



## STAFF REPORT ACTION REQUIRED

### Pension Committees - Toronto Fire Department Superannuation & Benefit Fund and the Toronto Civic Employees' Pension & Benefit Fund

<b>Date:</b>	June 17, 2008
<b>To:</b>	Government Management Committee
<b>From:</b>	Treasurer
<b>Wards:</b>	All
<b>Reference Number:</b>	P:\2008\Internal Services\ppeb\gm08007ppeb (AFS#7865)

#### SUMMARY

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The City is the sponsor of five pension plans that pre-date OMERS, each of which is administered by a Pension Committee. The membership of all these plans has been closed since mid-1968 and consists mostly of retirees in receipt of pensions.

This report recommends changes related to the composition of the Pension Committees of the Toronto Civic Employees' Pension & Benefit Fund and the Toronto Fire Department Superannuation & Benefit Fund and, updating of inapplicable terminology in the governing by-laws and harmonization of the Fire plan's provisions regarding frequency of the meetings of its Pension Committee with actual frequency in recent years.

#### RECOMMENDATIONS

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**The Treasurer recommends that:**

1. Each of the Toronto Civic Employees' Pension & Benefit Fund pension plan and the Toronto Fire Department Superannuation and Benefit Fund pension plan be modified so that:
  - (i) effective as of January 1, 2000, at any time that the plan requires its active members or any class thereof to elect a representative and/or alternate representative to fill a Pension Committee position,

- (a) if there are fewer than three such members in the plan or in the class, as applicable, no seconder be required for a nomination;
    - (b) if there is only a single such member, the member may nominate himself or herself;
    - (c) if the required election process cannot be held because there are no longer any active members in the plan or the class, as applicable, then for all purposes, such position shall be filled by the plan's pensioner organization from among its membership;
  - (ii) all references to the “Deputy City Treasurer” be read as references to such senior subordinate of the City Treasurer as the Treasurer may from time to time appoint for the purpose.
2. The composition of the Toronto Civic Employees’ Pension & Benefit Fund pension plan be modified so as to eliminate, as of January 1, 2008, the two positions occupied:
- i. *ex officio* by the “Commissioner of Corporate Services” or *pro tempore* by the “Director of Human Resources”; and
  - ii. by a member of the Toronto Civic Pensioners’ Protective Association, or alternate, appointed by Council.
3. The Toronto Fire Department Superannuation & Benefit Fund pension plan be modified to provide that:
- i. effective as of January 1, 1998,
    - a) the positions on the Pension Committee previously filled by Council from among the membership of the Toronto Fire Department Pensioners’ Association be so filled instead by that Association itself; and
    - b) it be made clear that those designated as alternates have the right to attend a Pension Committee meeting even when not participating;
  - ii. effective as of January 1, 2009, the positions on the Pension Committee occupied,
    - a) *ex officio* by the “Chief of the Fire Department” or *pro tempore* by the “Deputy Chief of the Fire Department”; and
    - b) by one of the members of the Toronto Fire Department Pensioners’ Association, or alternate, appointed by Council,
 be eliminated;
  - iii. the number of Pension Committee meetings required to be held per year be reduced from monthly to quarterly.

4. By-laws Nos. 380-74 and 10649 of the former City of Toronto governing respectively the Toronto Civic Employees' Pension & Benefit Fund and the Toronto Fire Department Superannuation & Benefit Fund as amended to date be further amended accordingly and authority be granted to introduce the necessary bills in Council.
5. The appropriate City officials be authorized to take the necessary action to give effect to the foregoing recommendations.

### **FINANCIAL IMPACT**

There are no financial implications arising from this report. However, adoption of the recommendations in this report will improve the efficiency of elections to and meetings of the Pension Committees of the Toronto Civic Employees' Pension & Benefit Fund and the Toronto Fire Department Superannuation & Benefit Fund and reduce the associated demands on staff time and City resources.

### **ISSUE BACKGROUND**

The City of Toronto is the sponsor of five pre-OMERS pension plans. Each of these plans is governed by its own by-law which has been amended from time to time by City Council.

Each of the five funds is administered by a Pension Committee or Board of Trustees. A balanced body with equal representation from the members and the City.

As the membership of these plans have been closed to new members since mid-1968, there are very few active (employed) members and the main focus of each administrator is ensuring proper investment of the plan's assets and continued payment of the pension benefits called for by the applicable by-law.

A review of the composition of each Pension Committee has been conducted by staff including consultations with various stakeholders and discussion of the results have been held with each respective Committee. Modifications of the composition of the Pension Committees of both the Civic and Fire plans are necessary to reflect the dwindling numbers of employed members.

As well, the Fire plan's requirement for monthly meetings of its Pension Committee is unnecessarily demanding in view of current needs and practices.

## COMMENTS

### Toronto Civic Employees Pension & Benefit Fund

The current composition of the 9-member Pension Committee of the Toronto Civic Employees Pension & Benefit Fund as called for by its governing by-law 380-74 as amended to date is as follows:

- (a) an external Committee-nominated Chair appointed by City Council;
- (b) one member and an alternate elected biennially by the employee members belonging to CUPE Local 416, or if not so elected, appointed by the Toronto Civic Pensioners' Protective Association (TCPPA);
- (c) one member and an alternate elected biennially by the employee members belonging to CUPE Local 79, or if not so elected, appointed by the TCPPA;
- (d) one member and an alternate elected biennially by the employee members belonging to the Administrative, Professional and Supervisory (APS) group, or if not so elected, appointed by the TCPPA;
- (e) the City Treasurer (or if that office is vacant the Deputy Treasurer) or a designated substitute;
- (f) the "Commissioner of Corporate Services" (or if that office is vacant the "Director of Human Resources") or a designated substitute;
- (g) two members of City Council;
- (h) one member (or an alternate) appointed by Council from among the membership of the TCPPA.

No representative of the new City has ever attended any meeting of the Pension Committee as, or on behalf of, the "Commissioner of Corporate Services".

Because fewer of the dwindling numbers of employed members of the Civic plan were showing an interest in serving on the Pension Committee, a "safety-net" provision was added to the plan in 1999 as subsection 15(6) of governing By-law 380-74 requiring the TCPPA to see to the filling from its own membership any position(s) not filled as a result of failure on the part of any of the categories of employee members (union or APS) to fill the positions by election; that provision is what the concluding wording of each of clauses (b) to (d) above is based on.

In fact, it has been a number of years now that all the non-City representatives on the Pension Committee have been appointees of the TCPPA.

Not only did the safety-net provision begin to come into operation shortly after it was created, but the employee-member categories for CUPE Local 416 and the APS group subsequently disappeared because of retirements, making the contemplated elections for those categories impossible. As each disappearance occurred, the Pension Committee, City pension staff and the TCPPA took a common-sense approach and treated the “safety-net” provision as applicable on the grounds of a failure to elect. The TCPPA has accordingly been filling the Pension Committee positions for the now-empty categories, including the alternates, by appointments from among its own membership.

As at December 31, 2007, the plan had 954 retirees, 702 survivor pensioners, and only one employee member. That employee member, like many of his counterparts in recent years, never served on the Pension Committee. It is likely that he will retire in the next couple of years.

### **Discussion:**

It is recommended that the common-sense interpretation of the Civic Plan's “safety-net” provision under which the TCPPA's power to make default appointments to the Pension Committee has been applied in the case of empty employee classes, be ratified by retroactively modifying the plan by-law to clarify the point.

Similarly, to ensure that no question can be raised about the legitimacy of past nominations and elections of the employee-member representatives on the Pension Committee as the specified categories became too small for the nominees, the nominator and the seconder to be separate individuals, it is being recommended that the plan be retroactively modified to specify that if a category consists of only two individuals, no seconding be required, and if only one, self-nomination be permitted.

It is also being recommended that the position of the City's Human Resources representative on the Pension Committee — the “Commissioner of Corporate Services” (although no office with that name currently exists) or, when that office is vacant, the “Director of Human Resources” — be eliminated, and, to maintain balance, that the position of the pensioner representative (and alternate) appointed by Council from among the membership of the TCPPA also be eliminated. It was appropriate when the pension plan was still open to new members to have a Human Resources representative on the Committee to deal with Human Resources issues. However, the plan has been closed to new members since mid-1968 and the decline in the number of active members over time has meant that the number and importance of such issues have followed the same route.

The proposed elimination of the two Pension Committee positions, which will reduce its size from nine individuals to seven, was discussed with and agreed to by the Executive Director of Human Resources and the Committee at its last meeting, and will lessen the possibility that inadequate attendance will prevent a question from being actively dealt with — section 19A of the governing by-law requires that any matter considered by the Committee be determined by a majority of its members holding office at the particular time (currently five, but the eliminations would make it four), and that investment decisions be approved by two-thirds of those in attendance.

The TCPPA, knowing of the proposal to reduce the size of the Pension Committee, made one less appointment for 2008.

Since the new City has never had a “Deputy City Treasurer”, it is being recommended that the Civic plan, and the Fire plan as well, be modified to require that all references to such an officer be read as references to such senior subordinate of the City Treasurer as the Treasurer may from time to time appoint for the purpose.

The proposed changes to the composition of the Civic plan's Pension Committee are shown below:

<b>Current Stated Composition</b>	<b>Proposed Composition January 1, 2008</b>
<ul style="list-style-type: none"> <li>▪ Chair</li> <li>▪ Local 416 or TCPPA rep've or alternate (1)</li> <li>▪ Local 79 if TCPPA rep've or alternate (1)</li> <li>▪ ASP Group or TCPPA rep've or alternate (1)</li> <li>▪ City Treasurer (or Deputy) <i>ex officio</i> or designate</li> <li>▪ Comm of Corp Svcs or HR Dir'r or designate</li> <li>▪ City Councillors (2)</li> <li>▪ Council-appointed TCPPA rep've (1) or alternate</li> </ul>	<ul style="list-style-type: none"> <li>▪ Chair</li> <li>▪ TCPPA reps. or alternates (2)</li> <li>▪ Local 79 or TCPPA rep or alt (1)</li> <li>▪ City Treasurer or designate</li> <li>▪ City Councillors (2)</li> </ul>
<b>TOTAL = 9</b>	<b>TOTAL = 7</b>

### **Toronto Fire Department Superannuation and Benefit Fund**

The current composition of the nine member Pension Committee of the Toronto Fire Department Superannuation and Benefit Fund as called for by its governing by-law is as follows:

- (a) an external Committee-nominated Chair appointed by City Council;
- (b) two members of the City Council;
- (c) two representatives of the (unretired) fire-fighter members of the Fund, each with an (unretired) alternate;
- (d) two members, each with an alternate, appointed by Council from among the membership of the Toronto Fire Department Pensioners' Association (TFDPA);

(e) the City Treasurer (*ex officio*) or staff delegate;

(f) the Chief of the Fire Department (*ex officio*) or staff delegate;

Clause VII(e)(ix) of the governing by-law states that each alternate member “shall receive notices, agendas and minutes of all Committee meetings but only in the absence of a member shall the alternate member attend the meetings and have the right to participate in its discussions and vote”. Because of the placement of the verb “attend”, the clause taken literally imposes on each alternate a prohibition against attending a meeting at which he will not be carrying out his role as a back-up, although in fact no such prohibition has ever been recognized, and alternates often attend Committee meetings as observers.

The last two active members of the Fire plan retired in early 2003 and mid-2005. Unlike the Civic plan, the Fire plan has never contained a “safety-net” providing for the pensioners’ organization to fill an employee-member position on the Pension Committee in the event of a “failure” of the employee members to do so. The Pension Committee, City pension staff and the TCPPA took a pragmatic approach after the second-last firefighter retired, and when necessary for quorum purposes or otherwise desirable, treated the TCPPA as having succeeded to the representative-appointing rights of the employee members. The same was done after the retirement of the last firefighter three years ago. The TCPPA has for 2008 advised of its appointment of four representatives and two alternates.

As at December 31, 2007, the plan had 643 retired members and 337 survivor pensioners, with no employee members.

## **Discussion**

It is recommended that the practice of appointment by the TCPPA of representatives to the Pension Committee of the Fire Fund in the stead of employee members be ratified and regularized by an appropriate retroactive amendment to the plan's governing by-law. There would then be four Committee positions representing the TCPPA.

It is also being recommended that the by-law make clear that non-participating alternates are not barred from attending Committee meetings. It is the interests of the Committee for such alternates to be present, and while they would be disqualified from making, seconding or voting on motions, there is nothing to prevent the Committee from permitting them to participate in any discussion.

In recognition of the small number of those interested in Committee participation, a further recommendation is that the provision in the by-law *requiring* an alternate for each representative be modified to one *permitting* the TCPPA to designate a pool of alternates,

no greater in number than the number of positions and none of them linked to any particular one of the main representatives.

To ensure that no question can be raised about the legitimacy of past nominations and elections of the employee-member representatives on the Pension Committee as the number of employee members became too small for the nominees, the nominator and the seconder to be separate individuals, it is being recommended that the plan be retroactively modified to specify that if the employee membership consists of only two individuals, no seconding be required, and if only one, self-nomination be permitted.

It is also being recommended that as of January 1, 2009, the “Chief of the Fire Department” or, when that office is vacant, the “Deputy Chief” — be eliminated as an *ex officio* position on the Pension Committee, and, to maintain balance, that as of the same date one of the two pensioner-representative positions appointed by Council from among the membership of the TFDPA also be eliminated.

It was appropriate when the pension plan was still open to new members to have a City fire-personnel representative on the Committee to deal with Human Resources issues. However, the plan no longer has either any employee members or such issues of that type. The proposed elimination of the two Pension Committee positions, which will reduce its size from nine individuals to seven, was discussed with and agreed to by the Fire Chief and the Committee members at its last meeting, and will lessen the possibility that inadequate attendance will prevent achievement of a quorum, which Section XII of the governing by-law specifies as “a majority of the Committee”.

An effective date of January 1, 2009, has been proposed for the reduction in the size of the Pension Committee to avoid the need for the TCPA to remove any of its 2008 appointees.

The proposed changes to the composition of the Fire plan's Pension Committee are shown below:

Current Stated Composition	Proposed Composition January 1, 2009
<ul style="list-style-type: none"> <li>▪ Chair</li> <li>▪ City Councillors (2)</li> <li>▪ Fire Chief (or Deputy) <i>ex officio</i> or designate</li> <li>▪ Treasurer (or Deputy) <i>ex officio</i> or designate</li> <li>▪ Employee Members or alternates (2)</li> <li>▪ TFDPA representatives or alternates (2)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Chair</li> <li>▪ City Councillors (2)</li> <li>▪ Treasurer (<i>ex officio</i>) or designate</li> <li>▪ TFDPA representatives or alternates (3)</li> </ul>
<b>TOTAL = 9</b>	<b>TOTAL = 7</b>



Frequency of Meetings:

Currently the governing by-law stipulates that the Pension Committee is to meet “as soon as possible in the month of January in each year” and thereafter “as early as possible each month”. In each of the last few years, the Committee has met five times and no objections have been raised to this reduction from the originally required frequency by either member representatives or Councillors. It is recommended that to match the governing by-law of the Civic plan, the Fire plan's governing by-law be modified to require the Committee to meet at least quarterly; this would not prevent the holding of more meetings if and when necessary.

The City Legal Services Division has been consulted in the preparation of this report.

**CONTACT**

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**SIGNATURE**

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