Agenda - Council - June 29, 2005

Report - Standing Policy Committee on Protection and Community Services - June 21, 2005

Item No. 1 Amendments to The Obstructive Solicitation By-law No. 7700/2000 File GF-2

STANDING COMMITTEE RECOMMENDATION:

On June 22, 2005, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Protection and Community Services, as amended, and submits the following to Council:

1. That the amendments to The Obstructive Solicitation By-law No. 7700/2000, as outlined in the administrative report dated June 10, 2005, incorporating the amended Schedule "A" to the By-law, be approved.

2. That the Winnipeg Police Service be directed to prepare a further report comprised of an enforcement plan for The Obstructive Solicitation By-law and recommendations regarding follow-up with the Province, to implement this plan.

3. That the Winnipeg Police Service's report also offer recommendations with respect to community education and outreach regarding obstructive solicitation, and that it specify the additional funding that will be needed to undertake this education and outreach.

4. That the Administration, in consultation with Social Planning Council, be requested to develop a framework plan to deal with the "many social components, related to health, mental health, housing, employment, and substance abuse issues" faced by panhandlers and report back to the appropriate Committee of Council, with the intent that if the Framework Plan is adopted by Council that the City would then approach the Province of Manitoba to enter into discussions on this issue.

5. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

Agenda - Council - June 29, 2005

Report - Standing Policy Committee on Protection and Community Services - June 21, 2005

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On June 22, 2005, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Protection and Community Services, as amended, namely:

- Recommendation 4 be deleted in its entirety and replaced with the following:

  That the Administration, in consultation with Social Planning Council, be requested to develop a Framework Plan to deal with the "many social components, related to health, mental health, housing, employment, and substance abuse issues" faced by panhandlers and report back to the appropriate Committee of Council, with the intent that if the Framework Plan is adopted by Council that the City would then approach the Province of Manitoba to enter into discussions on this issue,

and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On June 21, 2005, the Standing Policy Committee on Protection and Community Services concurred in the administrative recommendation with the following amendments:

- Add the following recommendation:

  That the Community Services Department, working with the Provincial Government, be directed to deal with the "many social components, related to health, mental health, housing, employment, and substance abuse issues" faced by panhandlers by devising a plan of action to address these problems.

- Substitute Schedule "A" in the administrative report for the revised Schedule "A",

and submitted the matter to the Executive Policy Committee and Council.

On June 21, 2005, the Standing Policy Committee on Protection and Community Services also requested the administration to provide a (written) legal opinion on the constitutionality of the proposed amendments to the Obstructive Solicitation By-law No. 7700/2000 for a Special Meeting of the Standing Policy Committee on June 28, 2005.

Report - Standing Policy Committee on Protection and Community Services - June 21, 2005

DECISION MAKING HISTORY (continued):

Further, the Standing Policy Committee considered a revised Schedule "A" submitted by the Chairperson, along with the following submissions from delegations, which have been placed on file in the City Clerk's Department:

- Brian Timmerman, Director of Operations, Exchange District BIZ
- Sid Frankel, Past President, Social Planning Council of Winnipeg
- Harold Dyck, Private Citizen
- Valerie Price, Executive Director, Manitoba Association for Rights and Liberties
- Margot Lavoie, Oblate Justice and Peace Committee

RE: Proposed Amendments to "The Obstructive Solicitation By-Law"

FOR SUBMISSION TO: Standing Policy Committee on Protection and Community Services

ORIGINAL REPORT SIGNED BY: Chief of Police

REPORT DATE: June 10, 2005

RECOMMENDATIONS:

1. That the attached proposed amendments to The Obstructive Solicitation By-Law No. 7700/2000, as outlined in Appendix "A", be considered at a special meeting of the Standing Policy Committee on Protection and Community Services, to be convened for the purpose of obtaining public input and that the Standing Policy Committee on Protection and Community Services recommend to City Council that amendments to the By-law be enacted, based on the results of the meeting.

2. That the Winnipeg Police Service be directed to prepare a further report comprised of an enforcement plan for The Obstructive Solicitation By-Law and recommendations regarding follow-up with the Province, to implement this plan.

3. That the Winnipeg Police Service's report also offer recommendations with respect to community education and outreach regarding obstructive solicitation, and that it specify the additional funding that will be needed to undertake this education and outreach.

Report Summary

Key Issues:

- In the almost five years since the adoption of The Obstructive Solicitation By-Law, No. 7700/2000, concerns have been identified with respect to the by-law. The primary concern is that it does not address solicitation of persons who may reasonably perceive their personal safety to be threatened due to their location on a route or within an area which does not reasonably allow them to avoid the solicitation. The attached proposed amendments to the By-law prohibit solicitation of a "captive audience" - people in confined areas or those who need to be at a location such as a bus stop or ATM for a particular purpose and cannot conveniently leave the area.

- The problem of obstructive solicitation is recognized to be a complex one. The Winnipeg Police Service has identified enforcement issues which warrant the development of an enforcement plan, and, further to that plan, formal follow-up and cooperation with the Province of Manitoba.

- The Winnipeg Police Service has also identified community education and outreach as a priority in addressing this problem. Public awareness of how best to respond is important to improving reporting rates, and on-site response. A variety of partnerships with both community organizations and other levels of government (partnerships such as the ones developed for "Project Breakaway") are needed to ensure that service provision is coordinated and effective.

Implications of the Recommendation(s):

General Implications

☐ None

☒ For the organization overall and/or for other departments

☒ For the community and/or organizations external to the City

☐ Involves a multi-year contract

Comment(s): The proposed amendments to the by-law are intended to address the need to provide members of the community with a sense of personal safety, while respecting the Charter rights of all individuals in society.

Policy implications

☐ No

☒ Yes

Comment(s): The proposed amendments to the by-law are intended to meet a public policy need: to promote personal safety in public places and in places that are open to the public by prohibiting solicitation in locations where individuals may reasonably perceive their personal safety to be threatened due to their location on a route or within an area which does not reasonably allow them to avoid the solicitation. The amendments are intended to address this pressing and substantial safety concern in a manner that is consistent with the spirit of By-Law No. 7700/2000, and which respects the Charter rights of everyone, including the right of everyone to be present, visible, and participating in public places.

The report also proposes the development of a clear enforcement plan, greater intergovernmental cooperation, and a public education and outreach campaign, to address the problem of obstructive solicitation.

Environmental implications

☒ No

☐ Yes

Comment(s):

Human Resources implications

☒ No

☐ Yes

Comment(s):

Financial Implications

☒ Within approved current and/or capital budget

☐ Current and/or capital budget adjustment required

Comment: While no budget adjustments are required for the implementation of the present report, additional funds will be needed to proceed with the public education and outreach campaign to which Recommendation 3 alludes. These costs will be outlined for consideration in a subsequent report.

Report

REASON FOR THE REPORT:

Amendments to by-laws require the approval of City Council.

HISTORY:

On January 26, 1995, Council enacted The Panhandling By-Law, No. 6555/95. It prohibited panhandling:

- after sunset;
- within 10 metres of an automatic teller machine;
- within 10 metres of a bus stop or bus shelter;
- within 10 metres of the entrance to a bank, credit union, trust company or hospital;
- in a transit bus, elevator, or pedestrian walkway;
- from an occupant of a motor vehicle which is parked, stopped at a traffic control signal, or standing temporarily for the purpose of loading or unloading.

The 1995 Panhandling By-Law also prohibited a person from continuing to ask another person for money, or continuing to follow that person, after a negative response had been made.

The 1995 Panhandling By-Law was challenged by the National Anti-Poverty Organization, who contended it violated the rights to freedom of expression and equal protection under the law as well as other rights protected by *The Canadian Charter of Rights and Freedoms*. After engaging in a review of the By-law, including a judge-assisted mediation session, and with the concurrence of NAPO, the City replaced the 1995 Panhandling By-Law with the current Obstructive Solicitation By-Law, No. 7700/2000. The current By-law prohibits soliciting in a manner which causes an obstruction, defined as engaging in any of the following while soliciting:

- obstruct or impede the convenient passage of pedestrian traffic in a street;
- continue to solicit from or follow a pedestrian after that pedestrian has made a negative initial response;
- verbally threaten a pedestrian;
- physically approach a pedestrian as part of a group of three or more persons.

Further to the City's decision to adopt the current Obstructive Solicitation By-Law, the National Anti-Poverty Organization entered into a written agreement with the City that it would not bring a legal challenge to that by-law, provided that the by-law's essential features are not amended by the City in the future.

It has been almost five years since Council adopted the current Obstructive Solicitation By-Law. In the intervening period, there have been several developments which might incline Council to consider amendments to the By-Law.

First, obstructive solicitation has continued to be a concern to the citizens of Winnipeg, since 2000. The Winnipeg Police Service Community Support Unit advises that it has been made aware of many concerns, both from citizens acting in a private capacity, and from persons representing businesses and other organizations. In 2002, a Downtown Business Improvement Zone members' survey found that 84% of its members think that panhandling is a problem in downtown Winnipeg. Similarly, a 2003 community safety survey distributed by the Exchange District Business Improvement Zone rated panhandling as the issue that most needs to be dealt with, in the District.

Second, in recent years, other jurisdictions have proceeded with legislative measures to assist in addressing problems of obstructive solicitation, notably Ontario and British Columbia. Ontario introduced *The Safe Streets Act* in 1999 and British Columbia recently enacted *The Safe Streets*

Act in 2004. These pieces of legislation both prohibit solicitation of a "captive audience": individuals at automatic teller machines and banks, at pay telephones, taxi stands and bus stops, in public transit vehicles, getting in or out of vehicles, and in parking lots.

Third, the law in this area continues to develop. For example, in *Federated Anti-Poverty Groups of B.C. v. Vancouver* (City), in 2001, The British Columbia Supreme Court decided that the City of Vancouver had the authority to enact its By-Law No. 8309, which contains provisions prohibiting the solicitation of a captive audience. In *R. v. Banks*, the Ontario Superior Court of Justice upheld the Ontario Safe Streets legislation as constitutional.

The recent developments in legislation and case law, as well as the community's experiences, provide reasonable and justifiable grounds to expand the current Obstructive Solicitation By-Law to address the pressing and substantial need to ensure that individuals do not perceive their safety to be at risk in public places and places open to the public, while still respecting the Charter rights of all individuals in society.

DISCUSSION:

It is recommended that the City of Winnipeg recognize the need for a comprehensive approach to the problem of obstructive solicitation. It is clearly a complex problem, both in the social issues involved (including poverty, substance abuse, and mental health issues) and in the range of participants who must work together to seek solutions.

While the City is only one participant in this dialogue, it does have its own significant public policy responsibility in this matter. Section 5 of *The City of Winnipeg Charter* states that the City's purposes include maintaining safe and orderly communities and promoting the safety of inhabitants of the city. Section 135 authorizes Council to "pass by-laws respecting people, activities and things in, on, or near public places or places open to the public", and section 136 notes that "the city has the control and management of streets within the city". *Plan Winnipeg: 2020 Vision*, the community's blueprint for the future and a product of extensive community consultations, pledges the City to "promote a safe downtown".

Given these responsibilities and the strong commitment in *Plan Winnipeg* to a safe downtown, the City of Winnipeg (like many other Canadian jurisdictions) has sought to regulate obstructive solicitation. There are several reasons that such efforts are important to the community. Professor Arthur Schafer, in a frequently cited 1998 paper on "the ethics of legislating against panhandling" (Ottawa: Caledon Institute of Social Policy, 1998), identifies several of them. The "broken windows" hypothesis suggests that when low-level disorder in a neighbourhood is ignored, more serious disorder (and crime) is likely to follow. The "city planning" perspective stresses the importance of maintaining orderly streets, if neighbourhoods are to be economically vital and culturally vibrant.

The City of Winnipeg has been given the legislative authority and responsibility to maintain public order and a sense of personal safety without unnecessarily restricting solicitation. The

proposed amendments do not prohibit solicitation but rather seek to regulate solicitation so as to ensure the public's safety is protected. They do so by restricting solicitation in specific locations where an individual would reasonably perceive solicitation to be threatening to personal safety, while limiting as little as possible the right of the soliciting person to self expression.

The amendments to the By-law are consistent with the spirit in which the current Obstructive Solicitation By-Law No. 7700/2000 was drafted and adopted. They set out a limited number of places in which an individual might reasonably feel most vulnerable. These are places where individuals may reasonably perceive their personal safety to be threatened due to their location on a route or within an area which does not reasonably allow them to avoid the solicitation. They include confined spaces or places where a person might well be alone or would otherwise reasonably experience solicitation as threatening or obstructive. The By-law identifies the following such situations:

- at automatic teller machines and banks;
- at public pay telephones;
- at bus stops and in transit buses;
- at taxi stands;
- getting in and out of vehicles, and in parking lots;
- in elevators and enclosed pedestrian walkways
- while seated on an outdoor patio.

In all these instances, persons being solicited are a "captive audience", in that they cannot reasonably avoid the solicitation while going about their business. The proposed amendments to the Obstructive Solicitation By-Law recognize this fact, and seek to regulate solicitation for donations in a limited and proportional way. The amendments seek to respond to community concern, which is frequently expressed to the Winnipeg Police Service, in a way which respects the basic right of all to freedom of expression. Regulation, not prohibition, is the goal.

In addition, the proposed amendments extend the current restriction on impeding or obstructing the convenient passage of pedestrian traffic to include soliciting in a manner that impedes or obstructs vehicular traffic.

The proposed amendments also include several technical amendments to the existing By-law provisions that do not alter their substance.

Attached as Appendix "A" to this Report is a draft copy of the By-law as it would appear if the proposed amendments are enacted by Council.

The City of Winnipeg has also sought to play a constructive role in alleviating the problems posed by obstructive solicitation by working with a number of partners in the community, including the other levels of government, business organizations, and not-for-profit and advocacy organizations. A notable example is "Project Breakaway", in which the Winnipeg Police Service works with representatives of the Winnipeg Fire Paramedic Service, Community Services Department, and Aboriginal organizations, to seek longer-term solutions for individuals at risk.

Recommendation 2 of this report seeks to initiate the preparation of a clear enforcement plan for The Obstructive Solicitation By-Law. The Winnipeg Police Service has noted a problem related to the enforcement of offences under the current Obstructive Solicitation By-Law; the only penalty which presently follows from an infraction is a fine, which is frequently disregarded. This is an issue which can only be addressed with the cooperation of the Province's Department of Justice.

In addition, however, the problem of obstructive solicitation is a problem with many social components, related to health, mental health, housing, employment, and substance abuse issues. Recommendation 3 seeks to initiate both community outreach and education. The first will involve dialogue among front-line professionals to determine avenues of addressing the broader social issues related to obstructive solicitation in a cooperative and effective manner.

Recommendation 3 envisages additional community education with respect to the problem of obstructive solicitation. The Winnipeg Police Service advises that its members are frequently unable to be of assistance, as citizen complaints are received much after the fact. Public education to discourage citizens from giving money to panhandlers, and encouraging citizens to report instances of obstructive solicitation, is one further way in which the problem might be addressed. The Winnipeg Police Service will advise, in a further report, of its specific proposals with respect to Recommendation 2, and the projected costs of Recommendation 3.

It is clear, both from the experience of the City of Winnipeg and other cities across Canada, that no single measure can offer a complete or immediate solution to the problem of obstructive solicitation. This report recommends action in three areas: that the Standing Policy Committee on Protection and Community Services consult with the community on by-law amendments to address public concern in a measured and proportional way; that the Winnipeg Police Service prepare an enforcement plan, to be pursued with the Province; and, that a plan for improved community outreach and education be developed.

A comprehensive approach, which incorporates legal, intergovernmental, and educational elements, is the approach recommended by The City of Winnipeg's front-line service providers.

Financial Impact Statement **Date:** June 2, 2005

Project Name: **First Year of Program** **2005**

Proposed Amendments to "The Obstructive Solicitation By-Law"

	2005	2006	2007	2008	2009
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Grants (Enter Description Here)	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Other - Enter Description Here	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ -	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	-	-	-	-	-
Net Cost/(Benefit)	$ -	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts	-	-	-	-	-
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments:

While no budget adjustments are required for the implementation of the present report, additional funds will be needed to proceed with the public education and outreach campaign to which Recommendation 3 alludes. These costs will be outlined for consideration in a subsequent report.

(Original signed by R. Abeysekera)
Manager of Finance & Administration
Corporate Services Dept.

IN PREPARING THIS REPORT THERE WAS CONSULTATION WITH, AND CONCURRENCE BY:

Legal Services Division

THIS REPORT SUBMITTED BY:

Department The Winnipeg Police Service
Division
Prepared by:
File No.

6022

DRAFT

THE CITY OF WINNIPEG

THE OBSTRUCTIVE SOLICITATION BY-LAW NO. 7700/2000

A By-law of THE CITY OF WINNIPEG to control obstructive solicitation for donations.

WHEREAS people need a safe and civil environment in public places within the City of Winnipeg where residents and visitors may freely engage in the usual activities and enjoyments of the urban milieu;

AND WHEREAS residents and visitors in the City are entitled not to be obstructed while enjoying public places;

THE CITY OF WINNIPEG, in Council assembled, enacts as follows:

Short title

1. This by-law may be cited as "The Obstructive Solicitation By-law".

Definitions

2. In this by-law:

"captive audience" means:

(a) a person who is using, waiting to use, or departing from an automated teller machine, a bank or credit union;
(b) a person who is using, waiting to use, or departing from a public pay telephone;
(c) a person who is waiting at a public transit stop or taxi stand;
(d) a person who is in or on a public transit vehicle;
(e) a person who is in an elevator;
(f) a person who is in an area of the downtown pedestrian walkway system designated in red on the map attached as Schedule A and in the areas designated on the map as future designated walkways as they are constructed and become part of the walkway system;
(g) a person who is in the process of getting in, out of, on or off a vehicle, or who is in a parking lot;
(h) a person who is seated in an outdoor area of a restaurant or bar in which food or beverages are being served.

DRAFT

"cause an obstruction" means:

(a) in the course of solicitation, to obstruct or impede the convenient passage of any pedestrian **or vehicular** traffic in a street;
(b) to continue to solicit from or follow a pedestrian after that person has made a negative initial response to the solicitation;
(c) to threaten, insult or verbally abuse a pedestrian in the course of, **or following a** solicitation;
(d) as a member of a group of three or more persons, to physically approach and solicit from a pedestrian; **or**
(e) to solicit a captive audience.

"solicit" means to ask, whether by spoken, written or printed word, **or gestures**, for donations of money or other things of value for one's self or for any other person, and solicitation has a corresponding meaning;

"street" has the same meaning as in The City of Winnipeg Charter.

Obstructive solicitation prohibited

3. No person shall solicit in a manner which causes an obstruction.

4. (Repealed)

5. The City of Winnipeg By-law No. 6555/95 is hereby repealed.

DONE AND PASSED, in Council assembled, this 20th day of September, 2000.

REVISED SCHEDULE "A"

