



REPORT FOR ACTION

Consolidation of Text of The Corporation of the City of York Employee Pension Plan

Date: October 30, 2017
To: Government Management Committee
From: Treasurer and City Solicitor
Wards: All

SUMMARY

This report seeks authority to revise and re-enact the text of the by-law (currently Former City of York By-law 3349-96) governing The Corporation of the City of York Employee Pension Plan, which is now sponsored by the City as a result of the 1998 amalgamation. The revision will take into account all amendments made since the last revision and re-enactment in 1996 and will also bring the text into harmony with the Plan's current administrative practices. This re-enactment is a requirement of the Pension Transfer Agreement to be entered into between the City and OMERS for the merger of that Plan into the OMERS Primary Plan, as recently authorized by City Council, and will assist OMERS in implementing the merger.

RECOMMENDATIONS

The Treasurer and the City Solicitor recommend that:

1. City Council authorize the introduction of a bill to:
 - (a) consolidate, to the satisfaction of the City Solicitor, all amendments since the last revision and consolidation of the text of The Corporation of the City of York Employee Pension Plan put in place by By-law 3349-96 of the former Corporation of the City of York, together with the further amendments described in the body of this report;
 - (b) stipulate, to the satisfaction of the City Solicitor, that the text of the Plan as so consolidated is to be interpreted to reflect:
 - (i) that the City of Toronto has assumed all obligations of the former City of York as of January 1, 1998 under the Plan;

- (ii) the retirement in 2004 of the last active member of the Plan; and
 - (iii) that the expectation as to indefinite continuation of the Plan set forth in section 17.01 of the Plan text is to be interpreted as being subject to the expectation of the forthcoming merger of the Plan into the OMERS Primary Plan; and
- (c) repeal By-law 3349-96 of the former City of York.

FINANCIAL IMPACT

Enactment of the recommended consolidating by-law will have no financial impact on the City.

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

DECISION HISTORY

At its meeting held on October 24 and 25, 2011, City Council adopted Executive Committee report EX11.10 "City-Sponsored Pre-OMERS Pension Plans – Analysis of Alternative Investment and Pension Administration through OMERS" authorizing staff to investigate the options of:

- (i) a possible merger of the City's five Pre-OMERS pension plans with the OMERS plan; and
- (ii) potentially winding up each of the Plans through purchase of annuities.

Following is the link to the staff report and Council decision:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.EX11.10>

At its meeting held on June 13, 2016, Government Management Committee requested the Treasurer to report to the Government Management Committee semi-annually on the status of the merger of the City of Toronto Pre-OMERS Pension Plans and include any relevant correspondence from OMERS with the report.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.GM13.5>

At its meeting on May 29, 2017, Government Management Committee received the latest report on Progress on the Merger of the City of Toronto Pre-OMERS Pension Plans.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.GM21.9>

At its meeting held on October 2, 3 and 4, 2017, City Council adopted Government Management Committee report GM22.23 " Direction Regarding Merger of the Five (5) City of Toronto Pre-OMERS Pension Plans with OMERS" authorizing the Treasurer to

- (i) enter into a Pension Transfer Agreement with the OMERS Sponsors Corporation and the OMERS Administration Corporation for each of the five pre-OMERS pension plans sponsored by the City on the terms indicated in Confidential Attachment 1 to the report;
- (ii) make public the terms of the Pension Transfer Agreements following the adoption of the Pension Transfer Agreement recommendation;
- (iii) provide instructions as required to the City's outside counsel to negotiate with an authorized legal representative of the pensioners of each plan likely to have surplus assets remaining after its merger, and to document in a suitable manner, a mutually satisfactory allocation of such assets between the City and those pensioners within certain parameters;
- (iv) make public the terms of the negotiated allocation of surplus assets for each plan immediately following the execution of the required documentation;
- (v) report back on the progress of each merger and, subject to confidentiality as required, the progress of the surplus allocation negotiations, as appropriate;
- (vi) report back on the financial results of each transfer and the implementation of each negotiated surplus allocation following the completion of each,

and directing that the content of Confidential Attachment 2 to the report from the Treasurer containing the negotiating parameters remain confidential in its entirety as being related to the security of the City's property, requested the administrator of each pension plan to proceed expeditiously to fulfil its role in the merger of its plan, including adoption of the resolution called for by Confidential Attachment 1 to the report and diligent instruction of City pension staff regarding all statutory requirements, all in a timely manner, and authorizing City staff to take all steps necessary to achieve the mergers on behalf of both the City and each administrator, as applicable.

<http://www.toronto.ca/legdocs/mmis/2017/gm/bgrd/backgroundfile-106826.pdf>

COMMENTS

One of the requirements in the Pension Transfer Agreement to implement the merger of the York Plan into the OMERS Primary Plan is that the City deliver to OMERS, within 30 days of the execution of the Agreement, a true, correct and complete copy of a current consolidation of the Closed Plan text, as filed with the Financial Services Commission of Ontario, reflecting all relevant amendments thereto, so that following the merger OMERS can properly administer the benefits provided under the York Plan.

OMERS has required that the consolidation be approved and enacted by Council rather than assembled administratively.

The proposed amendments will include the following administrative harmonizations in the text of the York Plan:

- (A) the "Actuary" originally to be appointed by or under the authority of the City Council, is, in accordance with past practice, appointed by the York Employees' Pension and Benefit Committee ("York Committee"), the York Plan's "administrator" within the meaning of the Act, consisting of representatives of both the City and the pensioners;

- (B) defining the word "Corporation" to be clear that it refers to the City of Toronto, effective January 1, 1998, and the Corporation of the City of York until December 31, 1997;

- (C) deleting the requirement in the current Plan that the Administrator of the Plan (*i.e.*, the York Committee) is to administer the Plan and its underlying fund in accordance with, among other requirements, the by-laws of the Corporation (*i.e.* the City of York) as this requirement seems to be an inadvertent holdover from a template for a pension plan having the corporate sponsor as the administrator of the plan and would be inconsistent with the duty which the *Pension Benefits Act* imposes on each representative who sits on the York Committee to "exercise the care, diligence and skill in the administration and investment of the pension fund that a person of ordinary prudence would exercise in dealing with the property of another person";

- (D) clarify that the Plan requires, as per the current practice, that the Actuary's actuarial reviews and evaluations shall be as directed by the York Committee, which should submit a report in each case to City Council (*i.e.*, through City staff).

OMERS has indicated its approval of these Plan amendments described above.

Recommended stipulations (i) and (ii) in the consolidating by-law as to the interpretation of the revised Plan text are for the purposes of making clear to the reader that although the revised text still includes the provisions concerning contributions by active members, early retirements and eligibility for disability benefits, those provisions are for the historical record only, having been superseded by the provisions relating to retired members and their entitled survivors — the last active member retired in 2004 and the City is neither purporting to create a new pension plan for future employees nor taking on greater financial responsibilities.

The last recommended stipulation in the consolidating by-law qualifies the opening assertion of section 17.01 of the Plan text that “The Corporation expects to continue the Plan indefinitely” by making the reader aware of the currently proposed merger of the York Plan with the OMERS Primary Plan.

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SIGNATURE

Mike St. Amant

Treasurer

Wendy Walberg

City Solicitor