



STAFF REPORT ACTION REQUIRED

Reviewing Re-hire provisions in Members' Staff Contracts

Date:	May 26, 2016
To:	Executive Committee
From:	Ulli S. Watkiss, City Clerk
Wards:	All
Reference Number:	

SUMMARY

This report is in response to MM12.9 "Addressing Arbitrary Limitations of Council Staff Severance Packages", adopted by City Council at its meeting in February 2016. The motion directed the City Clerk, in consultation with the City Solicitor and the Executive Director, Human Resources, to report to City Council on options to address the current prohibition clause in severance packages for Council staff.

This report recommends amending the current clause that prohibited Members' staff who have received a severance package from the City to return to work for the City for two years. The new policy would match the prohibition period to the severance package received. In addition, if the employee pays back the severance received, they would be eligible to return to work either for another Member of Council or to be hired into the Toronto Public Service.

RECOMMENDATIONS

The City Clerk recommends that City Council:

1. Approve amending the prohibition clause in Members' Staff severance packages as follows:
 - a. Upon receipt of a severance, a Members' Staff will be restricted from being rehired by another Member of Council or being hired into the

Toronto Public Service for a period equivalent to the length of time the severance payment was based on.

- b. A severed Members' staff will be able to work for another Member of Council or to be hired into the Toronto Public Service during the restriction period if they pay back the severance received.
- c. A severed Members' staff may defer receipt of their severance for up to three months from the day of termination in order to secure employment with another Member of Council or to continue participation in a Toronto Public Service hiring process.

Implementation Points

The amended policy, if approved by City Council, will be incorporated into any new Council staff contracts. The City Clerk will also inform all existing Members' staff of the amendment to Clause 15(e) of their existing employment contracts.

Financial Impact

There is no financial impact from the adoption of the recommendation.

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

DECISION HISTORY

At its meeting on February, 4, 5 and 6, 1998, Toronto City Council adopted Report No. 2(2) of the Strategic Policies and Priorities Committee, titled "Separation Program for Executive Management and Non-Union Staff" and approved that "employees who receive an exit or retirement package from the City of Toronto or an Agency, Board or Commission funded in whole or in part by the City, or who received an exit or retirement package from one of the seven former municipalities will not be eligible for re-employment or employment by the municipality for a period of two years".

<http://www.toronto.ca/legdocs/1998/agendas/council/cc/cc980204/sp2rpt/cl002.htm>

At its meeting on November 25, 26 and 27, 1998, Toronto City Council adopted Report No. 17(2) of the Corporate Services Committee, titled "Conditions of Employment – Council Staff Members" and approved that "an employee would be eligible for three weeks' severance per year of service and be required to follow the City's policy of not being re-hired during the next two years by either the City or its Agencies, Boards or Commissions".

<http://www.toronto.ca/legdocs/1998/agendas/council/cc/cc981125/cs17rpt/cl002.htm>

At its meeting on July 25, 26 and 27, 2006, Toronto City Council adopted Report No. 6(56) of the Policy and Finance Committee, titled "*Conditions of Employment – Council Staff*" and approved that:

- "(ii) staff may request to delay severance payments for up to three months with the intention of securing placement with another Member of Council;
- (iii) Council staff will be allowed to pay back to the City any severance payments received and be able to work for other Members of Council".

<http://www.toronto.ca/legdocs/2006/agendas/council/cc060725/pof6rpt/cl056.pdf>

At its meeting on August 25, 26, 27 and 28, City Council adopted EX 44.2 "Human Resources and Ethnical Framework for Members' Staff". The report re-affirmed that Members' Staff are a special sub-group of temporary non-union City of Toronto employees on fixed-term contracts and that Members of Council have full jurisdiction on the hiring, compensation and termination of their staff.

<http://www.toronto.ca/legdocs/mmis/2014/ex/bgrd/backgroundfile-72503.pdf>

<http://www.toronto.ca/legdocs/mmis/2014/ex/bgrd/backgroundfile-72504.pdf>

COMMENTS

The City Clerk's Office consulted with Legal Services and Human Resources on this report.

Unique Status of Members' Staff

Staff for Members of Council are a unique sub-group of City of Toronto non-union employees. They are fixed-term temporary contract employees with their employment governed by the Human Resources and Ethical Framework for Members' Staff.

The current policy of prohibiting working for the City for two years is included in clause 15(e) of their standardized employment contracts.

The clause stated that:

- (e) Where your employment has been terminated pursuant to paragraph 15, you agree that you are ineligible to be rehired (or retained as a consultant or vendor, either personally or as an employee of a company of partnership) by either the City or any of its Agencies, Boards, Commissioner or Corporations for a period of two years from the date of termination. Provided that if any and all termination/severance payments received at the time of termination are paid back to the City, you may be rehired to work for other Members of Council within the two year period."

Historical Context and Principle behind Policy

The City policy restricting the rehire of former employees who received a severance payment for two years was approved by City Council in February 1998 at the time of amalgamation of the seven former municipalities. The intent of the policy at that time was to ensure that the many long-term employees who received significant exit or retirement packages from the City did not return and receive a City of Toronto salary at the same time they also received their severance payment.

The principle behind this policy was to eliminate 'double-dipping' – that the City should not be paying an employee twice, once as severance payment, and once as employment salary.

In November 1998, City Council approved that this two year rehire restriction would also apply to Members' staff.

Ability to pay back severance to work for another Member of Council

In 2006, City Council approved amendments to the policy so that:

- Members' staff can delay receiving severance payments for up to three months so that they could continue the job application process and secure a position or another Member of Council or the Toronto Public Service;
- Within the two years restriction period, Members' staff can pay back the severance payments received and be able to work for other Members of Council.

Severance Payments to Members' Staff

While at amalgamation, there may have been many long term employees who received significant severance from the City (maximum as 96 weeks), more recent severance payments to Members' staff have been significantly less than two years.

The following chart provides an overview of the severance payments made during the 2010 and 2014 Council transitions:

Weeks of Severance Paid	Percentage of Members' Staff who Received Severance	
	2010	2014
12 weeks and under	31%	51%
Between 12 weeks and 36 weeks	54%	30%
Between 36 weeks and 48 weeks	0%	12%
Over 48 weeks	15%	7%

More than 80 per cent of Members' staff who received severance, received less than 36 weeks. In 2014, more than 50% of Members' staff received severance of 12 weeks or less. However, all were restricted from being rehired for two years, which seems fundamentally unfair as it is longer than the period they worked as Members' staff.

Options

Staff considered different options to address this mismatch between amount of severance received and the rehire restriction period, and assessed the options against the underlying principle of no "double-dipping".

Option 1 Rehire restriction equivalent to the severance period received. Employees can repay the severance during the restriction period in order to return to work for another Member of Council or to be hired into the Toronto Public Service.

Option 2 Rehire restriction equivalent to the severance period received but employees do not have ability to repay severance to return to work for another Member of Council or to be hired into the Toronto Public Service.

Option 3 Rehire restriction of one year with the ability to repay remaining severance to return to work for another Member of Council or to be hired into the Toronto Public Service.

Option 4 No rehire limitation.

Option 5 -- Status Quo – maintain existing policy.

Option 1 best matches the principles of no double-dipping while being fair to the employee. Option 2, while matching the restriction period to the severance period, would not permit staff to return to work for another Member of Council if they repaid the severance. This may negatively impact the ability of a Member of Council or the Toronto Public Service to recruit qualified staff. Option 3 is arbitrary with the one year restriction. Option 4 would be contrary to the no double-dipping principle while Option 5, status quo, continues to be arbitrary.

Staff also recommend that severed Members' staff continue to be able to defer receipt of their severance for three months so that they could seek another position with another Member of Council or continue their participation in a Toronto Public Service hiring process. This would help reduce the administrative costs of paying a departing employee and then receiving and processing a payment within a very short period of termination.

Conclusion

The City Clerk recommends Option 1, as it is fairest and respects the no 'double-dipping' principle.

This amended policy will be implemented for all news staff contracts. Existing staff will be informed of the change in Clause 15(e) of their existing contracts as well.

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SIGNATURE

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