Follow Up – Scarborough Associated Groups Liability Insurance Process Options

Date: February 27, 2012
To: Scarborough Community Council
From: Jim Hart, General Manager, Parks, Forestry and Recreation
Wards: Wards 35, 36, 37, 38, 39, 40, 42, 43 and 44
Reference Number: P:\2012\Cluster A\PFR\SC14-032012-AFS#15148

SUMMARY

This report provides additional information on the issues raised by deputants at the January 10, 2012 meeting of the Scarborough Community Council regarding the discontinuation of a pre amalgamation subsidy of providing City paid insurance coverage to 114 sports and community groups in Scarborough, provides some options for organizations to mitigate costs, and explains communication to affected groups.

RECOMMENDATIONS

The General Manager of Parks, Forestry and Recreation recommends that:

1. Scarborough Community Council receive this report for information.

Financial Impact

There is no financial impact as a result of receiving this report.

DECISION HISTORY

As a result of the changes implemented to the Scarborough Associated Groups Liability Insurance, Scarborough Community Council requested, through a communication by
Councillor Ainslie, that the office of the General Manager of Parks, Forestry and Recreation report back to Scarborough Community Council regarding these changes.


At its meeting of November 2, 2011, Scarborough Community Council deferred Item SC11.7 to the meeting of January 10, 2012 to allow for deputations.

(Scarborough Community Council Decision Document – November 2, 2011, Item SC11.7)

At its meeting of January 10, 2012, after hearing deputations, Scarborough Community Council referred back Item SC12.22 and requested the General Manager, Parks, Forestry and Recreation to report further to Scarborough Community Council on the Scarborough Associated Groups liability insurance process and to include in the report:

i. comments on issues raised by the deputants;
ii. an outline of detailed options for organizations to mitigate costs; and
iii. an explanation of what mechanisms are being utilized to explain these options to effected groups.


ISSUE BACKGROUND

During the permit harmonization process, staff have identified a pre-amalgamation subsidy where 114 sports and community groups in Scarborough obtained City-paid Commercial General Liability and Directors' and Officers' Liability insurance, while all other permit holders within the City had to pay for the Commercial General Liability insurance required by the City. In order to provide the groups with sufficient notice and allow them to make other arrangements, the discontinuation of the subsidy, which is also referred to as harmonization of insurance practices, was implemented subsequent to the end of the current policy term at September 1\textsuperscript{st}, 2011 with a three month notice period.

All Scarborough Associated Groups (SAG) and Scarborough Councillors were informed of the changes via letters dated June 10 and 13, 2011, respectively, and associated savings were approved in the 2012 Operating Budget for Parks, Forestry and Recreation.

Sports groups and organizations are required to provide General Liability Insurance for their permits issued by Parks, Forestry and Recreation. The insurance can be purchased
by the groups during their permit application stage via a charge back process. Approximately 9,286 individuals and groups permit our parks and facilities and purchase and/or provide proof of liability insurance. Providing insurance to the 114 organizations covered under the Scarborough Associated Groups policy, at no cost to them, while charging all other groups, including many groups based in Scarborough, was an inconsistency.

In addition to Commercial General Liability Coverage of $2 million per occurrence, which the City of Toronto requires for all user groups, the discontinued SAG policy included additional coverages that the City of Toronto does not require from permit holders, such as tenant's legal liability of $0.5 million per occurrence, Directors and Officers liability for $1 million per occurrence, non-owned automobile liability for $2 million per occurrence, and, through endorsements, provided coverage for medical malpractice liability and watercraft liability. The policy also excluded contact sports.

At the January 10, 2012 meeting of Scarborough Community Council, six organizations deputed that obtaining insurance, in particular Directors' and Officers' insurance which was previously part of the SAG coverage, was cost prohibitive.

According to Insurance Bureau of Canada, Directors' and Officers' Liability insurance is a coverage available for the Board of Directors of an organization, who have a duty to exercise due diligence in overseeing the activities of the organization that they serve. Directors have three basic duties:

1. Duty of Diligence (Duty of Care): Act reasonably, in good faith, in the organization’s best interest.
2. Duty of Loyalty: Place the interest of the organization before their own.
3. Duty of Obedience: Act within the scope of the organization, within applicable rules and laws.

The Coverage provides defense against directors and officers for their legal liability as a result of a claim against them for wrongful acts as a breach of the above duties. It does not provide protection for members of the sports group, members of the general public, or the City of Toronto. Any personal injuries suffered by the members of the sports group, volunteers, or the general public is covered by the Commercial General Liability insurance the permit groups are required to provide at their own expense, or purchase through the City during permitting.

The premiums applicable to the Directors' and Officers' Liability coverage varies based on types of organizations, activities, operation season and size. Our analysis shows that sports groups across Toronto secure their Directors' and Officers' Liability coverage through the governing bodies of their sports. Many of the sports groups previously part of the SAG have been successful in obtaining the appropriate insurance, either through the City of Toronto User Group Program or their own sport governing body. Obtaining Directors' and Officers' Liability coverage appears to be more difficult for local Community Associations whose only real option is use of a commercial insurance broker.
COMMENTS

Staff have reviewed the number of organizations previously covered under the SAG policy and determined that the number of organizations on the Policy have declined over time and 39 of the groups obtained their permits from the Economic Development and Culture Division. This list of 39 has been referred to the Culture Unit for further follow up.

As a result of the joint and several provisions of the Negligence Act, RSO 1990, where damages have been caused or contributed to by the fault or neglect of two or more persons and, where two or more persons are found at fault or negligent, they are jointly and severally liable to the person suffering the loss or damage. Since most of the organizations permitting space are not-for-profit groups, municipalities would be liable to pay 100% of the damages if other parties are unable to meet a court ordered reward. As a result, all Ontario municipalities require Commercial General Liability Insurance from the sports and community organizations that permit sports fields and space.

Similar to the City of Toronto, Ontario municipalities have a User Groups Policy which allows organizations that do not have independent Commercial General Liability coverage to purchase it through the municipality through a User Groups Policy at the time of the permit. Staff have reviewed a number of Ontario municipalities and found that none of the municipalities’ User Group policies offer Directors’ and Officers’ coverage. Staff did not find any instances where the municipality paid for the Directors’ and Officers’ insurance coverage of a sports or community organization that operated within their facilities.

During the meeting of January 10th, 2012, Scarborough Community Council heard from several deputants that the cost of Directors’ and Officers’ Liability insurance for their individual organizations could run as high as $1,000 - $2,000 per year. In order to provide assistance to those organizations, staff have explored providing D&O coverage to sports and community organizations on an as requested and cost recovery basis. City of Toronto, Risk Management staff, on behalf of Parks, Forestry and Recreation, held discussions with the City insurance provider, Marsh Canada, who indicated that given the differences in the user groups, this would not be an option that could be offered as part of the User Group Program. Groups seeking Directors’ and Officers’ Liability coverage would obtain the best value by contacting their sport governing body, or approach a commercial insurance broker for best coverage and premium options.

City staff would not have the industry knowledge to refer the affected groups to insurance brokers or review their insurance needs to assess the adequacy of coverage or premiums.

Parks, Forestry and Recreation staff have also confirmed that several tennis clubs have recently obtained Commercial General Liability coverage of $2M and Directors and Officers Liability coverage of $1M for September 1, 2011 – April 1, 2012 through the Ontario Tennis Association, and the typical rate is $442.
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SIGNATURE

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