



Motion Memorandum

SUBJECT: Resolution on Joint and Several Liability

TO: Mayor and Members of Council

FROM: Mayor Marianne Meed Ward

Date to Committee: N/A

Date to Council: January 18, 2022

Motion for Council to Consider:

Whereas municipal governments provide essential services to the residents and businesses in their communities; and

Whereas the ability to provide those services is negatively impacted by exponentially rising insurance costs; and

Whereas one driver of rising insurance costs is the legal principle of 'joint and several liability,' which assigns disproportionate liability to municipalities for an incident relative to their responsibility for it; and

Whereas, the Government of Ontario has the authority and responsibility for the legal framework of 'joint and several liability; and

Whereas the Premier of Ontario committed to review the issue in 2018 with a view to helping municipal governments manage their risks and costs; and

Whereas the Association of Municipalities of Ontario (AMO) on behalf of municipal governments has provided recommendations, in their policy paper, "[Towards a Reasonable Balance – Addressing Growing Municipal Liability and Insurance Costs](#)", to align municipal liability with the proportionate responsibility for incidents and capping awards;

Therefore be it resolved that, the City of Burlington does hereby support the following AMO recommendations;

1. The provincial government adopt a model of full proportionate liability to replace joint and several liability.

2. Implement enhancements to the existing limitations period including the continued applicability of the existing 10-day rule on slip and fall cases given recent judicial interpretations, and whether a 1-year limitation period may be beneficial.
3. Implement a cap for economic loss awards.
4. Increase the catastrophic impairment default benefit limit to \$2 million and increase the third-party liability coverage to \$2 million in government regulated automobile insurance plans.
5. Assess and implement additional measures which would support lower premiums or alternatives to the provision of insurance services by other entities such as non-profit insurance reciprocals.
6. Compel the insurance industry to supply all necessary financial evidence including premiums, claims, and deductible limit changes which support its, and municipal arguments as to the fiscal impact of joint and several liability.
7. Establish a provincial and municipal working group to consider the above and put forward recommendations to the Attorney General;

And further that it be resolved that the City of Burlington does hereby call on the Attorney General of Ontario to work with municipal governments to put forward a plan of action to address “joint and several liability” before the end of the government’s current term so that municipalities can continue to offer high quality services to their communities;

And that a copy of this resolution be forwarded to Attorney General, the Honourable Doug Downey, the Minister of Municipal Affairs and Housing, the Honourable Steve Clark and to AMO President Jamie McGarvey.

Reason:

Municipal governments cannot afford to be the insurer of last resort. The principle of joint and several liability is costing municipalities and taxpayers dearly, in the form of rising insurance premiums, service reductions and fewer choices. The *Negligence Act* was never intended to place the burden of insurer of last resort on municipalities.

The heavy insurance burden and legal environment is unsustainable for Ontario’s communities. Despite enormous improvements to safety, including new standards for playgrounds, pool safety, and better risk management practices, municipal insurance premiums and liability claims continue to increase.

Outcome Sought:

The Attorney General of Ontario will work with municipal governments and AMO on a plan to address “joint and several liability” before the end of the government’s current

term so that municipalities can continue to offer high quality services to their communities

Vision to Focus Alignment:

(check those that apply)

- ☒ Increase economic prosperity and community responsive city growth
- ☐ Improve integrated city mobility
- ☐ Support sustainable infrastructure and a resilient environment
- ☐ Building more citizen engagement, community health and culture
- ☐ Deliver customer centric services with a focus on efficiency and technology transformation

Motion Seconded by: Councillor Paul Sharman, Ward 5

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Approved as per form by the City Clerk,

Reviewed by the City Manager - In accordance with the Code of Good Governance, Council-Staff Relations Policy and an assessment of the internal capacity within the City to complete the work based on a specific target date (quarter/year).

Comments:

City Clerk: Approved as per form

City Manager: Approved as per form