

The Regional Municipality of York

Committee of the Whole
Finance and Administration
March 12, 2020

Report of the Commissioner of Corporate Services and Regional Clerk

Updating the Severance Recognition Policy for Members of Council

1. Recommendations

1. Bylaw No. A-214-96-109 be amended to specify the following exceptions to the payment of severance remuneration for Members of Council:
 - a. Removal from office by judicial process or a conviction under the *Criminal Code*, including but not limited to breach of trust, municipal corruption or accepting secret commissions or resignation in anticipation of such removal.
 - b. Notwithstanding the above, a Member of Council can receive severance if and when such charges are withdrawn or the Member is acquitted.
2. The Regional Solicitor prepare the necessary bylaw to enact the amendments.

2. Summary

Bylaw A-214-96-109, to implement a Severance Recognition Policy for Members of Council, was last updated over ten years ago. This report proposes amendments to the Bylaw to provide greater clarity on when severance remuneration will be paid.

Key Points:

- The current Bylaw prescribes that *“no member is entitled to receive severance remuneration if they cease to hold office due to disqualification under or operation of any Act of the Parliament of Canada or the Legislature of the Province of Ontario”*
- This provision could disallow severance remuneration for Members of Council who leave office for reasons including municipal restructuring, election to other levels of government or moving out of the municipality they are elected to represent
- Proposed amendments to the Bylaw would specify that severance would be withheld only where a Member is removed from office by a judicial process, criminal conviction or has resigned in anticipation of such removal
- The formula for determining the amount of severance remuneration is within the range of comparable bylaws

3. Background

The Severance Bylaw recognizes the unique employment status of Members of Regional Council

Regional employees are eligible to receive employment insurance benefits and severance pay in accordance with the *Employment Standards Act* and common law. Members of Council are not subject to the *Employment Standards Act* and do not receive the minimum protection of notice and severance in relation to their position on Regional Council.

In 1996, Regional Council enacted Bylaw A-214-96109, to implement a Severance Recognition Policy for Members of Council. The accompanying report noted additional characteristics about the unique employment status of elected officials. For example, it noted a municipal employee could remain employed while actively seeking alternative employment. However, elected officials only find out whether they return to office on election day.

The Severance Bylaw has had minor updates since adoption

The Bylaw was first updated in 2000 to amend the formula for calculating severance and to cap the amount at a maximum of 18 months remuneration. The next revision came in 2009, to clarify the definition of “service” to mean continuous, unbroken service as a member.

4. Analysis

The current Severance Bylaw is unclear and contains exclusions that may be broader than intended

The Severance Bylaw excludes severance payments if a Member of Council is removed from office due to disqualification under or operation of any Act or if the Member resigns in anticipation of such removal. While this would capture criminal convictions and other wrongdoing, it could also include some or all of the following situations:

- Election to the Federal or Provincial legislatures
- Legislated municipal restructuring
- Failure to attend three consecutive months of Council meetings
- No longer living in or owning property in the municipality they represent
- The member becomes an employee of the municipality

While those situations may or may not have been contemplated at the time of the original Bylaw, the proposed amendments provide an opportunity to clarify when a Member of Council is entitled to receive severance.

Amendments are proposed to limit the exclusions only to removal from office through a judicial process

To address this, the Bylaw could be amended to specify that no severance will be payable where a Member of Council is removed from office through a judicial process or conviction under the *Criminal Code*. This more clearly links forfeiture of severance to actual wrongdoing rather than other things which may be considered more innocuous.

Additionally, it is proposed that a provision be added so that severance payments may be made to Members who have criminal charges withdrawn or if they are acquitted.

The proposed amendments to the Bylaw are in line with the majority of local municipal bylaws

Seven of the nine local municipalities have severance provisions for council members; each is slightly different. Generally they suggest that Members of Council will receive severance payments after they cease to be a Member unless they are removed from office through a judicial process or convicted under the *Criminal Code*. Three of the bylaws also contain a provision withholding severance payments where charges have been laid. Severance may subsequently be payable if the charges are withdrawn or the member is acquitted.

Attachment 1 shows the eligibility requirements of the local and Regional bylaws.

The maximum amount of remuneration payable under the Severance Bylaw is within the range of local municipal bylaws

Generally, severance payments for the local municipalities and the Region amount to one month of severance for every year served. The maximum severance payments vary from six months to 24 months. Currently, the Region will pay a maximum of 18 months' severance. This is within the range of comparable local municipal bylaws.

Table 1 shows the severance payment formulas for the local municipalities and the Region.

Table 1
Comparison of Severance Funding Formulas

Municipality	Maximum Severance Provided	Funding Formula
Aurora	6 months	One month for every year of service to a maximum of six months.
East Gwillimbury	6 months	One month for every year of service to a maximum of six months.
Georgina	N/A	N/A
King	N/A	N/A
Markham	18 months	One month for every year of continuous service to a maximum of 12 months. Additional 3/52 of the annual remuneration per year of continuous service in excess of twelve years, to a maximum of 18 months.
Newmarket	12 months	One month for every year of continuous service to a maximum of 12 months.
Richmond Hill	18 months	One month for every year of service to a maximum equal to 18 months.
Vaughan	24 months	One month for every year of service to a maximum of 24 months.
Whitchurch-Stouffville	6 months	One month for every year of service to a maximum of six months
York Region	18 months	One month for every year of continuous service to a maximum of 12 months. Additional 3/52 of the annual remuneration per year of continuous service in excess of twelve years, to a maximum of 18 months.

5. Financial

The average severance amount paid following the 2018 Municipal Election was approximately \$36,763. All severance payments are accommodated within existing budget and the proposed amendments should not significantly impact the amount of severance paid.

6. Local Impact

Local municipalities will be unaffected as the proposed changes would only impact the remuneration paid by the Region.

7. Conclusion

Seven of the nine local municipalities have severance payment provisions for council members. The severance provisions reflect the unique employment status of elected officials who are not entitled to employment insurance or severance pay under the *Employment Standards Act* or common law.

The current Severance Bylaw contains exclusion that may be broader than intended. Proposed amendments would exclude severance payments if a Member of Council is removed from office through a judicial process or conviction under the *Criminal Code*. This means Members forfeit severance payments for wrongdoing rather than activities that may be considered more innocuous; such as, election to another level of government or moving out of the municipality they represent.

The maximum amount of remuneration payable under the Severance Bylaw is within the range of comparable local municipal bylaws.

For more information on this report, please contact Christopher Raynor, Regional Clerk on 1-877-464-9675 ext. 71300. Accessible formats or communication supports are available upon request.

Recommended by: **Christopher Raynor**
Regional Clerk

Dino Basso
Commissioner of Corporate Services

Approved for Submission: **Bruce Macgregor**
Chief Administrative Officer

February 28, 2020
Attachments (1)
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