Agenda - Council - January 25, 2006

Report - Standing Policy Committee on Protection and Community Services - January 9, 2006

Item No. 1 **Increase in Minimum Fines - City of Winnipeg Noise Control By-law No. 2480/79, Food Service Establishment By-law No. 5160/89, Fire Prevention By-law No. 150/2004, Residential Buildings Fire Safety By-law No. 4304/86**
Files ER-1.2, EH-1.6, GF-5 and EB-1(RBFS)

STANDING COMMITTEE RECOMMENDATION:

On January 18, 2006, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Protection and Community Services and submits the following to Council:

1. That the minimum fines imposed under the City of Winnipeg Noise Control By-law No. 2480/79, Food Service Establishment By-law No. 5160/89, Fire Prevention By-law No. 150/2004, Residential Buildings Fire Safety By-law No. 4304/86, be increased as set out in Appendix "A" to the administrative report dated November 21, 2005.

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

Report - Standing Policy Committee on Protection and Community Services - January 9, 2006

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On January 18, 2006, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Protection and Community Services and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On January 9, 2006, the Standing Policy Committee on Protection and Community Services concurred in the administrative recommendation and submitted the matter to the Executive Policy Committee and Council.

Re: **Increase in Minimum Fines under the Noise Control By-law, the Food Service Establishment By-law, the Fire Prevention By-law and the Residential Buildings Fire Safety By-law.**

For Submission To: **Standing Policy Committee on Protection and Community Services**

Submitted By: **Ursula Goeres**
City Solicitor and Manager of Legal Services

Report Date: **November 21, 2005**

RECOMMENDATION(S):

1. That Council enact the attached By-law, which increases the minimum fines imposed under the City of Winnipeg Noise Control By-law, the Food Service Establishment By-law, the Fire Prevention By-law and the Residential Buildings Fire Safety By-law.

Report Summary

KEY ISSUES:

- The Winnipeg Police Service, the Community Services Environmental Health Services Branch and the Fire Paramedic Service Fire Prevention Branch have identified the need to increase the minimum fines set out in the City of Winnipeg Noise Control By-law, the Food Service Establishment By-law, the Fire Prevention By-law and the Residential Buildings Fire Safety By-law.

- Although judges are authorized by *The Summary Convictions Act* to override minimum fines in some situations, a minimum fine helps to establish the seriousness with which the City regards by-law violations.

IMPLICATIONS OF THE RECOMMENDATION(S):

General Implications

	None
X	For the organization overall and/or for other departments
X	For the community and/or organizations external to the City of Winnipeg
	Involves a multi-year contract
	Comment(s): The attached By-law will increase the minimum fines imposed by the City of Winnipeg Noise Control By-law, the Food Service Establishment By-law, the Fire Prevention By-law and the Residential Buildings Fire Safety By-law.

Policy Implications

X	None
	Yes
	Comment(s):

Environmental Implications

X	None
	Yes
	Comment(s):

Human Resources Implications

X	None
	Yes
	Comment(s):

Financial Implications

X	Within approved current and/or capital budget
	Current and/or capital budget adjustment required
	Comment(s): The minimum fines may result in a marginal increase in the amount of fines received by the City.

REASON FOR THE REPORT:

The Report recommends the enactment of a By-law by Council.

HISTORY:

The City of Winnipeg Noise Control By-law was enacted in 1979. At that time no minimum penalty was imposed. The By-law was amended in 2000 to provide for current minimum penalties as follows:

- First Offence - $50.00
- Second Offence - $100.00
- Third Offence - $150.00

The Food Service Establishment By-law was enacted in 1989 and initially did not provide a minimum penalty for a violation. It was amended by the omnibus Charter Implementation By-law in 2002 to include the following minimum penalties:

- First Offence - $50.00
- Second Offence - $100.00
- Third Offence - $200.00

The Fire Prevention By-law was enacted in 2004 and does not set out any minimum fine as a penalty.

The Residential Buildings Fire Safety By-law was enacted in 1986 and does not set out any minimum fines as penalties.

DISCUSSION:

The three departments involved all concur that the minimum penalties in these by-laws should be increased as set out in the attached draft By-law. Although judges are expressly permitted by *The Summary Convictions Act* to override minimum penalties where a judge concludes that the offence occurred "through accident or under circumstances not wholly attributable to the fault of the accused", a minimum penalty has a number of benefits:

- It provides an indication of the seriousness with which the City believes that the courts should view particular by-law violations.
- It establishes a "norm" for sentencing, even when judges choose to impose fines lower than the minimum.
- It does not prevent judges from imposing more significant fines when the circumstances warrant this.

The attached draft By-law would increase the minimum fines in the four by-laws as follows:

City of Winnipeg Noise Control By-law (largely enforced by the Winnipeg Police Service):

- The current penalty scale is $50 for a first offence, $100 for a second offence and $150 for a third or subsequent offence for both individuals and corporations.
- The attached draft By-law would leave the current minimum fines in place for individuals.
- The attached draft By-law would result in double the minimum fines for corporations.
- Rationale: Where the offender under this By-law is a corporation, and especially where the noise is made in the course of carrying on business, $50 fine is too insignificant to serve as an effective deterrent.

Food Service Establishment By-law (enforced by Environmental Health Services Branch, Community Services Department)

- The current penalty scale is $50 for a first offence, $100 for a second offence and $200 for a third or subsequent offence.
- The attached draft By-law would double these fines.
- Rationale: Unless the fines are made more significant, it will be less expensive to simply ignore the health and safety provisions of the By-law and pay the fine than to comply with the By-law.

Fire Prevention By-law (Fire Prevention Branch, Winnipeg Fire Paramedic Service)

- There is no current minimum fine.
- The attached draft By-law would create a minimum fine of $500 where:
    - smoke alarms are inoperable or missing in residential rental units;
    - fire alarm systems are inoperable;
    - combustible materials have been allowed to accumulate and constitute an undue fire hazard in buildings other than owner-occupied homes;
    - means of egress have been obstructed in buildings other than owner-occupied homes; or
    - a compliance order has not been followed.
- There would be no other minimum fine.
- Rationale: All but the last offence identified pose significant life safety concerns which should attract a significant penalty for deterrent purposes. A conviction for failing to obey a compliance order would only result after the person has either failed to appeal the order or appealed it unsuccessfully and has refused to take action to follow the order.

Residential Buildings Fire Safety By-law (Fire Prevention Branch, Winnipeg Fire Paramedic Service)

- There is no current minimum fine
- The attached draft By-law would create a minimum fine of $500 where:
    - a single family home or duplex has been converted to a multiple-family dwelling without a permit under the By-law; or

    - a multiple-family dwelling that was approved and met the standards of the By-law has been modified so that it is no longer in compliance with the By-law.
- Rationale: This by-law is aimed at single family homes or duplexes that have been converted into rooming houses and is designed to safeguard the lives and safety of occupants during a fire. A failure to comply with this By-law in these situations will place at risk the lives of multiple individuals and should attract a significant penalty.

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

Winnipeg Police Service
Environmental Health Services Branch, Community Services Department
Fire Prevention Branch, Winnipeg Fire Paramedic Service

THIS REPORT SUBMITTED BY:

Corporate Services Department
Legal Services Division
Prepared By: Harold Dick
File No.

Financial Impact Statement — Date: November 18, 2005

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

Increase in Minimum Fines in the Noise Control By-Law, the Food Service Establishment By-Law, the Fire Prevention By-Law and the Residential Buildings Fire Safety 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:

The financial impact of imposing the minimum fines cannot be quantified because the Court will retain a discretion in imposing an appropriate penalty, and the number of prosecutions that will occur are unknown. Some modest increase in revenue is expected to occur.

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

APPENDIX "A"

THE CITY OF WINNIPEG

BY-LAW NO. .

A By-law of THE CITY OF WINNIPEG to increase minimum fines under the City of Winnipeg Noise Control By-law No. 2480/79, the Food Service Establishment By-law No. 5160/89, the Fire Prevention By-law No. 150/2004 and the Residential Buildings Fire Safety By-law No. 4304/86.

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

Noise By-law amended

1. The Noise By-law No. 2480/79 is amended by repealing section 6.1 and substituting the following:

6.1 A person who contravenes this By-law is guilty of an offence and is liable upon summary conviction to the following penalties:

(1) if the person is an individual

(a) for a first offence, to a fine of not less than $50.00;
(b) for a second offence, to a fine of not less than $100.00; and
(c) for a third or subsequent offence, to a fine of not less than $150.00; and

(2) if the person is a corporation

(d) for a first offence, to a fine of not less than $100.00;
(e) for a second offence, to a fine of not less than $200.00; and
(f) for a third or subsequent offence, to a fine of not less than $300.00.

Food Service Establishment By-law amended

2. The Food Service Establishment By-law No. 5160/89 is amended by striking out clauses 37(a), (b) and (c) and substituting the following:

(a) for a first offence, to a fine of not less than $100.00;

(b) for a second offence, to a fine of not less than $200.00; and

(c) for a third or subsequent offence, to a fine of not less than $400.00;

Fire Prevention By-law amended

3. The Fire Prevention By-law No 150/2004 is amended by adding the following after section 60:

Penalty

60.1 The owner of a building, or his or her agent, who fails to comply with

(a) section 28 of this By-law, by allowing inoperable smoke alarms to exist in residential rental units;

(b) subsection 30(1) of this By-law, by failing to install and maintain at least one smoke alarm in every residential rental unit;

(c) subsection 40(1) of this By-law, by failing to ensure that a fire alarm system is operable at all times;

(d) Sentence 2.4.1.1(1) of the Manitoba Fire Code, by allowing combustible materials to accumulate in and around the building in quantities or locations that constitute an undue fire hazard;

(e) Article 2.7.1.6 of the Manitoba Fire Code, by failing to ensure that means of egress is maintained in good repair and free of obstructions; or

(f) an order to remedy a contravention issued pursuant to this By-law;

is guilty of an offence and is liable upon summary conviction to a fine of not less than $500.00 or to imprisonment for a term of not more than six months, or both.

Residential Buildings Fire Safety By-law amended

4. The Residential Buildings Fire Safety By-law No. 4304/86 is amended by adding the following immediately after section 24:

24.1 The person responsible for a building that is subject to this By-law who

(a) fails to obtain an approval for the residential occupancy pursuant to this By-law; or

(b) fails to comply with section 22;

is guilty of an offence and is liable upon summary conviction to a fine of not less than $500.00 or to imprisonment for a term of not more than six months, or both.

DONE AND PASSED, in Council assembled, this day of , 200 .

_____
Mayor

_____
City Clerk

Certified as to form:

_____
for City Solicitor/Manager of
Legal Services