To: Chair and Members, Audit and Administration Committee
Outstanding Business Item No. L and Issue: Military Leave for Reservists

From: Glen Peace, City Manager
Prepared by: Helen Hale Tomasik
Executive Director, Human Resources

Telephone: 905-540-5420
Facsimile: 905-546-2340
E-mail: gpeace@hamilton.ca

Date: May 9, 2008
Re: Policy on Military Leave for Reservists (HUR08007) - (City Wide)

Council Direction:

This report responds to a request by City Council that staff review the provisions of the City of Calgary’s Policy on Military Leave for Reservists in comparison to the City of Hamilton’s Policy.

Background:

City Council recently received a communication from the City of Calgary with a request that Hamilton review its policy on military leave “to adequately acknowledge the contribution and demonstrate support for the Canadian military”.

Staff were in the process of updating the City’s policy on military leave to reflect recent amendments to the Employment Standards Act, 2000 (“ESA”) with respect to military leave for reservists.

Council asked staff to submit a report to the Audit and Administration Committee outlining the differences between the draft City of Hamilton policy and the City of Calgary’s policy. This report responds to that request.
(1) The Employment Standards Act, 2000 amendments

The Employment Standards Act, 2000 (ESA) was recently amended to provide for an unpaid, indefinite leave for employees who cannot perform their employment duties because:

a. the employee is deployed to a Canadian Forces operation outside Canada;

b. the employee is deployed to a Canadian Forces operation inside Canada that is or will be providing assistance in dealing with an emergency (legislatively defined) or its aftermath; or

c. in such other circumstances as the Provincial Government may prescribe by regulation (no such circumstances yet prescribed).

Participation in pre-deployment and post-deployment activities in connection with the deployment to a Canadian Forces operation outside Canada are also considered deployment for the purposes of leave entitlement (termed “connected to deployment” throughout this report) under the ESA. Leaves for training or other military duties unconnected to deployment are not covered by the ESA.

If the employee requires a leave for deployment or connected to deployment, the employer does not have discretion over whether or not to approve the leave as long as the conditions of the ESA have been met, including:

1. The reservist must have been employed for at least six consecutive months in order to be eligible and must provide “reasonable” notice of the leave in writing, either prior to the leave or as soon as possible after commencing the leave.

2. The employee is permanent, temporary, or on contract (the legislation does not cover casual employees, such as seasonal workers or on-call staff).

The employer is not responsible to maintain pay or benefits, including pension and life insurance contributions, during the leave. The employee’s seniority and length of service credits continue to accrue during the leave; however, the employee is not entitled to accrue vacation time.

Upon the reservist’s return from leave, the employer is required to reinstate the reservist to the same position he/she held prior to the leave, if it still exists, or to a comparable position, if it does not. If no position is available, employment would be terminated or the employee would be laid off in accordance with the employer’s policies or in accordance with the collective agreement governing the employee.

(2) City of Hamilton’s Policy (Draft)

Hamilton’s Military Leave Policy was last updated in August 2007. Amendments to the ESA were enacted in December 2007 and staff commenced a review of the policy with a view to complying with the new ESA amendments. Hamilton’s new draft policy
essentially mirrors the terms of the ESA in circumstances involving deployment to operations, with the following enhancements:

1. If the employee is involved in deployment or activities connected to deployment, the employee is eligible for an indefinite leave with “top-up” of his/her military pay to the equivalent of his/her bi-weekly base salary or wage, excluding premiums such as overtime, shift differential, etc. for the first ten (10) working days of military service in a calendar year. Essentially, the employee is paid full base salary for the first ten working days of service and remits his/her military salary for the equivalent period of time back to the City.

2. In circumstances not involving operational deployment or connected to deployment, and therefore not covered by the ESA, an employee is eligible to apply for an unpaid leave of absence of up to six months, with approval at the discretion of the General Manager, or as provided in the applicable collective agreement. This would apply to leaves for military training or other duties (i.e. not connected with deployment). The employee would be eligible for full base salary for the first ten (10) working days of the leave and would be required to remit his/her military salary for the equivalent period of time back to the City.

The new draft policy for the City of Hamilton that provides for a greater benefit than the employee would otherwise have been entitled under the ESA is attached (Appendix A).

(3) The City of Calgary’s Policy

The Province of Alberta does not have legislation governing military leaves.

Calgary’s policy provides for the following for permanent full-time and permanent part-time employees:
   a. “Top-up” of military pay for leaves up to twenty-four (24) months (employee continues on full salary during the leave and remits the military pay to the City);
   b. Harmonization of health and dental benefits for the period of the leave;
   c. Employer’s contribution to pension for the period of the leave;
   d. “Top-up” for the purposes of short-term and long term disability; and
   e. Reimbursement of premiums if the reservist purchases life insurance through the Government of Canada plan for military personnel, to a maximum of 2 times the employee’s salary to the nearest $1,000.

Calgary’s policy covers all military leaves no matter the purpose, including military training activities or duties not connected to deployment.
For other than permanent full-time or permanent part-time employees, the policy provides:
   a. A leave of absence without pay for up to twenty-four (24) months;
   b. Continuation of the employer’s premium cost for health and dental benefits for the period of the leave;
   c. Reimbursement of the employer’s contribution to the employee’s pension plan, up to a period of twelve (12) months, if the employee immediately buys back pensionable service upon return from leave.
A chart comparing the various provisions of Calgary’s Policy, the ESA, and the revised City of Hamilton policy is attached (Appendix B).

(4) Other Ontario Municipalities

Based on the nine Ontario municipalities canvassed, it appears that most have not yet updated their existing military leave policies to reflect the ESA.

Of the nine municipalities, three municipalities allow the employee to continue benefits but the employee must pay the full costs. One municipality pays the employee’s benefit premiums during the first two consecutive months of leave. With respect to pension, four municipalities allow the employee to purchase the leave period as credited service but the employee must pay both the employee’s and the employer’s share of the OMERS contribution.

_______________________
Glen Peace,
City Manager
DRAFT

MILITARY LEAVE POLICY
(Time Away from Work)

POLICY STATEMENT AND PURPOSE

The City of Hamilton desires to support employees who may be called upon to serve in the Canadian Armed Forces as reservists in cases of emergency or war.

This policy outlines the conditions for granting the necessary time off work for active reserve service or for training exercises.

SCOPE

This policy applies to all permanent, temporary, or contract, full-time and part-time employees of the City of Hamilton who have successfully completed their probationary period.

PROVISIONS

Any employee who is called for military reserve service or who is involved in training exercises or other duties may be entitled to a leave of absence. Subject to the terms of this policy, the leave must be for the purpose of active military reserve service, training exercises, or other military duties as they occur.

ACTIVE MILITARY OR RESERVE SERVICE

If the leave is for active reserve service, the employee will be granted an unpaid leave of absence of an indefinite duration. The employee must advise his or her General Manager, in writing, about the leave and the expected duration of the leave, if known, and must provide proof of the request or requirement for military service. Such proof must be in the form of a certificate from an officer of the Canadian Armed Forces.

Active reserve service is defined as:

(a) deployment to a Canadian Forces operation outside of Canada;
(b) deployment to a Canadian Forces operation inside Canada that is or will be providing assistance in dealing with an emergency or its aftermath; or
(c) any other circumstances prescribed by legislation.

The definition of “emergency or its aftermath” will be in accordance with the Employment Standards Act, 2000.

Pre-operational and post-operational activities for the purposes of deployment to a Canadian Forces operation outside of Canada are considered active reserve service for the purposes of this policy.
Employees will be paid their full salary (to the equivalent of their regular bi-weekly base salary or wage, excluding any premiums such as overtime, shift differentials, etc.) for the first ten working days of active reserve service in a calendar year, subject to the employee remitting military pay earned to the City for those first ten working days. The balance of any military leave of absence will be unpaid.

**TRAINING EXERCISES OR OTHER SERVICE**

If the purpose of the leave is to engage in military training exercises or other such military service or duties, the employee may apply for an unpaid leave of absence of up to 6 months or as provided in the applicable collective agreement. Applications for military leave must be made in writing to the General Manager of the employee's department and must be accompanied by proof of the training enrolment or request for military service.

Such leaves are to be approved only by the General Manager of the Department and the Executive Director of Human Resources or his or her designate. Approval for these leaves will be subject to operational requirements and collective agreements.

Employees will be paid their full salary (to the equivalent of their regular bi-weekly base salary or wage, excluding any premiums such as overtime, shift differentials, etc.) for the first ten working days of the leave in a calendar year, subject to the employee remitting military pay earned to the City for those first ten working days. The balance of any military leave of absence will be unpaid.

**TERMS AND CONDITIONS**

Employees will suffer no loss of service credits or seniority during the period of any leave under this policy.

Employees will not be entitled to the following benefits during the leave:

- Health and Dental Insurance
- Basic Life Insurance
- Short Term Disability Coverage
- Long Term Disability Coverage
- Accidental Death and Dismemberment Insurance
- WSIB coverage
- Vacation entitlement

Employees may obtain benefit coverage during the leave through the Department of National Defense and, if available, the Ontario Hospital Insurance Plan.

Employees taking leave will not earn credited service in the OMERS Pension Plan during the leave. Employees, who were enrolled in the OMERS Pension Plan at the start of the leave, who wish to purchase credited service for their leave of absence will be required to pay the City's OMERS contribution and their own contribution.
EMPLOYEE STATUS
ON RETURN TO WORK
A permanent employee returning to work following military leave, is entitled to his/her former position, or, if the position no longer exists, to a comparable position. If neither the former position nor a comparable position is available, the provisions of the Termination of Employment Policy (Non-Union) or the terms of the collective agreement will apply. A temporary or contract employee will only be reinstated if the term of employment has not expired during or at the end of the leave.

LEGISLATION
All other provisions of the Employment Standards Act, 2000, will apply.

APPROVAL
Approved by Senior Management Team (insert date)
### MILITARY LEAVE FOR RESERVISTS – COMPARISON OF POLICIES AND LEGISLATION

<table>
<thead>
<tr>
<th>Provision</th>
<th>Calgary¹</th>
<th>Employment Standards Act, 2000 (Ontario)</th>
<th>Hamilton</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Permanent Full-Time Employee</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Period of Leave</td>
<td>Up to 24 months</td>
<td>Indefinite</td>
<td>Indefinite Post Probationary Period (maximum of six months)</td>
</tr>
<tr>
<td>Eligibility</td>
<td>Post Probationary Period</td>
<td>After Six Months</td>
<td>Post Probationary Period (maximum of six months)</td>
</tr>
<tr>
<td>Purpose of Leave</td>
<td>All purposes</td>
<td>Deployment; Pre- and Post-Deployment Activities</td>
<td>Deployment; Pre- and Post-Deployment Activities²</td>
</tr>
<tr>
<td>Approval</td>
<td>Discretion of City Director</td>
<td>Mandatory Approval</td>
<td>Mandatory Approval</td>
</tr>
<tr>
<td>Paid Leave</td>
<td>24 months (top-up of military pay)</td>
<td>None</td>
<td>10 days full base pay if military pay earned remitted to City</td>
</tr>
<tr>
<td>Health and Dental Benefits</td>
<td>Harmonization</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>Pension</td>
<td>Continued contribution</td>
<td>None</td>
<td>Can buyback service if pay both employee and employer share</td>
</tr>
<tr>
<td>Life Insurance</td>
<td>Paid Premiums to 2x salary to nearest $1,000</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>Vacation</td>
<td>Service and Seniority Accrue but no entitlement to vacation</td>
<td>Service and Seniority Accrue but no entitlement to vacation</td>
<td>Service and Seniority Accrue but no entitlement to vacation</td>
</tr>
<tr>
<td>STD and LTD</td>
<td>Harmonization (top-up)</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>Status at End of Leave</td>
<td>Returned to same position, if still available, otherwise redeployed or laid off</td>
<td>Returned to same position, if available, or comparable position, or laid off/exited</td>
<td>Returned to same position, if available, or comparable position, or laid off/exited in accordance with termination policy or collective agreement</td>
</tr>
</tbody>
</table>

¹ Alberta does not have legislation governing military leave for reservists.

² For other than deployment and pre- and post-deployment activities, the policy provides for up to six months’ leave of absence at the discretion of the General Manager, with the first 10 days of the leave at full base pay if the employee remits his/her military pay earned for the first ten days to the City.
# MILITARY RESERVIST LEAVE – COMPARISON OF POLICIES AND LEGISLATION

<table>
<thead>
<tr>
<th>Provision</th>
<th>Calgary</th>
<th>Employment Standards Act, 2000</th>
<th>Hamilton</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Other than Permanent Full-Time (Temporary, Contract)</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Period of Leave</td>
<td>Up to 24 months</td>
<td>Indefinite</td>
<td>Indefinite</td>
</tr>
<tr>
<td>Eligibility</td>
<td>Post Probationary Period</td>
<td>Must be continuously employed for six months</td>
<td>Post Probationary Period (maximum of six months)</td>
</tr>
<tr>
<td>Purpose of Leave</td>
<td>All purposes</td>
<td>Deployment; Pre- and Post-Deployment Activities</td>
<td>Deployment; Pre- and Post-Deployment Activities³</td>
</tr>
<tr>
<td>Approval</td>
<td>Discretion of City Director</td>
<td>Mandatory Approval</td>
<td>Mandatory Approval</td>
</tr>
<tr>
<td>Pay</td>
<td>Unpaid</td>
<td>None</td>
<td>10 days full base pay if military pay earned remitted to City</td>
</tr>
<tr>
<td>Health and Dental Benefits</td>
<td>Continue employer’s cost</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>Pension</td>
<td>Employer contribution for buyback of service up to 1 year</td>
<td>None</td>
<td>Can buyback service if pay both employee and employer share⁴</td>
</tr>
<tr>
<td>Life Insurance</td>
<td>None</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>Vacation</td>
<td>Service and Seniority Accrue but no entitlement to vacation</td>
<td>Service and Seniority Accrue but no entitlement to vacation</td>
<td>Service and Seniority Accrue but no entitlement to vacation</td>
</tr>
<tr>
<td>STD and LTD</td>
<td>None</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>Status at End of Leave</td>
<td>Returned to same position, if still available, otherwise redeployed or laid off</td>
<td>Only return to position if term has been guaranteed and then only to end of term</td>
<td>Only return to position if term has been guaranteed and then only to end of term</td>
</tr>
</tbody>
</table>

³ For other than deployment and pre- and post-deployment activities, the policy provides for up to six months’ leave of absence at the discretion of the General Manager, with the first 10 days of the leave at full base pay if the employee remits his/her military pay earned for the first ten days to the City.

⁴ Only if already enrolled in OMERS at the time of the leave.