Agenda – Executive Policy Committee – September 21, 2023

Report – Governance Committee of Council – September 15, 2023

Moved by Councillor

That Rule 10(3) of The Procedure By-law No. 50/2007 be suspended in order that the following item, which was received less than four business days preceding the committee meeting, be considered by Committee.

Item No. 1 Amendments to the Council Pension Benefits Program By-law No. 7869/2001

COMMITTEE RECOMMENDATION:

On September 15, 2023, the Governance Committee of Council concurred in the recommendation of the Winnipeg Public Service and recommended to Council:

1. That the amendments to the Pension for Members of Council By-law 7869/2001, as outlined in the attached draft amending by-law (Attachment), be approved.

2. That the City Solicitor / Director of Legal Services be directed to prepare and submit the necessary amending by-law directly to Council.

3. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

Agenda – Executive Policy Committee – September 21, 2023

Report – Governance Committee of Council – September 15, 2023

DECISION MAKING HISTORY:

COMMITTEE RECOMMENDATION:

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ADMINISTRATIVE REPORT

Title: Amendments to the Council Pension Benefits Program By-law No. 7869/2001

Critical Path: Governance Committee – Executive Policy Committee - Council

AUTHORIZATION

Author	Department Head	CFO	CAO
C. Kloepfer	C. Kloepfer	C. Kloepfer	

EXECUTIVE SUMMARY

The Board of the Council Pension Benefits Program is recommending amendments to the By-law governing the Pension Benefits Program for Elected Officials as approved by the Board on March 23, 2022.

This by-law has been in place since 2001 with amendments occurring in 2012. Since that date, several clauses in the by-law have proven to be open to interpretation. Amendments are necessary to provide clarification and to align the by-law with current legislation and administrative practices. These clauses relate to selected definitions, marriage-breakdown and additional flexibility for deferral of pension payments.

The amendments as proposed will provide clarity to:

- members of the plan,
- administrators in making determinations of pension benefits, and
- the appointed Actuary in determining the funded status of the Plan.

There are no substantive changes to benefits available to program members.

RECOMMENDATIONS

1. That the amendments to the Pension for Members of Council By-law 7869/2001, as outlined in the attached draft amending by-law (Attachment), be approved.

2. That the City Solicitor / Director of Legal Services be directed to prepare and submit the necessary amending by-law directly to Council.

3. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

REASON FOR THE REPORT

The Board of the City of Winnipeg Council Pension Benefits Program is seeking amendments to the governing by-law 7869/2001 to allow for clarity on the interpretation of certain clauses. The Board does not have the authority to make changes unilaterally. All such changes require Council approval of an amending By-law.

IMPLICATIONS OF THE RECOMMENDATIONS

There are no immediate financial implications to the recommended amendments to the By-law. However, the clarifications provided by these amendments will allow for greater certainty related to the actuarial valuation and for determination of benefits by the administrators of the Plan.

HISTORY/DISCUSSION

On November 22, 2000, Council adopted recommendations in Clause 1 of the Report of the Secretariat Committee to establish a pension benefits program for members of Council as enabled under *The City of Winnipeg Act.*

As a result, the Council Benefits Program (the Plan) was established in 2001 under this current by-law 7869/2001 and was amended in 2012. The consolidated version of the by-law is attached.

The Plan is governed by a Board comprised of three representatives of Council, only one of whom may be a Councillor, and the Chief Financial Officer of the City. Current Board members are:

- Councillor Devi Sharma: Alternate - Councillor Ross Eadie
- Winston Yee, Manager Community Licensing and By-law Enforcement, City of Winnipeg
- Glenda Willis, Chief Executive Officer, The Winnipeg Civic Employees' Benefits Program
- Catherine Kloepfer, Chief Financial Officer, City of Winnipeg, Chair

The duties of the Board are specified in Section 10 of the by-law and include Board responsibilities related to fiduciary, policy and investing duties and powers along with a requirement to report to Council annually on the operations and financial position of the Pension Fund.

In order to amend, modify, vary or terminate any provision of the pension benefits program Section 16 requires the passage of a by-law by Council to do so.

Section 17 of the by-law specifies any such amendments, modification, variation or termination be approved by the Board and then a report is to be made to Council with the proposed amendment, modification, variation or termination.

The proposed amendments in this report are administrative in nature and do not modify the substance of the pension benefits program. This administrative report was approved by the Board on March 23, 2022.

Explanation of Proposed Amendments

Totally and Permanently Disabled: the definition of Totally and Permanently Disabled is being amended to reflect the intent of the provision. The change proposed here is to modify the reference to 'Employment' so that includes not just "serving as a member of Council' but also any other employment.

In the assessment of whether a member of the Plan is eligible to receive a disability pension from the Plan, the definition of Totally and Permanently Disabled applies. In general, if the Member's disablement prohibits the Member from being employed then they would be eligible for a disability pension. However, the Totally and Permanently Disabled definition refers to the defined term 'Employment' which is narrowly defined in the by-law as "for the purpose of the Plan, serving as a member of Council for the City". The modification proposed is to clarify that Totally and Permanently Disabled also entails 'or any other employment'.

This clarification is important to the interpretation of by-law provisions regarding disability. Under the current definition of Totally and Permanently Disabled, a member whose disability prevents them from serving as a member of Council but where they would be otherwise employed, could potentially be determined to be eligible to receive a disability pension from the Plan. This is not the intent of the provision. Expanding the definition of Totally and Permanently Disabled to include 'or any other employment' would close this gap. The intent of the Plan provision is to provide disability payments relative to the member's ability to obtain any employment.

By modifying the definition of Totally and Permanently Disabled, the Plan is protected from having to pay disability pension amounts to members who are still able to find employment outside of being a member of Council. For context, the disability pension would be the same amount as the lifetime pension as if the member retires and takes the normal pension at age 60. Without this modification, the City is potentially at risk for higher pension liabilities.

The definition of **Earnings** is being clarified to remove the potential interpretation that taxable benefits are part of this amount.

The **Spouse** definition is being clarified to include common law relationships.

Technical changes are also being recommended to provide more clarity and greater certainty relating to how the plan is to be administrated in the event of any future wind-up of the Plan.

1. In subsection 3(3) a subclause is being added 3.3(a) in order to be clarify how amounts would be contributed in the event that the Plan is wound up. Following on that addition, two more subclauses are added to this clause in order to provide certainty regarding the terminology of "unfunded liability", "proper amortization" and "wind-up shortfall".

2. The amendment to subsection 3(4) is a typographical error correction with the addition of brackets to (5).

3. The Maximum Employee Cost subsection 6(3) has been renamed as *Excess Employee Contributions* and has been modified to provide Members with a choice of how to receive any such excess contributions. This amendment will provide the Plan administrators with the authority to provide members with this choice.

4. When cost of living adjustments are being calculated for payments that have only been in place for less than a year, the calculation has been clarified to include only complete months and not partial months

5. Eligibility Upon Termination in subsection 11(2) has been renamed to *Pension Commencement After Termination* and amended to allow a terminated Member to commence their pension after reaching the age of 55. The amount of the pension at early commencement is actuarily equivalent in value to the pension that would have commenced at age 60. This will allow for more flexibility for members to choose a deferred pension in a way that is cost neutral to the Plan.

6. Clause 12(3)(b) is amended to provide clarity around the determination of amounts, and methods of payment, to a Spouse or former Spouse upon marriage breakdown. This will bring the Plan into alignment with the Manitoba provincial property law and *The Pension Benefits Act (*Manitoba).

7. The amendment to Part B of the By-law is to eliminate a superfluous reference to Section 12 of Part A.

Summary of Proposed Amendments versus Current By-Law:

Section	Current Language	Amended Language
Proposed Amendments to Part A		
1. Definitions		
	"Totally and Permanently Disabled" means a physical or mental impairment which prevents a Member from engaging in any Employment for which he or she is reasonably suited by virtue of his or her education, training or experience and that can be reasonably be expected to continue for the reminder of the Member's lifetime and which is determined by the Board to exist, based on a written report of a medical doctor licensed to practice in Canada or where the Member resides.	"Totally and Permanently Disabled" means a physical or mental impairment which prevents a Member from engaging in any Employment <u>(as defined in section 1) or any other employment;</u> and for which he or she is reasonably suited by virtue of his or her education, training or experience and that can be reasonably be expected to continue for the reminder of the Member's lifetime and which is determined by the Board to exist, based on a written report of a medical doctor licensed to practice in Canada or where the Member resides.
	"Earnings" means the total taxable remuneration received by a Member from the City during a Taxation Year, plus, with respect to periods of Credited Service during which a Member does not actually receive remuneration from the City, an amount deemed to be received based on the rate of Earnings the Member was receiving immediately preceding that period. However, deemed Earnings shall not exceed the amount of compensation that is prescribed for this purpose by the *Income Tax Act* (Canada). A Member's Earnings shall be considered as having been earned in equal instalments throughout the Taxation Year.	"Earnings" means the total taxable remuneration<u>, other than taxable benefits,</u> received by a Member from the City during a Taxation Year, plus, with respect to periods of Credited Service during which a Member does not actually receive remuneration from the City, an amount deemed to be received based on the rate of Earnings the Member was receiving immediately preceding that period. However, deemed Earnings shall not exceed the amount of compensation that is prescribed for this purpose by the *Income Tax Act* (Canada). A Member's Earnings shall be considered as having been earned in equal instalments throughout the Taxation Year.
	"Spouse" means, at the time a determination of marital status is required, a person to whom the Member is:	"Spouse" means, at the time a determination of marital status is required, a person to whom the Member is:

	(a) legally married, provided the Member is not living separate and part from that person, or (b) not legally married but the Member and that person are and have been cohabiting continuously for at least a 12 month period, and who qualifies as a spouse as defined at the relevant time by the *Income Tax Act* (Canada) for purposes of registered pension plans.	(a) legally married, provided the Member is not living separate and part from that person, or (b) not legally married but the Member and that person are and have been cohabiting continuously for at least a 12 month period, and who qualifies as a spouse or common law partner as defined at the relevant time by the *Income Tax Act* (Canada) for purposes of registered pension plans.
Clauses		
2. Eligibility for Membership		
2.(3)(b)	If a Member who is receiving a pension from the Plan is re-elected, the Member's pension will be suspended prior to the pay period in which he or she again becomes an Employee. The Member's years of Credited Service at his or her date or retirement shall be added to his or her years of Credited Service after re-election, for the purpose of determining any pension payable to the Member or his or her survivors. If the Member again retires, or is deemed to retire, the Member's pension shall be recalculated in accordance with Section 6 and shall commence on the first of the month following or coincident with the pay period in which the Member again retires or is deemed to have retired. Notwithstanding the foregoing, no further benefits shall accrue to a Member in respect of a period during which retirement benefits are paid to the Member under this Plan	If a Member who is receiving a pension from the Plan is re-elected, the Member's pension will be suspended prior to the pay period in which he or she again becomes an Employee. The Member's years of Credited Service at his or her date or retirement shall be added to his or her years of Credited Service after re-election, for the purpose of determining any pension payable to the Member or his or her survivors. If the Member again retires, or is deemed by subsection 5(3) to retire, the Member's pension shall be recalculated in accordance with Section 6 and shall commence on the first of the month following or coincident with the pay period in which the Member again retires or is deemed to have retired. Notwithstanding the foregoing, no further benefits shall accrue to a Member in respect of a period during which retirement benefits are paid to the Member under this Plan

	or any other registered pension plan in which the City participates.	or any other registered pension plan in which the City participates
1. Contributions		
3.(3)(a)	Subject to subsection (5), the City shall make such contributions to the Pension Fund as are required, based on the certification of the Actuary, to provide: (i) the normal cost of benefits currently accruing to Members under the Plan, and (ii) for the proper amortisation of any unfunded liability, after taking into account all relevant factors including the assets of the Pension Fund and the contributions of Members. The City may reduce its contributions in accordance with this By-law to reflect any actuarial surplus in the Plan.	Subject to subsection (5), the City shall make such contributions to the Pension Fund as are required, based on the certification of the Actuary, to provide: (i) the normal cost of benefits currently accruing to Members under the Plan, ~~and~~ (ii) <u>while the plan is ongoing,</u> for the proper amorti<u>z</u>ation of any unfunded liability, (iii) <u>in the event the Plan is terminated, for the funding, within an appropriate timeframe as determined by the Board, of any winding-up shortfall</u> after taking into account all relevant factors including the assets of the Pension Fund and the contributions of Members. The City may reduce its contributions in accordance with this By-law to reflect any actuarial surplus in the Plan.
3.(3) (b)		<u>For the purpose of subclause (a)(ii),</u> (i) <u>unfunded liability means the going concern shortfall, if any, as determined by the Actuary and disclosed in the most recently filed actuarial funding valuation for the Plan, and</u>

		(ii) <u>"proper amortization" means amortization within eight years after the date of the actuarial funding valuation that disclosed the unfunded liability</u>
3.(3)(c)		<u>For the purpose of subclause (a)(iii) "winding-up shortfall" means the amount, as determined by the Actuary, by which the value of the benefits payable under the Plan exceeds the total assets of the Pension Fund.</u>
3.(4)	Subject to subsection 5, the City shall also make a contribution to the Pension Fund as is required, based on the certification of the Actuary, to provide for the additional past service cost that will be incurred as a result of any past service benefits being purchased by an Employee.	Subject to subsection <u>(5)</u>, the City shall also make a contribution to the Pension Fund as is required, based on the certification of the Actuary, to provide for the additional past service cost that will be incurred as a result of any past service benefits being purchased by an Employee.
6. Retirement Pension		
6.(3)	Maximum Employee Cost Upon death, retirement or termination, if the Member's Required Contributions, With Interest exceed 50% of the Commuted Value of the pension benefit earned, the excess shall be refunded to the Member, or the Member's Spouse or Beneficiary, as applicable, in a lump sum.	~~Maximum Employee Cost~~ ~~Upon death, retirement or termination, if the Member's Required Contributions, With Interest exceed 50% of the Commuted Value of the pension benefit earned, the excess shall be refunded to the Member, or the Member's Spouse or Beneficiary, as applicable, in a lump sum.~~ Excess Employee Contributions If at the time of a Member's termination or retirement, or the death of a Member before termination or retirement, the Member's Required Contributions, With Interest, exceed 50% of the

		Commuted Value of the pension benefit earned, the excess shall (a) be used to increase the Member's pension (or the Commuted Value where portability of the pension is permitted); or (b) at the option of the Member, or the Member's Spouse or Beneficiary as the case may be, be refunded to the Member, or to the Spouse or Beneficiary as applicable.
7. Cost of Living		
7.(2)(b)	If the pension in respect of which an adjustment is to be made in accordance with clause (a) has been in payment for less than 12 months, the percentage adjustment shall be multiplied by the fraction N/12 where N is the number of months for which the pension has been in payment.	If the pension in respect of which an adjustment is to be made in accordance with clause (a) has been in payment for less than 12 months, the percentage adjustment shall be multiplied by the fraction N/12 where N is the number of <u>complete</u> months for which the pension has been in payment
11. Termination of Employment		
11.(2)	Eligibility Upon Termination If, for any reason other than death, a Member's Employment with the City terminates before the Member becomes eligible for a pension, the Member is entitled to receive a pension commencing on the first day of any month following or coinciding with the month in which the Member attains age 60. The amount of the pension shall be equal to the pension determined in accordance with Section 6.	~~Eligibility Upon Termination~~ ~~If, for any reason other than death, a Member's Employment with the City terminates before the Member becomes eligible for a pension, the Member is entitled to receive a pension commencing on the first day of any month following or coinciding with the month in which the Member attains age 60. The amount of the pension shall be equal to the pension determined in accordance with Section 6.~~ Pension Commencement After Termination If, for any reason other than death, a Member's Employment

		terminates before the Member is eligible to receive their pension, the Member is entitled to receive the pension commencing (a) on the first day of any month following or coinciding with the month in which the Member attains age 60, in which case the amount of the pension shall be equal to the pension determined in accordance with Section 6; or (b) at the Member's option, on the first day of any month following the month in which the Member attains age 60, in which case the value of the pension must be the actuarial equivalent of the value of the pension that would be payable if the pension were commenced on the first day of the month in which the member attained age 60.
12. General Provisions		
12.(3)(b)	Pension benefits, pension credit and other benefits under this Plan are, on divorce, annulment or separation, subject to the Manitoba provincial property law. However, notwithstanding provincial property law, upon the breakdown of the spousal relationship, a Member may assign, or convey, all or a portion of his or her pension benefits, pension credits or other benefits under the Plan to his or her Spouse or former Spouse.	Pension benefits, pension credit and other benefits under this Plan are, on divorce, annulment or separation, subject to the Manitoba provincial property law. ~~However, notwithstanding provincial property law, upon the breakdown of the spousal relationship, a Member may assign, or convey, all or a portion of his or her pension benefits, pension credits or other benefits under the Plan to his or her Spouse or former Spouse~~. For this purpose, although *The Pension Benefits Act* (Manitoba) and the regulations under this Act do not apply to the Plan, for the purposes of accounting for and dividing a Member's pension or

		pension credits under provincial family property law, (i) a Member's divisible pension credits or pension benefits are to be calculated as if that Act applied to the Plan; (ii) despite the application of that Act to the calculation of the divisible pension credits or pension credits, a Member may assign, or convey, all or any part of their pension benefits, pension credits or other benefits under the Plan to their Spouse or former Spouse; (iii) if all or any part of a Member's pension in pay is assigned to the Spouse or former Spouse, the part so assigned is payable to the recipient as a pension in pay; and (iv) if all or any part of a Member's pension credit is assigned to the Spouse or former Spouse, the value of it is payable to the recipient as a lump sum or, at the recipient's election, is to be transferred directly to a registered retirement savings plan held in the name of the recipient, subject to any limitations in the *Income Tax Act* (Canada).
roposed Amendments to Part B		
3.(2)	There shall be no benefits payable under this Part B as a result of the provisions of Sections 10, 11, or 12 of Part A.	There shall be no benefits payable under this Part B as a result of the provisions of Sections 10 or 11~~, or 12~~ of Part A.

FINANCIAL IMPACT

Financial Impact Statement **Date:** February 22, 2022

Project Name: **First Year of Program** **2022**

Amendment of by-law 7869/2001 Pension Benefits Program for members of Council

	2022	2023	2024	2025	2026
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Grants (Enter Description Here)	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Other - Enter Description Here	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ -	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	-	-	-	-	-
Net Cost/(Benefit)	$ -	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts	-	-	-	-	-
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: There is no financial impact of the proposed by-law amendments.

original signed by Catherine Kloepfer

Chief Financial Officer

CONSULTATION

This Report has been prepared in consultation with: Legal Services and City Clerk

OURWINNIPEG POLICY ALIGNMENT

Not applicable.

WINNIPEG CLIMATE ACTION PLAN ALIGNMENT

Not applicable.

SUBMITTED BY

Department: Office of the Chief Financial Officer
Division: Office of the Chief Financial Officer
Prepared by: Catherine Kloepfer
Date: March 24, 2022
File No: N/A

Attachments:

Proposed By-law 7869/2001 Amendments

By-law No. 7869/2001 as previously amended