Agenda – Executive Policy Committee – January 18, 2012

Report - Governance Committee of Council – January 12, 2012

Item No. 3 Amendments to By-law No. 7869/2001 – A By-law to establish a pension benefits program for members of Council

COMMITTEE RECOMMENDATION:

On January 12, 2012, the Governance Committee of Council, pursuant to section 17(2) of The Council Pension Plan By-law No. 7869/2011, submits the following to Council as notice:

1. That Council enact the proposed amendments (Appendix A) to By-law No. 7869/2001 ("A By-law of The City of Winnipeg to establish a pension benefits program for members of Council of The City of Winnipeg").

Further, on January 12, 2012, the Governance Committee of Council concurred in the recommendation of the Winnipeg Public Service and pursuant to section 17(2) of The Council Pension Plan By-law No. 7869/2011, submits the following to Council for its subsequent meeting:

1. That Council enact the proposed amendments (Appendix A) to By-law No. 7869/2001 ("A By-law of The City of Winnipeg to establish a pension benefits program for members of Council of The City of Winnipeg").

2. That the Proper Officers of the City do all things necessary to implement the intent of the foregoing.

ADMINISTRATIVE REPORT

Title: **Amendments to By-law 7869/2001 – A By-law to establish a pension benefits program for members of Council**

Issue:

Critical Path: **Governance Committee of Council - Executive Policy Committee - Council**

AUTHORIZATION

Author	Department Head	CFO	CAO
P. Olafson	P. Olafson (acting)	P. Olafson (acting)	C. Wightman (acting)

RECOMMENDATIONS

1. That Council enact the proposed amendments (attached as Appendix A) to By-law No. 7869/2001 ("A By-law of The City of Winnipeg to establish a pension benefits program for members of Council of The City of Winnipeg"); and

2. That the Proper Officers of the City do all things necessary to implement the intent of the foregoing.

REASON FOR THE REPORT

By-law 7869/2001 (the "By-law") was adopted by Council in 2001 and has not been updated since then. Only Council can enact amendments to by-laws.

IMPLICATIONS OF THE RECOMMENDATIONS

The amendments proposed make the By-law consistent with other governing legislation and improve clarity, process and reasonability in administering the By-law.

HISTORY

At its meeting of July 18th, 2001, Council enacted By-law 7869/2001, which established a pension benefits program for members of Council of The City of Winnipeg (the "Plan") effective January 1, 2001. Since that time, the By-law has not been updated.

On November 22, 2011, the Council Pension Benefits Board (the "Board"), created and established under By-law 7869/2001, considered amendments to be made to this by-law and received an oral report from the plan's actuary, Mercer Canada Limited. The Board approved the amendments. What follows are explanations of the more significant amendments along with any implications.

Plan Comparability

Subsection 6(2) of the by-law provides that *any change to the benefits in the Civic Employees' Pension Plan or the Civic Employees' Early Retirement Benefits Arrangement shall require an identical amendment to the Council Pension Benefit Program under this By-law, subject to the approval of Council.* At the same time, Sections 16 and 17 provide by-law amending powers with Council Pension Benefits Board endorsement and specified Council approval. Sections 16 and 17 do not restrict Council to amending the Plan to be completely parallel to changes in the Civic Employees' Pension Plan or the Civic Employees' Early Retirement Benefits Arrangement. In fact, Section 16 provides that *Council may by By-law from time to time amend, modify, vary or terminate the terms, conditions or provisions of this By-law or the Council Pension Benefits Program (and any trust arising under this By-law or under the Pension Plan) in such manner and on such terms as Council may deem appropriate.*

Of note, when the Civic plans were altered from single-employer to a jointly-trusteed arrangement, no such parallel amendment was made to the Plan. As such, it may be reasonable to conclude Sections 16 and 17 override Subsection 6(2), rendering Subsection 6(2) redundant. Subsection 6(2) is included under the section heading *Solvency of the Council Pension Benefits Program.* While it is purely speculative, perhaps this clause was intended to pertain solely to solvency-related issues.

Process to Amend Plan

Sections 16 and 17 describe the process by which any amendments to the Plan can be made. Specifically, Section 17 requires submission of proposed amendments to the Board who in turn must report any proposed changes to Council within two months of their receipt. Then after one month from the date of report submission, it may be placed before Council. Finally, Council must not vote on the proposed amendment for at least one further month.

While this provides ample time for due consideration of any amendments, it is lengthy compared to the due process accorded most other reporting to and voting by Council. The proposed amendment, which considers and models similar process requirements detailed for The Winnipeg Civic Employees' Pension Plan and The Winnipeg Police Pension Plan, will streamline this process. In the future, the Board, in consultation with the plan actuary, will determine those amendments that are material therefore requiring an actuarial report be placed before Council.

Deemed Retirement Age

Subsection 5(3) of Part A of the By-law provides that *each member who is not retired on December 1 of the Taxation Year in which he or she attains age 69 shall be deemed to have retired on that day…* As a result of changes to the Income Tax Act and human rights legislation, the deemed age of retirement has changed to age 71.

Small Pensions

Subsection 6(11) of Part A of the By-law has been amended to more fully define when a lump sum payment is made for what is considered a small pension. Although this plan is governed by the Income Tax Act which doesn't have similar provisions, this change makes the benefit consistent with recent changes under the Manitoba Pension Benefits Act.

Minimum Death Benefit

Subsection 10(1) of Part A of the By-law defines the benefits a member's beneficiary is entitled to in the event of death prior to retirement where the employee has less than two years of eligible service. In such a case, the beneficiary is entitled to a lump sum refund of the member's contributions plus interest. Specifically, the beneficiary would not benefit from contributions made by the City for that member.

The proposed change is to include employer contributions in the death benefit calculation. Although this plan is governed by the Income Tax Act which doesn't have similar provisions, this change makes the benefit consistent with recent changes under the Manitoba Pension Benefits Act. Given the small number of actively contributing members, it is not anticipated that this will be an inordinate cost to the Plan.

Death Benefit – Portability

Subsections 10(9) and 11(3) of Part A of the By-law provide the option for a beneficiary to elect to transfer the commuted value of the pension to a Registered Retirement Savings Plan or receive it as a lump sum payment in lieu of the benefits otherwise payable under Section 10. To do so, the beneficiary must make this election within 30 days of receiving notification from the Board of the benefits payable. It is felt that this time period is too short and the amendment would extend this election period to 90 days.

Termination Benefit

Section 11 of Part A of the by-law defines the benefit afforded a member who terminates with the City. Similar to the Death Benefit discussed above, the member will also be entitled to City contributions in the event the service is for less than two years. As such, there is no need to differentiate the termination that takes place with less than two years' eligibility service from those with more than two years' service as they are now treated the same.

Section 17(4) of the by-law requires that prior to any amendment to the Plan, Council shall receive a report thereon from a qualified actuary. Included in Appendix B is a letter from Mercer Canada Limited concerning the implications of these amendments.

FINANCIAL IMPACT

Financial Impact Statement **Date:** December 28, 2011

Project Name:

Amendments to By-law 7869/2011- A By-law to establish a pension benefits program for members of Council

COMMENTS:

The amendments proposed are of a housekeeping nature to make the by-law consistent with other legislation and improve clarity, process and reasonability in administering the by-law.

The financial impact is anticipated to be minimal.

"Original Signed By"
Fernando Dela Cruz
Acting Manager of Finance (Campus)
Corporate Finance Department

CONSULTATION

In preparing this report there was consultation with:

Legal Services Department

City Clerks Department

Mercer Canada Limited (Plan actuary)

Council Pension Benefits Board

SUBMITTED BY

Department: Corporate Finance Department
Division: Corporate Controller's
Prepared by: Paul D. Olafson, CA
Date: December 28, 2011

Appendix A
By-law to Amend By-law 7869/2001 -
A By-law to establish a pension benefits
program for members of Council

THE CITY OF WINNIPEG

BY-LAW NO.

A By-law of THE CITY OF WINNIPEG to
amend the Pension for Members of Council
By-law

WHEREAS pursuant to *The City of Winnipeg Act* (Manitoba), the Council of The City of Winnipeg has adopted By-law No. 7869/2001 (the "By-law"), which established a pension benefits program for all members of Council;

AND WHEREAS the By-law came into effect on January 1, 2001;

AND WHEREAS in Section 16 of the By-law, Council reserved the right to by by-law from time to time amend, modify, vary or terminate the terms, conditions or provisions of the By-law or the Council Pension Benefits Program;

NOW THEREFORE THE CITY OF WINNIPEG, in Council assembled, enacts as follows:

By-law No. 7869/2001 amended
1 By-law No. 7869/2001, being a By-law of The City of Winnipeg to establish a pension benefits program for members of Council of The City of Winnipeg, is amended by this By-law.

Section 1 amended
2 Section 1 is amended by striking out *"City of Winnipeg Act"* wherever it appears and replacing it with *"The City of Winnipeg Charter"*.

Subsection 6(2) repealed
3 Subsection 6(2) is repealed.

Section 16 amended
4 Section 16 is replaced by the following:

16. Subject to Sections 17 and 18, but notwithstanding any other provision of this By-law or the Council Pension Benefits Program, Council may by By-law from time to time amend, modify, vary or terminate the terms, conditions or provisions of this By-law or the Council Pension Benefits Program (and any trust arising under this By-law or under the Plan) in such manner and on such terms as Council may determine appropriate, such determination to be conclusively deemed to be evidenced by the passage of such By-law, and such amendment, modification, variation or termination may be effective retroactive to a date prior to the date such By-law is passed.

Section 17 amended

5(1) Subsection 17(1) is amended by striking out *", within two months of receipt thereof"*.

5(2) Subsection 17(2) is repealed.

5(3) Subsection 17(4) is replaced with the following:

(4) If a proposed amendment, modification or variation of the terms, conditions or provisions of this By-law or the Council Pension Benefits Program would materially affect the contributions or benefits payable under the Plan, the Board shall have a written report thereon prepared by a qualified actuary and shall provide such report to Council, and Council shall not adopt such amendment, modification or variation until having received such written report.

Subsection 5(3) of Part A of By-law No. 7869/2001 amended

6 Subsection 5(3) of Part A is amended by replacing *"age 69"* with *"age 71"*.

Subsection 6(11) of Part A of By-law No. 7869/2001 amended

7 Subsection 6(11) is replaced with the following:

(11) If a Member's

(a) annual pension determined in accordance with subsection (1) at the first of the month in which the Member attains the age of 65 is less than 4% of the YMPE for the year in which the Member retired, died, or terminated Employment with the City or the year in which the Member became divorced, separated or had their marriage annulled; or

(b) Commuted Value of the pension is less than 20% of the YMPE for the year in which the Member retired, died, or terminated Employment with the City or the year in which the Member became divorced, separated or had their marriage annulled;

the Member or, if the Member has died, the Member's Spouse, Beneficiary or estate, whichever is applicable, shall receive a lump sum payment equal to the Commuted Value of the pension otherwise payable in lieu of all benefits under the Plan.

Appendix A
By-law to Amend By-law 7869/2001 -
A By-law to establish a pension benefits
program for members of Council

Sections 10 and 11 of Part A of By-law No. 7869/2001 amended

8(1) Subsection 10(1) is replaced with the following:

(1) If a Member dies while an Employee but before completing 2 years of Eligibility Service, the Member's Spouse, Beneficiary or estate, whichever is applicable, shall receive in a lump sum the Commuted Value of a pension commencing on the first day of the month following or coinciding with the month in which the Member would have attained age 60. The amount of the pension shall be equal to the pension determined in accordance with Section 6.

8(2) Subsection 11(2) is amended by:

(i) striking out the heading *"More than 2 Year's Eligibility Service"* and replacing it with *"Eligibility Upon Termination"*; and

(ii) striking out "*and after having completed at least 2 years of Eligibility Service,"* wherever it appears.

8(3) Subsections 10(9) and 11(3) are amended by replacing "*30 days*" with "*90 days*" in both provisions.

8(4) Subsection 11(1) is repealed.

DONE AND PASSED, this day of , 2011.

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Mayor

_____
City Clerk

Approved as to content:

_____
Chief Financial Officer

Approved as to form:

_____
For Director of Legal Services/City Solicitor

Appendix B –
Letter from Mercer Canada Limited –
Implications of the Proposed Amendments



Letter from Mercer Canada Limited - Impl