

Coordinating Committee of the Councillors Office Report to  
Combined Meeting of Council  
2018 July 30

ISC: UNRESTRICTED  
C2018-0949

## Parental Leave Bylaw

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### EXECUTIVE SUMMARY

The *Municipal Government Act* was recently amended to empower a municipal council to establish by bylaw maternity or parental leave for Councillors prior to, or after, the birth or adoption of a child. This report outlines the provisions of the proposed parental leave bylaw.

### COMMITTEE RECOMMENDATIONS:

The Committee recommends that Council:

1. Give three readings to proposed Bylaw Number 38M2018 to establish maternity or parental leave for Members of Council.
2. Direct that the Bylaw be referred for review to the next Council Compensation Review Committee when that committee is established.

### PREVIOUS COUNCIL DIRECTION / POLICY

On February 26, 2018, Council directed **Administration (Human Resources)** to prepare a report outlining the provisions of a new parental leave bylaw for Councillors in accordance with section 144.1 of the *Municipal Government Act*, RSA 2000, Chapter M-26. Pursuant to the direction of Council, the bylaw must address:

1. The duration of leave Councillors are entitled to; and
2. Representation of constituents during the leave and how duties of the Councillor will be fulfilled during the leave; and
3. Compensation during leave; and
4. Benefits during leave and payment of applicable benefits premiums; and
5. The process to request leave, including providing notice of a proposed leave; and
6. The approving authority for a requested leave, if any; and
7. Any other aspect the CCCO considers appropriate.

The proposed Bylaw is to be presented to Council through a report of the Coordinating Committee of the Office of the Councillors ("CCCO") no later than Q2 2018.

### BACKGROUND

Amendments to the *Municipal Government Act* were proclaimed into force on October 26, 2017 which allow Alberta municipalities to create a bylaw to establish whether councillors (which by definition includes the Mayor) are entitled to take leave prior to or after the birth of a child. Pursuant to Section 144.4(2), if a bylaw is created by a municipality which allows such leave, it must contain provisions regarding the length of the leave and the terms and conditions of the leave entitlement and address how the municipality will continue to be represented during the periods of leave.

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The City of Edmonton recently passed a parental leave bylaw. The Edmonton bylaw provides for 100% of salary for an initial period of leave which is then followed by a sliding scale of pay, depending on how much of the elected official's role they are able to fulfill on a weekly basis. The maximum period of leave is 26 weeks (6 months). A summary of the provisions of the Edmonton bylaw are attached to this report as Attachment 2.

A City of Calgary employee who takes a maternity leave is eligible for payment, for some portion of their leave, under The City's short-term benefit programs. Employees on both maternity leave and parental leave are, subject to the federal government guidelines, eligible for Employment Insurance payments.

Members of Council do not have a Sickness and Accident plan nor do they qualify for Employment Insurance benefits.

### INVESTIGATION: ALTERNATIVES AND ANALYSIS

Administration has considered two alternatives. The first alternative would be to draft a bylaw that completely mirrors the model established in the Edmonton bylaw. The Edmonton bylaw incorporates the requirements under section 144.1(2) (b) of the Municipal Government Act as well as those directed by Council. These elements include:

1. A defined length of leave and the compensation payable during the leave;
2. A requirement for prior, written notice of the intent to take leave;
3. A written commitment for how a Councillor's constituents will be represented for the duration of the leave;
4. A written agreement by a Councillor who is assuming a responsibility to provide representation for constituents whose Councillor is on leave; and
5. A process to make the written agreements outlined in items 3 and 4 available to the public.

In Administration's view, the Edmonton bylaw appropriately addresses nearly all of the requirements listed above. The Edmonton bylaw contains elements that specifically address both the requirements of the *Municipal Government Act* and reflect the unique position of City Councillors as compared to regular municipal employees. Accordingly, the proposed City Bylaw has been drafted to closely mirror the Edmonton Bylaw's incorporation of the above requirements, with some exceptions, outlined below.

One aspect of the Edmonton bylaw that Administration does not recommend adopting is its compensation model. The compensation model established in the Edmonton bylaw is complex. A Councillor is paid at 100% of their full remuneration for the first 10 weeks of their leave. After the first 10 weeks, a Councillor is paid in accordance with a variable scale of their full remuneration (ranging from 0 to 100%) based on the duties they are able to undertake. A calculation of what percentage of duties the Councillor has done is undertaken on a weekly basis. There is no differentiation between a leave provided to a Councillor who has given birth and that given to an adoptive parent or to a parent who did not give birth.

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In the estimation of Administration, this remuneration model is problematic. In addition to the fact that it is inherently complex, it is more generous than what is currently provided by The City of Calgary to its employees.

The City is currently engaged in collective bargaining with the majority of our unions and associations. Maternity and parental leave provisions are contained in virtually all The City's collective agreements and many of the unions and associations have active proposals on the table to enhance their entitlements.

In consideration of these issues, Administration has developed a second alternative which, as much as is practicable, provides elected officials with maternity or parental leaves which are comparable to what the majority of City employees receive.

Moreover, the Edmonton bylaw does not distinguish between maternity and parental leave. At The City, an important distinction is made between maternity leave, given to an employee who has given birth, and parental leave, which is given to either an adoptive parent or the parent who did not give birth. The distinctions are as follows:

### Maternity Leave

- Maternity leave is available only to birth mothers for a period of up to 16 weeks.
- An employee on maternity leave is eligible for Employment Insurance and, for an initial 6 to 8-week period, a health-related 'top-up' under The City's Sickness and Accident plans.
- The duration of the health-related 'top-up' is either 6 or 8 weeks, and allows birth mothers to recover from giving birth (the longer period of 8 weeks applies when the birth occurs by caesarian section).
- By combining the Employment Insurance and Sickness and Accident payments, birth mothers will receive 90% of their regular take home pay.
- This is consistent with what an employee on Sickness and Accident benefits for any other health-related reason would earn. Once the health-related portion is over, birth mothers receive only Employment Insurance payments for the balance of their maternity leave.

### Parental Leave

- Parental leave is available to an adoptive parent, a parent who did not give birth, or birth mothers whose maternity leave has concluded.
- There is no "health-related portion" for a parental leave. While on parental leave, subject to federal government eligibility criteria, an employee is eligible for 35 weeks of Employment Insurance, paid at 55% of the employee's salary up to a pre-determined maximum (currently set by the federal government at \$547 per week).
- An extended parental leave has recently been introduced for a total of 61 weeks. In this extended parental leave, an employee can spread their EI benefits out over the longer period and be paid at 33% of their salary up to a pre-determined maximum (currently set by the federal government at \$328 per week).

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City employees, whether on maternity leave or parental leave, retain their service and vacation entitlements as if they were working throughout the period of their leave. The employee has the option of prepaying their share of employee benefit premiums for the period of their leave, although it should be noted that birth mothers are not required to pay benefit premiums for the health-related portion of their leave.

To meet Council's objective of establishing a Bylaw which gives Members of Council access to a leave of absence prior to, or after, the birth or adoption of a child, a plan comparable to that available to City employees can be structured.

The Bylaw would be unique to The City of Calgary in that it would distinguish between maternity leave and parental leave. Maternity leave would be available only to a member of Council who gives birth. Parental leave could be taken by an adoptive parent, a parent who has not given birth, or birth mothers once the maternity leave has ended.

If the Bylaw is to replicate the same entitlements of a City employee who has given birth, a member of Council who has given birth would receive 90% of their take home pay for a period of 6 to 8 weeks. However, there is no short-term sickness and accident plan for members of Council. In the absence of a short-term sickness and accident plan, and pursuant to current practice, a member of Council who is ill will continue to receive their regular salary.

It could be argued that it is discriminatory to pay a Member of Council who is recovering from childbirth at 90% of their regular pay when a Member of Council absent from work for any other health-related reason receives 100% of their salary.

For that reason, a plan for Members of Council should provide for birth mothers to receive 100% of their salary for the first 6 or 8 weeks following the birth of their child. At the conclusion of this 6 to 8-week period, they can transition onto a parental leave.

A Member of Council does not pay Employment Insurance deductions and is not entitled to Employment Insurance benefits. Notwithstanding that, a Member of Council who takes a parental leave could be paid the salary equivalent of the pre-determined maximum (currently set by the federal government at \$547 per week) for the duration of their parental leave.

Notwithstanding the fact a City employee may take a prolonged maternity and/or parental leave that extends to 61 weeks, it can be argued that Members of Council are unlikely to opt for an extended leave given the nature of their role.

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The Edmonton bylaw has established its maximum period of leave at 26 weeks. In looking at the practice in both the provincial and federal legislatures, it appears that sitting provincial MLAs and federal MPs who give birth return to work within a matter of weeks.

In keeping with these precedents, and in the absence of extenuating circumstances, Administration recommends that the maximum period of parental or combined maternity and parental leave also be set at 26 weeks (6 months).

Finally, in the same fashion as a City employee can choose to pre-pay their pension and benefit premiums, a Member of Council whose leave exceeds 30 consecutive days should be eligible to pre-pay their share of any applicable benefits. If on maternity leave, the Member of Council should pay their share of any applicable benefits for the period of leave which falls outside the health-related portion of 6 to 8 weeks.

As mentioned above, the City of Calgary could replicate the Edmonton bylaw; however, if the City of Calgary were to replicate the Edmonton bylaw then it would result in elected officials being paid quite differently from how City of Calgary employees are paid when on either maternity or parental leave.

To avoid that outcome and based on our analysis, it is the recommendation of Administration that the second alternative (to closely replicate the compensation of a City employee) form the basis for a maternity and parental leave policy for Members of Council.

Administration has drafted a proposed Bylaw, which, as closely as possible, replicates how a City employee is paid during a maternity or parental leave. It also addresses the issues of pension and benefit contributions during a period of leave. The proposed Bylaw is attached to this report as Attachment 1.

### **Stakeholder Engagement, Research and Communication**

Administration has undertaken a scan of maternity and parental leave policies and practices at other levels of government.

It appears the federal government does not have a formal maternity leave policy. Based on media reports, a Member of Parliament who gives birth is eligible for 21 days of medical leave, and any further leave is an individual arrangement.

It further appears there are other options available for a Member of Parliament. Minister Karina Gould gave birth in March 2018 and media reports indicate that in Minister Gould's case another cabinet minister had taken on her portfolio on an interim basis.

At the provincial government, media reports with respect to the recent pregnancy of Cabinet Minister Stephanie McLean indicate that Members of the Legislative Assembly are not entitled to maternity leave. The rules of the Legislature allow for an MLA to miss 10 sitting days due to

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illness, bereavement or public duties. Following that, the MLA is docked \$100 per day for non-attendance.

Upon discussion, CCCO instructed Administration to draft this Bylaw as an interim measure pending review by the Council Compensation Review Committee, once that Committee is established later in the current election term. The Council Compensation Review Committee will have the opportunity to review the Bylaw and determine whether any updates or changes are necessary.

### **Strategic Alignment**

The recommended strategy aligns the entitlement of a Member of Council as closely as practicable with the entitlements of the majority of City employees who take a maternity leave or parental leave.

Although payment at full salary for a Member of Council who has given birth is more generous than the 90% paid to City employees who give birth, this is necessary to align the Member of Council on maternity leave with the current treatment of a Member of Council who is absent for any other health-related reason.

### **Social, Environmental, Economic (External)**

#### **Financial Capacity**

##### ***Current and Future Operating Budget:***

The proposed Bylaw would result in savings to the salary budget for Members of Council.

Employees on maternity leave would be paid at 100% of their base salary for 6 to 8 weeks. This would have no financial impact on The City. However, In the event that a Member of Council takes a parental leave, their weekly salary would be reduced to the maximum weekly earnings payable under Employment Insurance. In 2018, that figure is \$547 per week.

##### ***Current and Future Capital Budget:***

None.

#### **Risk Assessment**

The proposed Bylaw would provide Members of Council with access to maternity and parental leave while, as closely as possible, replicating the maternity and paternity leave provisions applicable to City employees.

To fail to provide access to such a leave risks a narrowing of the pool of Council candidates who are willing to run for election to City Council.

To provide Members of Council with superior entitlements than those available to City employees would be challenging in terms of employee relations, in particular at a time when collective bargaining is actively underway.

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### **REASON(S) FOR RECOMMENDATION(S):**

It is appropriate to develop a “made in Calgary” response to this policy issue. While incorporating many of the positive aspects of The City of Edmonton bylaw, this proposed Bylaw ensures a high degree of equity between Members of Council and the maternity and parental leave provisions which apply to employees of The City of Calgary.

### **ATTACHMENT(S)**

1. Attachment 1 – Proposed Bylaw 38M2018
2. Attachment 2 – Summary of the Edmonton bylaw