

CC49.2 – Part III of Confidential Attachment 1- made public by City Council on May 14, 2010

PART III – PROPOSED PROGRAM FOR EMPLOYEES

In establishing its parking policy and payroll administration, the City has relied on the CRA's published guidelines and direction, and also on the CRA's own determination following its 1995 audit of the former Municipality of Metropolitan Toronto. The City's actions were entirely reasonable and consistent with how other similar organizations interpreted applied the CRA's guidelines.

The City's parking policy and its payroll administration guidelines have been communicated to all employees and the employees relied on this information / interpretation in establishing their decision to drive; to get to and from work; and in the daily performance of their duties. In many cases, employees were required to provide a personal vehicle to perform their duties and when provided with the parking access they were not aware that it may be a taxable benefit.

Further, in relying on this interpretation, employees did not realize that mere access to the parking garages would be considered a taxable benefit. In many cases employees never used the parking, or only used it on very rare occasions when they required their vehicle for work. In these cases, employees did not keep any records or logs to demonstrate the business use and satisfy the CRA's criteria. However, the CRA has chosen to base its reassessments on the mere "opportunity" to park and not the actual usage of the parking. It is on that basis that employees are being reassessed in respect of access to parking.

Although the CRA's published guidelines with respect to parking have remained essentially unchanged, the CRA has now changed its interpretation of the City's (and other organization's) scramble parking situation and, further, they have elected to apply this new interpretation on a retroactive basis. The application of this new policy to prior taxation years is very unfair and places a significant financial burden on employees who were not given the opportunity to consider their options and make an informed financial decision based on the CRA's new policy on parking access.

As a result of this unique situation, staff are recommending that the City fund the tax owing and interest payable, for the 2006 to 2010 taxation years inclusive, with a view to mitigating the financial impact of the CRA's decision that parking access at six (6) controlled parking garages is a taxable benefit. In addition, it is recommended the City pay the tax that would be payable in respect of any payments made to or on behalf of employees as that payment, in itself, would constitute a taxable benefit (the "gross-up" amount).

Staff intend to meet with the CRA shortly to determine the most efficient and effective method of making these payments.

However, it is recommended that the payments be made based on the following criteria:

- i. All employees must agree to file Notices of Objection by June 30, 2010 to be coordinated by the City. This agreement will include a requirement from the employee to cooperate in proceeding with the appeals and attending any required hearings;
- ii. Employees must provide the City with a copy of their Notices of Reassessment and the signed Notices of Objection;
- iii. Non-union Employees must sign a letter of agreement to reimburse the City to the extent their objection is successful;
- iv. The City's Unions must agree to a Memorandum of Agreement providing that unionized employees will reimburse the City if the objection is successful in order for unionized employees to be indemnified;
- v. To the extent the objections are successful, the employee will reimburse the City;
- vi. To the extent the objections are unsuccessful, no further action will be required.

PPEB staff will develop and implement a program with the appropriate controls and oversight to ensure that the above criteria and principle are met. The preferred approach will be for the City to pay the CRA directly, however, we intend to consult with the CRA with a view to using the most efficient approach to payment.

It is recommended that we provide employees until June 30, 2010, to provide PPEB with the required documentation to qualify for the program with regard to the 2006 and 2007 tax owing. If employees do not meet these deadlines they will be responsible for paying the amount owing directly to the CRA.

Employees began receiving their Notices of Reassessment on May 3, 2010 and they have 20 days to remit the amount owing or interest will begin to accrue on the balance payable. As a result, in implementing this program and ensuring that we obtain the required information, there will be situations where additional interest will accrue up to June 30, 2010.

Once the 2008 and 2009 T4 slips are processed and submitted to the CRA, we will provide employees with a similar timeframe to qualify for the program for those two (2) years.

The program for 2010 will be dealt with in the current tax year and, therefore, there will be no interest costs incurred.

Financial Impact of the Proposed Program:

The estimated cost for the City to fund the tax and interest, grossed-up, from 2006 to December 31, 2010, is as follows;

YEAR	Tax Impact	Interest	Reimbursement Tax	Total
2006	\$0.755M	\$0.334M*	\$0.267M	\$1.356M
2007	\$0.791M	\$0.256M*	\$0.256M	\$1.302M
2008	\$0.793M	\$0.170M*	\$0.236M	\$1.199M
2009	\$0.786M	\$0.089M*	\$0.216M	\$1.091M
2010	\$0.786M	---	\$0.216M	\$1.002M
TOTAL				\$5.950M

*The interest has been approximated up to March 31, 2010. Since employees have already started to receive their Notice of Reassessments, there may be additional interest that accrues between now and June 30, 2010.

In addition, the City will be responsible for remitting all retroactive statutory deductions (e.g., Employer Health Tax, GST), which will be approximately \$500,000.00.

Pension Impact:

As a result of the CRA's decision that parking access at six (6) controlled parking garages is a taxable benefit, the amount of the taxable benefit is considered part of an employee's "contributory earnings" under the OMERS Act. This means that staff are obligated to adjust employees records retroactively, without exception, to amend the contributory earnings for employees, recognizing the taxable benefit.

This will result in additional employee and employer contributions being required to be remitted to OMERS, retroactively to 2006. The cost to the employer for this retroactive contribution is approximately \$2 million. In addition, employees will be responsible to remit their contributions and the estimated cost of this is approximately \$1.4 million. The cost to an individual employee will vary depending on the amount of the reassessment, however, the cost will range from approximately \$70.00 per year for East York Civic Centre to approximately \$280.00 per year for Metro Hall.

Staff will be communicating to employees their obligation to remit these contributions to the City of Toronto in order to make the necessary adjustments to OMERS.

City Cost:

Pension Contributions, plus Interest (Prime + 1% discount rate)

- 2006 and 2007 -- \$0.950 million
 - 2008 and 2009 -- \$1.070 million
- Total: Approx. \$2.020 million

Employee Cost:

Pension Contributions

- 2006 and 2007 -- \$0.681 million
- 2008 and 2009 -- \$0.725 million Total: Approx. \$1.406 million

It should be noted that if the City or any employee is successful in their objection to the CRA reassessment, this total amount may be reduced.

The total estimated cost of the employee program, including retroactive pension contributions, in the amount of \$8.0 million will be funded from the Benefits Reserve Fund. Any amounts recovered from the CRA, through successful objections, will be returned to the Benefits Reserve Fund.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.