of an industry. A single-tier municipality such as Hamilton has diverse operations (e.g. Emergency Services including EMS, Police Services, and Fire), Public Works (Construction, Roads Maintenance etc., Transit, Parks, Recreation, Water and Wastewater, Public Health, and so on). The underwriting criteria of general insurance markets does not easily accommodate a municipal entity the size and scope of Hamilton with its variety of operations. The availability of markets willing to insure municipalities is further complicated by provincial downloading of services to municipalities, by legislative changes, and by broader court decisions. Even among those insurers who will insure a municipality, market options for the City are further limited as many do not have the capacity to insure large municipalities.

At present the insurance market for Ontario municipalities is essentially limited to four providers – Marsh Canada, BFL Canada, AON Insurance, and Intact Public Entities (formerly Frank Cowan Company). The latter three entities were unwilling to provide competitive bids for the City’s 2021 insurance program.

Every reasonable effort is made to transfer liability exposure where possible, such as requiring appropriate levels of insurance, commensurate with project scope, for contractors working with the City. The City’s approach to risk transfer will be examined further under an Enterprise Risk Management framework.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Our People and Performance

Hamiltonians have a high level of trust and confidence in their City government.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” - City of Hamilton 2021 Property and Liability Insurance Renewal Coverages and Limits

Appendix “B” - City of Hamilton Insurance Coverages and Premiums 2016-2021