



City of
Richmond

Memorandum
Human Resources

To: Mayor and Councillors
From: Bruce Clow
Director, Human Resources
Re: Council Remuneration

Date: December 19, 2018
File: 05-1800-03/2018-Vol 01

Origin

Mayor Brodie has requested staff provide legal and technical guidance with respect to the City's plan to administer Council's adjustments as a result of the termination of the 1/3 non-taxable component of their remuneration effective January 1, 2019, and any potential impacts arising from a motion that may be put before Council on a Special Council meeting on December 19, 2018 on the same topic.

Background

The Elected Official's remuneration program, which was established in 2006 with the assistance of an external task-force of citizens and members of the business community and guided by an external professional compensation consultant, was designed to be administered on the basis of the following principles:

- Key components of remuneration, including base rate, are determined by external market data acquired from a specified comparator group and maintained at the 75th percentile;
- Annual increases will be implemented at the rate of increase of the Vancouver Consumer Price Index (CPI);
- External market surveys will be conducted on a regular basis (ideally every two to three years) and if possible during the final year of the term of the incumbent Council; and
- The Elected Officials remuneration plan will be administered on the basis of relevant and current market data without involvement or participation by incumbent Elected Officials.

The purpose of the external task force of citizens and an independent compensation consultant was to fix an issue around Elected Officials remuneration. The goal was to bring more rigour, transparency and objectivity to the process by which Elected Officials remuneration is determined without the involvement of Elected Officials who would receive the benefit. The process that was established is considered best practice and is a very effective system that clearly defines a specific peer group, market positioning and how salary adjustments are determined and administered.

Emerging Issue

Many Elected Officials in Canada receive 1/3 of their remuneration as non-taxable earnings. The Federal Government will terminate this tax exemption effective January 1, 2019.

Legal Perspective

While the Mayor and Councillors are elected every 4 years as opposed to being appointed, they are legally deemed to be employees of the City. This is validated by the fact that they receive a T4 and are assessed by the Canada Revenue Agency (CRA) for employment income. In order to clarify, staff consulted with professional Legal Counsel.

Elected Officials receive a prescribed rate of pay, prescribed benefits and have income tax deducted from their pay and remitted. They receive a T4 outlining their remuneration.

Historically, the current compensation philosophy for Elected Officials and the process to determine the level of remuneration, which are both considered best practice, were determined by an independent Committee and compensation consultant dating back to 2006 and 1992 respectively. This philosophy includes indexing the annual adjustment to the Vancouver CPI, and a periodic market adjustment if warranted. A portion of the remuneration (1/3) has been tax exempt by CRA. CRA has now rescinded the tax-free portion.

In an employment Law context, this change to a material component of the employee/employer "contract" (remuneration) through no fault of the Employee would be addressed by an effort to "keep the Employee whole". If the Employer were to unilaterally change a material term or condition of the employee/employee contract, it would give rise to a "constructive dismissal". In this context, the Employment contract is between each employee and the employer; it is not a group contract. In this instance, there has been an established range and change process. If the employer decides to take no action (in view of the 1/3 tax exemption ending), all members of Council will experience a reduction in take home pay. An Elected Official could reasonably expect to be paid at least what they were paid in the prior year and in accordance with the established process to determine Elected Officials compensation. To this end, they could also assert that the doctrine of detrimental reliance applies (a reliance on facts or assertions to their detriment). To act in a fashion other than one in which the employee remains whole could create legal issues. Whether the situation at hand is seen as "detrimental reliance" or "constructive dismissal", the remedies would largely be the same. An employer cannot unilaterally change an employee's remuneration that can pose material hardship on an employee. Solutions proposed by staff are intended to address this.

Technical Perspective: HR / Compensation and Proposed Remedy

Based on regular employment and compensation practices and the specific nature of the change imposed by the Federal Government, it is appropriate that the City ensure that the net value of remuneration of Elected Officials remain whole, effective 2019 onwards (*Scenario 2, Attachment 1*). The purpose of the change in Federal Government income tax regulations is to conclude a long practiced subsidy by the Federal Government of municipal governance costs, as opposed to, it being an attempt to regulate the level of remuneration provided to local government Elected Officials.

In order to achieve the "remain whole" objective, Elected Officials' gross remuneration will be increased until the 2019 net remuneration is equal to the value of their 2019 net remuneration if the 1/3 non-taxable component of employment earnings had remained in place.

Rationale for Proposed Remedy

Following are key points of the proposed adjustment:

- Justification – A change has been imposed by a senior-level government that will have a significant impact on local government Elected Officials' compensation. The purpose of this change is to reduce their costs, as opposed to addressing a need to correct or address any real issue concerning the remuneration provided to local government Elected Officials. Majority of municipalities surveyed are adjusting their Council remuneration to keep them whole effective January 1, 2019 (*Attachment 2*). It would be prudent for the City of Richmond to align with the broader local market and keep Elected Officials whole effective 2019, while others are making the salary adjustments rather than delay this into the future when the City's Council rates have fallen significantly behind the market.
- Elected Officials do not realize a net pay increase through the proposed corrective measures.
- As public sector remuneration is established primarily on the basis of their external comparator group and the basis for acceptance is directly related to local market position and the awarding of fair and equitable rates, most if not all municipalities will eventually have to adjust Elected Officials remuneration in response to market pressures.
- Implementing the needed adjustment in incremental increases over an extended period of time (*Scenario 3, Attachment 1*) will not have any impact on the total cost if the principle is to keep them whole (i.e. incorporating retro payments over time). The significant downside and risk factor of this approach is that year over year adjustments become noticeably significant (e.g. 6-7% incremental increase per year for the Mayor, and 4% incremental increase each per year for Councillors). An incremental increase approach only postpones the liability and monies owing into the future years creating significant retro payouts. The cost of Scenario 2 (Keep them whole effective 2019) and Scenario 3 (Keep them whole but with incremental increases and retro payments) is exactly the same. The main difference is that Scenario 3 results in significant annual increases whereas Scenario 2 makes the proper adjustment once, at the same time as other municipalities that are making the change to keep them whole.
- Implementing incremental adjustments until 2024 when Elected Officials reach a point where they are kept whole without retroactive adjustments (*Scenario 4, Attachment 1*) results in less cost than keeping them whole effective 2019. However, incremental increases will still result in significant annual increases for several years.
- Implementing no change and adjusting only by the Vancouver CPI each year (*Scenario 1, Attachment 1*) results in an approximate total annual net income loss of \$21,000 for the Mayor (i.e. 16% reduction in net income), and \$7,500 for each Councillor (i.e., 11% reduction in net income).
- Lessons learned include having to play catch-up with the market on Elected Officials' remuneration if it is allowed to fall behind can be increasingly more difficult and challenging to administer as more time elapses. This was one of the factors which prompted the 1992 Task Force and 2006 Independent Panel to recommend the program and a process which are presently in place and which were designed deliberately not having the sitting Council involved in determining its remuneration. To have a defensible and objective process in place to administer Elected Officials' remuneration protects the plan and ensures alignment with other municipalities and fairness.



Bruce Clow
Director, Human Resources

Mayor	Scenario 1			Scenario 2		Scenario 3		Scenario 4		
	No Adjustment (CPI Increase only)	Net Income Loss	% of Net Income Loss	Keep Whole	YoY Increase %	Keep Whole with Retro Adjustments	YoY Increase %	Proper Level by 2024 No Retro Adjustments	YoY Increase %	Net Income Loss
2019	\$ 155,182	\$ 21,308	16.6%	\$ 194,496	28.7%	\$ 155,182	2.7%	\$ 155,182	2.7%	\$ 21,308
2020	\$ 157,711	\$ 21,656	16.6%	\$ 197,666	1.6%	\$ 171,630	10.6%	\$ 166,320	7.2%	\$ 16,990
2021	\$ 160,282	\$ 22,008	16.6%	\$ 200,888	1.6%	\$ 189,822	10.6%	\$ 177,458	6.7%	\$ 12,699
2022	\$ 162,895	\$ 22,367	16.6%	\$ 204,162	1.6%	\$ 209,942	10.6%	\$ 188,596	6.3%	\$ 8,437
2023	\$ 165,550	\$ 22,731	16.6%	\$ 207,490	1.6%	\$ 232,194	10.6%	\$ 199,734	5.9%	\$ 4,204
2024	\$ 168,248	\$ 23,102	16.6%	\$ 210,872	1.6%	\$ 256,805	10.6%	\$ 210,872	5.6%	\$ -
Total over 6 years	\$ 969,868	\$ 133,172		\$ 1,215,574		\$ 1,215,574		\$ 1,098,162		\$ 63,658
Councilor	Scenario 1			Scenario 2		Scenario 3		Scenario 4		
	No Adjustments (CPI Increase only)	Net Income Loss	% of Net Income Loss	Keep Whole	YoY Increase %	Keep Whole with Retro Adjustments	YoY Increase %	Proper Level by 2024 No Retro Adjustments	YoY Increase %	Net Income Loss
2019	\$ 80,017	\$ 7,847	11.4%	\$ 90,946	16.7%	\$ 80,017	2.7%	\$ 80,017	2.7%	\$ 7,847
2020	\$ 81,321	\$ 7,975	11.4%	\$ 92,428	1.6%	\$ 85,396	6.7%	\$ 83,734	4.6%	\$ 6,242
2021	\$ 82,647	\$ 8,105	11.4%	\$ 93,935	1.6%	\$ 91,137	6.7%	\$ 87,451	4.4%	\$ 4,656
2022	\$ 83,994	\$ 8,237	11.4%	\$ 95,466	1.6%	\$ 97,264	6.7%	\$ 91,168	4.3%	\$ 3,086
2023	\$ 85,363	\$ 8,371	11.4%	\$ 97,022	1.6%	\$ 103,803	6.7%	\$ 94,885	4.1%	\$ 1,534
2024	\$ 86,754	\$ 8,508	11.4%	\$ 98,603	1.6%	\$ 110,782	6.7%	\$ 98,603	3.9%	\$ -
Total per Councilor over 6 years	\$ 500,096	\$ 49,042		\$ 568,400		\$ 568,400		\$ 535,858		\$ 23,365

Assumptions:

CPI of 2.9% was used for 2019 salary adjustments
 CPI of 1.63% was used for 2020 to 2024 salary adjustments based on CPI historical average (2015 to 2018)
 Marginal tax rates of 45.8% for the Mayor and 28.2% for Councilors were used from 2019 to 2024
 Marginal tax rates will remain unchanged from 2019 to 2024

Elected Officials & Elimination of Income Tax Exemption Status Effective
1/1/2019

The following municipalities **have made a decision to keep Council members 'whole'** to account for the removal of 1/3 tax free allowance and impact on remuneration (net pay):

- Coquitlam
- Port Coquitlam
- Capital Regional District
- Mission
- Langley (City)
- Lions Bay
- Maple Ridge
- District of North Vancouver
- Kelowna
- Langley (Township)
- Port Moody

The following **will be recommending keeping them 'whole'**:

- Burnaby (to be presented to Council in January 2019)

The following have decided **not to adjust remuneration to keep them 'whole'**:

- Surrey

The following indicate that **no formal decision has been made yet**:

- New Westminster (did not disclose what their recommendation will be)
- Delta

Waiting for a response from the following:

- Abbotsford
- Chilliwack
- West Vancouver
- White Rock

Note: Municipalities in red font represent comparators for determining Elected Officials' remuneration at Richmond.