

AMENDMENT TO EXEMPT STAFF POLICY- OVERTIME

EXECUTIVE SUMMARY

This report outlines options for Council to consider with respect to compensating Managers who are required to work overtime.

ADMINISTRATION RECOMMENDATION(S)

1. That the Priorities and Finance Committee (PFC) recommends that Council receive this report for information.
2. Direct that the report and attachments 1 and 2 remain confidential pursuant to Section 24(1)(d) of the Freedom of Information and Protection of Privacy Act until Council rises and reports. Attachment 3 to remain confidential pursuant to Section 24(1)(d) of the Freedom of Information and Protection of Privacy Act until changes to the Exempt Staff Policy-Overtime have been implemented.

RECOMMENDATION OF THE PRIORITIES AND FINANCE COMMITTEE, DATED 2014 MAY 06:

That Council:

1. Approve the Administration Recommendations contained in Report PFC2014-0241; and
2. Direct that the Report and Attachments 1 and 2 remain confidential pursuant to Section 24(1)(d) of the *Freedom of Information and Protection of Privacy Act* until Council rises and reports. Attachment 3 to remain confidential pursuant to Section 24(1)(d) of the *Freedom of Information and Protection of Privacy Act* until changes to the Exempt Staff Policy-Overtime have been implemented.

PREVIOUS COUNCIL DIRECTION / POLICY

At the 2013 November 25-27 Special Meeting of Council following a discussion of Report C2013-0668, Council directed Administration to review management remuneration policies, with the goal of removing overtime payments for Managers, and report back through the Priorities and Finance Committee (PFC) no later than the end of Q1 2014 with options. Further, that a moratorium be placed on all Level 1-3 management (City Manager, General Managers, and Directors) overtime payments, effective 2014 January, until the report comes to PFC.

BACKGROUND

At the Special Meeting of Council in November 2013, a discussion arose whether it was appropriate for Managers to receive overtime payments. Administration was asked to conduct further research and report to PFC with the intent of removing overtime payments for Managers, as well as discussing options. A moratorium, effective January 2014 was placed on overtime payments for The City Manager, General Managers, and Directors.

During the discussion it appeared that Council's concern with overtime payments was directed at employees who also receive variable pay (i.e. City Manager, General Managers, and Directors) but the notice of motion referred to all Managers. At the April 22 meeting of the Administrative Leadership Team, Administration approved a change to the Exempt Staff Policy-

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Overtime, to remove the option for overtime payments for The City Manager, General Managers, and Directors. The scope of the overtime provision in the policy still applies to exempt staff below the Director level. This group is not eligible for variable pay and is the focus of this report.

The City Manager currently has the authority, under Bylaw No.42M2004, to determine salaries, working conditions, benefits, hours of employment and all circumstances of employment with all City personnel who are not represented by a bargaining agent. Exempt employees are those employees who are not covered by a collective bargaining agreement. The purpose of the Exempt Staff Policy (HR-LR-006) ('the Policy') is to document specific policies applied by The City to its exempt employees. As a result, all exempt employees are governed by the terms of the Policy, and eligible for overtime, if prior approval is provided by the Supervisor. The Policy is part of the employment contract that The City has with each exempt employee and the overtime provisions are terms and condition of employment.

The Exempt Staff Policy recognizes that the nature of the work in an exempt position may require an employee to perform work outside of his/her regularly scheduled hours (such as early arrival and late departure). These additional hours are not to be considered as compensable overtime (Section (2.01 (3))). In certain circumstances, exempt employees may be eligible for overtime. For full-time staff, overtime is defined as those hours an employee is assigned to work over and above their standard hours of work (Section 2.02 (1)). It is clear from a review of the Policy that payment of overtime is not expected to be a usual occurrence.

Before assigning overtime work, other options are expected to be explored. Overtime is to be actively managed and, if required, must be pre-approved by the Supervisor.

Section 2.02 of the Policy states: Management recognizes that where overtime is necessary, exempt employees must be compensated for it, but that it is not in the best interest of either the civic service or employee wellness that overtime be performed on a regular basis. Therefore, overtime must be actively managed.

Section 2.02 (2) states: All overtime for exempt employees must be pre-authorized by the direct supervisor. The following are options that may be considered before assigning overtime work to exempt employees:

- Re-arrange the work week;
- Restructure hours, i.e., shifts, weekends;
- Re-prioritize assignments - eliminate low priority projects;
- Hire additional staff;
- Contract-out projects; and
- Implement or remove a compressed work week.

There are further requirements under the Policy to ensure that the payment of overtime is managed. For example, overtime may be paid out or banked. If it is banked it must be used by the end of the calendar year following that in which it was banked, or it will be paid out thus avoiding ongoing liability. If an employee should work in excess of 100 hours in a year, the name of that employee, a summary of the hours worked and the reasons for it shall be forwarded to the appropriate General Manager for review.

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INVESTIGATION: ALTERNATIVES AND ANALYSIS

Investigation:

The Employment Standards Code and Regulations precludes certain employees from claiming overtime. Employees employed in a managerial, supervisory or confidential capacities as well as professionals, including lawyers, engineers, information systems professionals, accountants, are all considered ineligible for overtime under the code (attachment 1). Similar provisions have existed in all provinces and have existed for many years. There has been an expectation that a Manager and/or a professional earning a salary should not be entitled to overtime and this view is what is reflected in existing legislation.

Many organizations have moved away from this position and are prepared to recognize the performance of additional work by Managers in some fashion. Employment Standards legislation provides for minimum entitlements only and better terms and conditions of employment are routinely offered to employees. The payment of overtime or some other form of compensation such as lieu time or additional days off to recognize additional work performed over and above a regular work schedule is common. As a result, exempt employees of The City are currently eligible for overtime pursuant to the provisions of the Policy.

There are reasons for paying overtime to exempt employees such as operational reasons or in extenuating circumstances. Currently the largest amount of exempt employee overtime incurred is at the Supervisory and Non-Supervisory level. For the period 2011-2013 Managers below the Director level have not had significant amounts of overtime paid out or banked and only a very small group of Managers have claimed overtime in the last three years.

If overtime is removed other means to compensate Managers for extraordinary or prolonged efforts required above and beyond a regular work schedule would be required. Overtime is the only mechanism to do so, as Managers are not eligible for variable pay and the Recognition and Rewards program is not designed to compensate for overtime.

Human Resources conducted a search in Q4 of 2013 of overtime policies for various public sector organizations in Canada. Exempt employee policies were collected from 29 Canadian municipalities, provincial governments and other public sector organizations.

A summary of the findings establishes Canadian public sector organizations vary on how they deal with the issue of exempt overtime. The findings are:

- Some organizations do not pay any of their exempt employees overtime while others range from paying straight time to 1.5 times and 2 times overtime for working on a statutory holiday.
- Some policies limit overtime to certain exempt employees, typically based on either their position on the salary grid or if they manage employees. Most of these organizations limit paid overtime to those exempt employees that do not manage staff, or are below the Manager level.
- Lieu time is common for all exempt employees (including managers and above), where overtime is allowed to be banked at a 1:1 rate to some set limit, or granting an average of 5 lieu days per year to all exempt employees.

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Options:

The following options could be considered regarding overtime provisions in the Exempt Staff Policy:

	Option	Rationale	Pros	Cons
1.	Status quo	There is no apparent problem to be solved given the small amount of overtime claimed by Managers.	Avoid possible risks stated below.	Does not meet Council's goal of removal of overtime payments for Managers.
2.	Managers (L4) are not eligible for overtime	In some organizations Managers are not eligible for overtime.	Similar to some other Canadian public sector organizations.	May lead to granting of time off in lieu either officially or unofficially. Inequity if Managers are ineligible to claim overtime, but other comparable professionals at The City can.
3.	Provide Managers (L4) up to five days with pay in lieu of overtime	Recognizes the extra hours' Managers incur throughout the year.	Aligns with some Canadian public sector organizations.	It may lead to an increase in unauthorized vacation banks. There is a cost of approximately \$700,000 associated with this option. Monitoring will be required to ensure the days are managed and taken.

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Stakeholder Engagement, Research and Communication

N/A

Strategic Alignment

This report aligns to Council's Fiscal Plan priority area to, "Maintain The City of Calgary as an employer of choice, focusing on employee career development and wellness throughout the organization" and with the Sustainability 2020 Direction for "The City of Calgary's competitive offerings and employee experience enables the attraction and hire of qualified applicants from all segments of the community. This workforce is skilled, engaged and productive in the delivery and continuity of quality and efficient public services."

Social, Environmental, Economic (External)

N/A

Financial Capacity

Current and Future Operating Budget:

N/A

Current and Future Capital Budget:

N/A

Risk Assessment

There are a number of potential risks:

1. There is an obligation to consult with The City of Calgary Society of Professional Engineers and The City of Calgary Administrative, Professional and Technical Employees Association and the Senior Executive Association when revisions to the Policy are proposed or contemplated by Administration. Failure to consult or to allow their input on this issue will result in a deterioration of The City's relationship with these groups.
2. There is a possibility that removing overtime entitlement for Managers may have an impact on our recruitment/retention efforts for exempt leadership positions. External candidates may deem The City not to be an employer of choice given that there is no additional compensation or recognition for extra hours worked in extraordinary circumstances. Internal exempt employees may find external organizations that pay overtime and/or bonuses to be a more attractive employment option.
3. Despite the fact that their overtime payments are low, exempt employees may become reluctant to apply for management positions as they can earn as much or more in their current role as they are eligible for overtime.
4. Elimination of payment of overtime for Managers, even in situations that clearly require additional effort above and beyond what is usually expected of a professional, could lead to decreased morale. A further inequity is evident when the exclusion does not apply to professionals at the same level at The City who are not managing employees such as Lawyers and Engineers.

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See Attachment 3 for the Legal and Labour Relations implications.

REASON(S) FOR RECOMMENDATION(S):

This report is for information only.

ATTACHMENT(S)

1. Province of Alberta- Employment Standards Code (Relevant Provisions)
2. Exempt Staff Policy- 2.02 Overtime (HR-LR-006)
3. Legal and Labour Relations Implications

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