



REPORT FOR ACTION

Metropolitan Toronto Police Benefit Fund – Termination/Wind-Up and Surplus Distribution

Date: November 1, 2019

To: General Government and Licensing Committee

From: Controller

Wards: All

SUMMARY

This report seeks authority from City Council to:

1. Amend the By-law governing the Metropolitan Toronto Police Benefit Fund (the Plan) to provide for surplus distribution to the members of the Plan, in accordance with the Surplus Sharing Agreement dated June 1, 2018, approved and adopted by City Council at its meeting on July 23, 24, 25, 26, 27, and 30, 2018;
2. Terminate the Metropolitan Toronto Police Benefit Fund (the Plan), effective November 30, 2019, and distribute the surplus assets remaining following the November 5, 2019 merger of the Plan with OMERS ("remaining assets"); and
3. Introduce a Bill to repeal By-law 116-2018, as amended, upon completion of the distribution of the remaining surplus assets of the Plan.

RECOMMENDATIONS

The Controller recommends that:

1. City Council amend Schedule A attached to By-law 116-2018, as amended, governing the Metropolitan Toronto Police Benefit Fund (the Plan), to provide for the distribution of the surplus to the members of the Plan, in accordance with the Surplus Sharing Agreement dated June 1, 2018.
2. City Council approve the termination of the Metropolitan Toronto Police Benefit Fund (the Plan), outlined in Schedule A attached to By-law 116-2018, as amended, effective November 30, 2019, and authorize the City Solicitor, following the distribution of the Plan's remaining assets in accordance with the Surplus Sharing Agreement dated June 1, 2018, to introduce a Bill to repeal By-Law 116-2018, as amended.

FINANCIAL IMPACT

There is no separate estimated financial impact arising from this decision and report. City Council has already authorized the merger of the Plan with OMERS and the distribution of the remaining net surplus following the merger, in accordance with the Surplus Sharing Agreement.

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

DECISION HISTORY

The Police Benefit Fund was established in 1957 and covers the Chief of Police, constables and other Metropolitan Toronto police officers hired prior to July 1, 1968.

In 1962, the Province of Ontario established the Ontario Municipal Employees Retirement System (OMERS) to provide retirement benefits for employees of local government in Ontario. Furthermore, effective July 1, 1968 the provincial government granted OMERS exclusivity to be the only registered pension plan for all Ontario municipalities and local boards. As such, membership in the Police Plan was closed to further enrolments at that time.

The Police Plan continued to be administered and sponsored by the former Municipality of Metropolitan Toronto and ultimately by the City of Toronto after amalgamation. The last active member of the Police Plan retired in November 2017.

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 ("legacy") pension plans with the OMERS plan; and
- (ii) potentially winding up each of the Plans through purchase of annuities.

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

As a result, City staff initiated discussions with OMERS staff regarding the potential transfer/merger of each of the five plans. However, these discussions were placed on hold following indication by the Provincial government that for the public sector, further legislation would be required to enable mergers of defined-benefit single-employer pension plans (such as the City's five legacy plans) with jointly-sponsored pension plans such as OMERS.

In 2014, the Pension Benefits Act (PBA) was amended to add a new Section 80.4 setting out the framework for such mergers and stipulating that before such a merger could proceed, notice of any such proposed merger had to be provided to all members

and beneficiaries and that their consent had to be given in accordance with the regulations.

On October 22, 2015, the Province promulgated Ontario Regulation 311/15 under the PBA titled "Conversions and Transfers of Assets under Section 80.4 of the Act and Conversions under Section 81.0.1 of the Act", stipulating that consent for a public-sector merger will exist if at least two-thirds of active members of the single-employer pension plan consent, and no more than one-third of pensioners and other beneficiaries of the plan object.

Since Council's direction in 2011, City staff have maintained an open and transparent dialogue with OMERS staff and with each of the Boards/Committees which are the administrators of the City's five legacy pension plans. City staff also arranged for senior OMERS representatives to attend some meetings of those Boards/Committees to provide information and answer questions. Once the Provincial framework changed, the City revived the discussions with the five legacy plans and OMERS

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 November 14, 2016 Government Management Committee requested the Treasurer to submit to the Government Management Committee in the second quarter of 2017 updated information on the 2011 "Preliminary Analysis of OMERS Options City of Toronto Pre-OMERS Pension Plans" including updates to:

- a. The financial/plan information as of December 31, 2016;
- b. Merger options;
- c. Financial information for OMERS and the five plans;
- d. Demographics;
- e. Current going concern and solvency payments;
- f. Current active members; and
- g. The 8 Exhibits.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.GM16.4>

At its meeting on May 29, 2017 Government Management Committee received a report on the 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 the recommendations in the report entitled Direction Regarding Merger of the Five (5) City of Toronto pre-OMERS Pension Plans with OMERS.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.GM22.23>

As directed by Council, a Surplus Sharing Agreement was negotiated between the City, the Represented and Non-represented Participants of the Plan, and the Toronto Police Association, dated June 1, 2018, identifying how the net surplus remaining in the Plan after the OMERS merger would be distributed.

At its meeting held on July 23, 24, 25, 26, 27, and 30, 2018, City Council adopted the recommendations in the report from the Treasurer dated June 18, 2018, titled *Mergers of Pre-OMERS Pension Plans with OMERS and Proposal for Sharing of Surplus*, including the recommendations in Confidential Attachment 1 regarding surplus sharing consistent with the negotiated June 1, 2018 Surplus Sharing Agreement.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.GM29.10>

COMMENTS

On November 20, 2017, the City of Toronto executed a Pension Transfer Agreement with the OMERS Sponsors Corporation and the OMERS Administration Corporation pertaining to the Police Plan.

Notices were mailed to the 1,669 members of the Police Plan providing detailed information on both the Police Plan and OMERS plan, the merger process and providing them with a voting ballot. As noted above the merger could not have proceeded if more than 1/3 of the members objected to the merger. The City received objection votes from only thirteen (13) members.

During the merger negotiations with OMERS it was anticipated that the Police Plan would have a surplus upon wind-up of the Plan. The City, through its outside counsel Osler, Hoskin and Harcourt LLP (Oslers), negotiated the disposition of projected surpluses in the Civic, Metro, and Police pension plans with legal representatives of the respective pensioner groups. The resulting Surplus Sharing Agreements contain different surplus distribution provisions than the current Plan by-laws, requiring that each of the Plan by-laws must be amended to be consistent with the negotiated Surplus Sharing Agreements.

On December 17, 2018, at the conclusion of the allotted time frame for the Police Plan pensioners to submit their ballots, the City filed an application with the Superintendent of Financial Services seeking consent to the proposed merger of the Police Plan into the OMERS Pension Plan under Section 80.4 of the PBA.

After reviewing the application, on June 4, 2019, the Superintendent of Financial Services issued a Notice of Intended Decision (NOID) of his intention to consent to the transfer of assets from the Police Plan to the OMERS Pension Plan with an Effective Transfer date of August 31, 2019 and a Closing Date of November 5, 2019.

Subsequently, on October 22, 2019, the Superintendent issued his consent to the merger of the Police Plan with OMERS. As part of the Pension Transfer Agreement, a valuation of the future liabilities to meet the on-going pension payments was conducted by the Plan's actuary and on November 5, 2019, the assets from the Police Plan required to meet that liability were transferred to OMERS. Effective, December 1, 2019, all members in receipt of a benefit payment from the Police Plan will commence receiving their first pension payment from OMERS as opposed to the Police Plan.

After the transfer of the required assets to OMERS in accordance with the actuary's valuation, a surplus of approximately \$23 million is expected to remain in the Police Plan, to be distributed in accordance with the Surplus Sharing Agreement. It is therefore recommended that the Plan by-law be amended to reflect the provisions of the Surplus Sharing Agreement by deleting the existing Section 9(2), Surplus, and replacing it with the following:

"(2) Any surplus accruing to the fund as certified by the actuary shall be divided between the Members and the City as follows, with the following amounts being paid only to the extent that sufficient Net Surplus exists, and in the order and priority set out below, subject to the payment of expenses as set out in Section 5.2 of the Surplus Sharing Agreement between the City, [the Represented and Non-represented Participants of the Plan, and the Toronto Police Association, dated June 1, 2018 \(the "Surplus Sharing Agreement"\)](#):

- (a) First, individual amounts of Net Surplus, to be calculated by the City, will be paid to those Members who, as active members of the Plan, were less than age 50 but had 30 or more years of credited service on the date when contribution refunds were made in 2002 to Plan members who had 30 or more years of credited service and were age 50 or over, with the amount being equal to the contribution refund they would have been entitled to had they met the eligibility requirements at the time, plus cost of living adjustment;
- (b) Second, individual amounts of Net Surplus, to be calculated by the City, will be paid to those Members who were within four months of completing 30 years of service as of the effective date in 2002 used for the purpose of the contribution refunds referenced in paragraph 9(2)(a) above; each such individual will receive an amount of Net Surplus equal to the difference between what their contributions refund would have been in 2002 had they met the eligibility requirements therefor, less the amount they received in pension payments from the Plan from the date of their retirement to the date they would have attained 30 years of service had they not retired before such date, plus a cost of living adjustment;
- (c) Third, \$15.8 million, less the amounts paid pursuant to paragraphs 9(2)(a) and (b) above, and less the expenses to be paid out of the Member Share as described in the Surplus Sharing Agreement, will be paid to the Members.

- (d) Fourth, should any Net Surplus remain following the distributions in 9(2)(a), (b) and (c) above, it shall be paid to the City, up to a maximum of \$15.8 million, after deducting the expenses to be paid out of the City Share as described in the Surplus Sharing Agreement.
- (e) Finally, should any Net Surplus remain following the distributions described above, it shall be split 50/50 between the City and the Members.”

Aside from the surplus, there will be no other assets in the Police Plan following the OMERS merger.

There being no remaining pension liabilities owing to members under the Police Plan, following the OMERS merger, authority is also sought to terminate the Plan effective November 30, 2019.

After City Council authorizes the termination of the Police Plan, the City will proceed with all necessary steps including notifying the pension regulator of the termination, and distributing the remaining assets of the Plan, e.g. the surplus, to eligible members of the Police Plan, in accordance with the Surplus Sharing Agreement of June 1, 2018 and the amended by-law.

Once the surplus has been distributed, the City Solicitor will introduce a bill repealing By-Law 116-2018 to reflect the termination of the Police Plan.

CONTACT

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SIGNATURE

Andrew Flynn
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