

Authority: Administration Committee Report No. 14, Clause No. 30,
as adopted by City of Toronto Council on November 26, 27 and 28, 2002
Enacted by Council: March 3, 2004

CITY OF TORONTO

BY-LAW No. 243-2004

To amend further By-law No. 3349-96 of the former City of York respecting pensions and other benefits and privileges.

WHEREAS By-law No. 3349-96 of the former City of York, a by-law "To amend the Restated Plan Text for the City of York Employee Pension Plan", as heretofore amended, governs "The Corporation of the City of York Employee Pension Plan"; and

WHEREAS it is desired to:

- (i) eliminate, as of January 1, 2002, any reduction in retirement income for a Member of such Plan, regardless of retirement date, resulting from an anticipated survivor benefit of 60% or less;
- (ii) provide for minimum 60% survivor benefits as of January 1, 2002, regardless of the date of death of the relevant retired Member of such Plan; and
- (iii) treat as spouses, as of January 1, 2002, persons who have met or subsequently meet the existing spousal eligibility requirements following the date of the Member's retirement, subject to reduction in survivor benefits for any such person younger than the Member by more than 10 years;

The Council of the City of Toronto HEREBY ENACTS as follows:

1. In this by-law,

- (a) "Plan" means "The Corporation of the City of York Employee Pension Plan";
- (b) any reference to any article, section or other provision of the Plan by label shall be a reference to the correspondingly labelled text in Schedule "A" attached to the hereinbefore-recited By-law No. 3349-96 of the former City of York, as such Schedule was amended by By-law No. 3636-97 of that City and by By-law No. 300-1999.

2. Article 2 of the Plan shall be amended by striking out section 2.45 and substituting therefor the following:

"2.45 'Spouse'

- (a) during the time prior to January 1, 2002, means, in relation to a Member, a person who, at the earlier of the commencement of a Member's pension and the date of the Member's death, is:
 - (i) married to the Member; or
 - (ii) not married to the Member but has been living with the Member in a conjugal relationship,

- (A) continuously for a period of not less than three (3) years; or
- (B) in a relationship of some permanence, if they are, within the meaning of the *Family Law Act* (Ontario) or any successor legislation, the natural or adoptive parents of a child,

provided that this subclause (ii) shall apply with respect to a Member and a person of the same sex only if the Member has died on or after the 5th day of June, 1998,

provided that the person is not living separate and apart from the Member at that time; and

- (b) for the time subsequent to December 31, 2001, means, with respect to a Member at a particular time, a person who is then as described in either subclause (a)(i) or (a)(ii) and not living separate and apart from the Member,

and ‘Spousal’ has a corresponding meaning.”

3. (1) Article 10 of the Plan shall be amended by adding the following new section immediately preceding section 10.01:

“10.01.0 Applicability of Sections 10.01 to 10.03.3

Sections 10.01 to 10.03 shall apply only with respect to the time prior to January 1, 2002, and sections 10.03.1 to 10.03.3 shall apply after December 31, 2001.”

- (2) The heading of each of sections 10.01 to 10.03 of the Plan shall be amended by adding the text “(Pre-2002)” to the end thereof.

- (3) Article 10 of the Plan shall be further amended by adding the following new sections immediately following section 10.03:

“10.03.1 Post-2001 Continuation of Pre-2002 Benefits

Any benefit being paid under any of subsections 10.02 to 10.03 as of December 31, 2001, shall continue to be paid from and after January 1, 2002, as provided for therein, except that the amount of each continuation payment shall be calculated as if

- (a) the last sentence of section 10.02 respecting actuarial equivalence had never existed;
- (b) the text “one-half” in the first line of each of items

10.01(b)(ii)(A) and (B) read “three-fifths”;

- (c) the provision in item 10.01(b)(ii)(A) for a reduction respecting certain Spouses younger than the Member had never existed;
- (d) the text “fifty percent (50%)” in the third line of subsection 10.03(b) read “Sixty Per Cent (60%)”,

but nothing herein shall entitle any existing or previous payee to any increase on account of any payment(s) made prior to January 1, 2002.

10.03.2

Normal Form (Post-2001)

- (1) Subject to section 10.03.3, the normal form of annual retirement income under article 9 or 12, except any temporary retirement income under section 9.03, for a Member retiring on or after January 1, 2002, shall consist of
 - (a) a life annuity payable to the Member in equal Monthly Instalments, the last of which shall be made on the First (1st) Day of the month in which the death of the Member occurs;
 - (b) to the extent that the number of Instalments paid pursuant to clause (a) falls short of Sixty (60), an annuity in continuation of such Instalments until such shortfall is eliminated, payable to
 - (i) the Member’s Spouse, subject to subsection (3); or if none,
 - (ii) the Member’s Dependants equally as at the time of each Instalment; or if none,
 - (iii) the Member’s Beneficiary,

commencing on the First (1st) Day of the month following the month in which the death of the Member occurs; and,

to the extent applicable,
 - (c) the benefits described in subsections (2) to (5).
- (2) Regardless of the date of a Member’s retirement, there shall be payable in an amount equal to Sixty Per Cent (60%) of the income being paid to the Member at the time of death, or with respect to the Member pursuant to clause (1)(b) when it ceases to operate, as applicable, in equal Monthly Instalments,

commencing on the First (1st) Day of the month following the month in which the death of the Member or the cessation of operation of such clause occurs, whichever is the later, a survivor pension to

- (a) the Member's Spouse for life, subject to subsection (3) and subject to any applicable reduction provided for in subsection (4), together with the supplement provided for in subsection (5), if applicable;

and then to

- (b) the Member's Dependants, if any, for the remainder of their respective dependencies, equally as at the time of each Instalment,

the last of which shall be made in each case on the First (1st) Day of the month in which the death of the Spouse or the cessation of the dependency occurs, as applicable.

- (3) If both a Spouse and another person who was the Spouse of the Member at the time of the Member's retirement survive the Member, then except insofar as such other person has waived her/his pension rights in connection with the Member as conferred by the Applicable Pension Laws,
 - (a) the expression "Member's Spouse" appearing in subclause 1(b)(i) and clause (2)(a) shall, subject to clause (b), be taken to refer to such other person, but only for life, on the basis that the expression "death of the Spouse" in the second-last line of subsection (2) shall be taken to refer to the death of the survivor of the Spouse and such other person;
 - (b) the operation of clause (a) with respect to subclause 1(b)(i) shall not apply to that part of the annuity to which that subclause relates which is in excess of such conferred pension rights.
- (4) If the Spouse at the time of the Member's death was not the Spouse at the time of the Member's retirement, and is younger than the Member by more than a limit of Ten (10) Years, the amount of any income payable to the Spouse pursuant to clause (2)(a) shall be adjusted so that its commuted value is equal to what it would be if the difference in ages equalled that limit.
- (5) For each person who is a Dependiant of the Member at the time of payment of any Monthly Instalment pursuant to clause (2)(a), such Instalment shall be increased by Ten Per Cent (10%), to a maximum of Twenty-Five Per Cent (25%), but if the recipient

of the Instalment is not the person having custody of the Dependant, the increase shall be treated as an independent pension benefit owing to the Dependant and payable to such custodian.

10.03.3

Election of Optional Form (Post-2001)

- (1) Subject to subsections (2) and (3), a Member may, in the written form prescribed by and filed with the Administrator within the Ninety (90) Day period immediately preceding the date of payment to the Member of the first Monthly Instalment of retirement benefits, elect to modify the annuity called for clause 10.03.2(1)(a) so as to make it payable in any other lawful manner prescribed by the Corporation and in accordance with Applicable Pension Laws and Revenue Rules, subject to whatever increase or decrease in the amount of each such Monthly Instalment may be required to maintain Actuarial Equivalence to the annuity without modification.
 - (2) Notwithstanding subsection (1), a Member having a Spouse at the time of the election referred to therein may not elect an annuity modification that will cause a Spousal survivor benefit under subclause 10.03.2(1)(b)(i) or subsection 10.03.2(2) to be less than Sixty Per Cent (60%) of the benefit payable to the Member immediately before death.
 - (3) No election under subsection (1) by a Member having a Spouse at that time, will be valid unless the Member delivers to the Administrator, within the Twelve (12) Month period immediately preceding the payment date referred to therein, a consent to such election signed by such Spouse in the form prescribed by the Administrator and as required under Applicable Pension Laws.
 - (4) If at the time of making an election under subsection (1) a Member has a Spouse and the Spouse subsequently predeceases the Member, the Member shall promptly notify the Administrator accordingly, the election shall become void as of the time of such change in Spousal status and if the Member has already retired, the associated reduction in the Member's pension benefit shall thenceforth cease;
 - (5) An election under subsection (1) may be revoked or changed provided that written notice of such revocation or change is received from the Member by the Administrator at least Thirty (30) Days prior to payment of the Member's first Monthly Instalment."
- (4) The first line of the text of section 10.04 of the Plan shall be struck out and the following

substituted therefor:

“Each July 1, the monthly amounts payable under the Plan to the following persons will be increased:”

4. (1) Article 11 of the Plan shall be amended by adding thereto

(a) immediately preceding section 11.01 the following new section:

“11.01.0 Effectiveness

An entitlement to a benefit under this section shall subject to any legally enforceable right or interest therein set out in a domestic contract as defined in Part IV of the *Family Law Act*, or an order under Part I of that Act.” ;

(b) immediately following section 11.01.0 as enacted by clause (a) the following new section:

“11.01.01 Applicability

Section 11.01 shall apply only with respect to the time prior to January 1, 2002, and sections 11.01.1 to 11.01.3 shall apply after December 31, 2001.”

(2) The heading of section 11.01 of the Plan shall be amended by adding the text “(Pre-2002)” to the end thereof.

(3) The last line of subsection 11.01(a) of the Plan shall be struck out and the following substituted therefor:

“shall be paid to the Member’s Spouse, or if none, the Dependants, or if none, the Beneficiary”.

(4) There shall be added to article 11 of the Plan the following new sections immediately following section 11.01:

“11.01.1 Post-2001 Continuation of Pre-2002 Benefits

Any benefit being paid under subsection 11.01 as of December 31, 2001, shall continue to be paid from and after January 1, 2002, as provided for therein, except that the amount of each continuation payment shall be calculated as if

(a) the text ‘one-half’ in the first line of each of clauses 11.01(d)(i) and (ii) read ‘three-fifths’;

(b) the provision in clause 11.01(d)(i) for a reduction respecting certain Spouses younger than the Member had never existed,

but nothing herein shall entitle any existing or previous payee to any increase on account of any payment(s) made prior to January 1, 2002.

11.01.2 Death Benefits Prior to Retirement Date (Post-2001)

- (1) For the purposes of this section,
 - (a) 'Deferred Dependant Pension' means a deferred pension in favour of each person, if any, qualifying as a Dependant on the day which is the Fifth (5th) Anniversary of the Member's death, commencing on the First (1st) Day of the month next following that day and continuing as long as such person remains a Dependant, equal to such Dependant's equal share, calculated as of each payment date, of a Survivor Pension;
 - (b) 'Deferred Spousal Pension', subject to clause (3)(a), means a deferred life pension to the Spouse commencing as described in clause (a), equal to Sixty Per Cent (60%) of a Survivor's Pension;
 - (c) 'Guaranteed Lump Sum' means a sum equal to Five (5) times the Member's annual retirement income determined under article 12 using the Member's date of death as the Date of Determination, less any sums already received and any unpaid arrears of Required Contributions
 - (d) 'Payment Option' means, with respect to a Guaranteed Lump Sum, an option in favour of the person(s) to whom such Sum is payable, exercisable by notice to the Administrator in writing, to have same made in instalments over a period not exceeding Five (5) Years, computed on such terms as the Administrator deems proper; and
 - (e) 'Survivor Pension' means a pension equal to Sixty Per Cent (60%) of the annual retirement income referred to in clause (c).
- (2) If a Member who is accruing Continuous Service dies prior to his/her Retirement Date, there shall be paid the following benefits:
 - (a) to the Member's Spouse, if then surviving, subject to subsection (3), either

- (i) a lump sum consisting of the sum of
 - (A) the Guaranteed Lump Sum, with a Payment Option; and
 - (B) the commuted value of the Deferred Spousal Pension; or
 - (ii) the Guaranteed Lump Sum, subject to a Payment Option, and a Deferred Spousal Pension; or
 - (iii) an immediate life pension commencing on the First (1st) Day of the month next following the date of the Member's death, having a commuted value equal to the lump sum described in subclause (i) without regard to the Payment Option mentioned in item (B) thereof,
- as the Spouse elects by written notice to the Administrator within Ninety (90) Days of receiving from the Administrator notice of the relevant details of the Spouse under this by-law as required by the Applicable Pension Laws, and in default of such election, the benefit described in subclause (iii);
- (b) to each Dependant of the Member,
 - (i) following the death of the surviving Spouse,
 - (A) any remaining payments that would, as a result of exercise of the Payment Option by the Spouse, subsequently have become due to the Spouse if death had not occurred; and
 - (B) if the Spouse did not become entitled to the commuted value referred to in item (a)(i)(B), a Deferred Dependant Pension, subject to clause (3)(b);
 - (ii) if there is no Spouse at the time of the Member's death,
 - (A) the Guaranteed Lump Sum, with a Payment Option; and
 - (B) a Deferred Dependant Pension,

in each case in equal shares with all other Dependants, and only during dependency;

- (c) to the Member's Beneficiary,
 - (i) if neither clause (a) nor (b) has come into operation, the Guaranteed Lump Sum with no Payment Option; or
 - (ii) following the death of the Spouse, if any,
 - (A) if there are then no Dependants, the commuted value of the payments, if any, referred to in item (b)(i)(A); or
 - (B) once the dependencies of all Dependants have ceased, the commuted value of payments, if any, still to come due as a result of any prior exercise of a Payment Option.

(3) If the lump sum provided for in subclause (2)(a)(i) is less than the lump sum payment mandated by the Applicable Pension Laws and there is a surviving Spouse,

- (a) the percentage specified in clause 1(b) defining 'Deferred Spousal Pension' shall be taken to be such greater percentage as will make the commuted value of such Pension sufficient to cause the two lump sums to be equal;
- (b) if item (2)(b)(i)(B) comes into operation after the Spouse has commenced to receive Deferred Spousal Pension payments, the 'Deferred Dependant Pension' referred to in the last-mentioned item shall be reduced so that its commuted value at that time, when added to the Guaranteed Lump Sum and the total of the said payments equals the first-mentioned lump sum prior to application of clause (a)."

(5) The part of section 11.02 of the Plan following the text "there shall be paid" shall be struck out and the following substituted therefor:

"benefits in accordance with the applicable provisions of sections 11.01 to 11.01.3".

- 5.**
- (1) Except as provided in subsections (2) and (3), this by-law shall come into force on the date of its enactment and passing.
 - (2) Subsections 3(4) and 4(3) and clause 4(1)(a) shall be deemed to have come into force

on the 1st day of January, 1992.

- (3) Except as provided in subsection (2), sections 2 to 4 shall be deemed to have come into force on the 1st day of January, 2002.

ENACTED AND PASSED by an affirmative vote of at least two-thirds of the Members of Council present and voting this 3rd day of March, A.D. 2004.

DAVID R. MILLER,
Mayor

ULLI S. WATKISS
City Clerk

(Corporate Seal)