

**STAFF REPORT
ACTION REQUIRED****Toronto Civic Employees' Pension and Benefit Fund
Payment by Fund of External Costs
Harmonizing Amendment of By-law No. 380-74**

Date:	May 24, 2016
To:	Government Management Committee
From:	Treasurer, City Solicitor
Wards:	All
Reference Number:	P:\2016\Internal Services\ppeb\gm16009ppeb (AFS22722)

SUMMARY

The Toronto Civic Employees' Pension and Benefit Fund provides pension plan benefits for individuals hired by the former City of Toronto before membership in OMERS became mandatory for new municipal employees in mid-1968, as well as for qualified survivors of those individuals.

In 1995, as part of the adoption of a proposal agreed to between the former City of Toronto and representatives of both the active and retired members of the Benefit Fund, the then City Council authorized amendment of the Fund's governing by-law so as to require the Fund to assume certain costs, conditional on the enactment of appropriate special legislation.

No such special legislation was ever enacted, and it is now the opinion of the City Solicitor that subsequent case law supports the view that the contemplated amendment may lawfully be made retroactively under the existing legislation applicable to the Benefit Fund. This report therefore seeks authority to proceed with formal amendment of the by-law as a housekeeping matter to reflect both the adoption of the 1995 proposal, and the course of conduct of the parties since that time.

RECOMMENDATIONS

The Treasurer and City Solicitor recommend that:

1. City Council amend By-law No. 380-74 of the former City of Toronto, substantially as set out in the draft amending by-law in Schedule A to this report, which provides for an effective date of January 1, 1995.

Financial Impact

There is no financial impact on the City as a result of this report.

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

DECISION HISTORY

At its meeting held on June 5 and 6, 1995, the Council of the former City of Toronto adopted Executive Committee Report 15(8) authorizing, *inter alia*, various amendments to By-law No. 380-74 governing The Toronto Civic Employees' Pension Plan so as to implement certain improvements to spousal survivor benefits, cessation of member contributions on attainment of 35 years of service and assumption by the Plan's fund of costs for a number of services and other items not already being paid by the fund, as negotiated with representatives of the pensioners with the majority concurrence of the members of the pension Committee, the Plan's administrator.

At the same meeting, that Council adopted the recommendation of the then City Solicitor made in a Supplementary Report, that the amendment relating to assumption of costs take place on the obtaining of appropriate special legislation amending the former City's governing Act.

Such special legislation was never enacted and the costs amendment was never made to By-law No. 380-74, although the By-law was amended to provide for the benefit improvements.

ISSUE BACKGROUND

In 1952, to supersede and improve upon an employee pension arrangement set up in 1943 based on the purchase of federal annuities, as permitted under general municipal legislation, the former City of Toronto established The Toronto Civic Employees' Pension and Benefit Fund under By-law No. 18777 pursuant to special legislation passed in 1921 giving its council power to establish such a fund. Eventually all municipalities were given powers to create funded pension plans under predecessors to the *Municipal Act, 2001*.

The Fund and its Plan were grandparented when OMERS was made mandatory for new employees of Ontario municipalities in mid-1968, and the former City continued to modify the Plan from time to time, eventually replacing By-law No. 18777 with By-law No. 380-74 which itself has been subsequently amended, including insertion in 1988 of a requirement that all actuarial surpluses "be used solely to pay for improved pension benefits" except for offsets of special payments due to the Fund from the City on account of past improvements and except for surplus remaining on Plan wind-up.

The Fund's governing by-law was amended in 1997 to give retroactive effect to the obligations of the former City under a proposal negotiated with the Plan's pensioner association, agreed to by a majority of the Pension Committee and adopted by the council of the former City in 1995 respecting certain Plan improvements.

In return for the improvements the Fund was, under the proposal, to assume from the City responsibility for payment of a wide range of external services.

The 1997 amending by-law, however, did not specifically provide for assumption by the Fund of responsibility for the remaining external costs. This was because in adopting the 1995 arrangement, the council had made that particular amendment to the by-law conditional on the obtaining of special enabling legislation, as recommended by the solicitor for the former City on the basis of an opinion from outside counsel.

Although staff of the former City subsequently received a favourable response when the contemplated special legislation was discussed with the appropriate government MPP, the legislation was neither formally requested nor enacted.

Consistent with the negotiated arrangement as adopted by the council of the former City, the Pension Committee started to pay out of the Fund the costs previously borne by the City shortly after council adoption and has continued to do so to this day, and the Plan members and pensioners have also received the improvements bargained for under the 1997 amendment to By-law No. 380-74.

City staff are unaware of any objections to the arrangement ever lodged on behalf of either active members or pensioners of the Plan.

COMMENTS

Upon review of this matter in light of the current law, it is the City Solicitor's opinion that the negotiated 1995 costs amendment may now be enacted without the need for special legislation or any other precondition.

The Fund's governing by-law should therefore be amended as a housekeeping matter to harmonize its wording as to external costs with both the 1995 proposal as adopted by the council of the former City of Toronto and in accordance with the Fund's actual practice for the past two decades.

CONTACT

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SIGNATURE

Mike St. Amant
Treasurer

Anna Kinastowski
City Solicitor

ATTACHMENT

Attachment 1 - Schedule A

Schedule A

Authority: Government Management Committee Item GMXX.XX, as adopted by City of Toronto Council on [DATE] 2016

CITY OF TORONTO

BY-LAW No. -2016

To amend further By-law No. 380-74 of the former City of Toronto with respect to pensions and other benefits.

Whereas By-law No. 380-74 of the former Corporation of the City of Toronto, a by-law “To establish a pension plan to be known as the '1974 IMPROVED PLAN'”, as amended, governs the Toronto Civic Employees Pension and Benefit Fund; and

Whereas it is desired to update such By-law as so amended by modifying the provisions relating to changes payable by the Fund,

The Council of the City of Toronto enacts:

1. In this by-law, all by-laws referred to by number are those of the former Corporation of the City of Toronto.
2. By-law No. 380-74, as amended, is further amended by
 - (a) repealing subsection 14(2) thereof as amended by By-law No. 368-89 and substituting therefor the following:

"(2) All charges other than

 - (a) those referred to in subsection (1);
 - (b) those fees authorized to be paid out of the Fund pursuant to subsection 14A(1);
 - (c) those expenses authorized to be paid out of the Fund pursuant to subsections 14A(3) and (4); and
 - (d) any honorarium authorized to be paid by the Fund pursuant to subsection 15A(4),

that are competent to and in connection with the operation and administration of this by-law shall be borne by the City";
 - (b) adding to section 14A the following subsection:

"(4) The Fund shall be responsible for and shall pay for the following external professional services and expenses:

- (a) actuarial valuations, cashflow projections and services directly related to plan administration;
- (b) external legal assistance and advice directly related to the administration of the Fund;
- (c) training and development expenses for employee or pensioner representatives on the Committee;
- (d) out-of-pocket and other administrative expenses which the Committee deems to be necessary for the proper administration of the Fund.";

(c) striking out the word "City" in the last line of subsection 15A(4) as enacted by By-law No. 581-91 and substituting therefor "Fund".

3. This by-law shall be deemed to have come into force on January 1, 1995.

Enacted and passed on _____, 2016.

Frances Nunziata,
Speaker

Ulli S. Watkiss,
City Clerk

(Seal of the City)