Report - Standing Policy Committee on Infrastructure Renewal and Public Works – November 13, 2007

Item No. 4 Graffiti Control By-law - Spray Paint Action Plan
File ER-1.5

STANDING COMMITTEE RECOMMENDATION:

On November 14, 2007, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Infrastructure Renewal and Public Works and submits the following to Council:

1. That the Graffiti Control By-law to restrict the sale of spray paint to minors and the possession of spray paint in public places by minors, as outlined in Appendix A of the report dated November 2, 2007 from the Director of Public Works, be enacted.

2. That the development of an appropriate enforcement strategy be referred for consideration to the Winnipeg Public Service and included as part of the Council directed review into the consolidation of responsibility for By-law enforcement through the creation of a stand-alone By-law enforcement unit.

3. 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 Infrastructure Renewal and Public Works - November 13, 2007

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On November 14, 2007, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Infrastructure Renewal and Public Works and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On November 13, 2007, the Standing Policy Committee on Infrastructure Renewal and Public Works concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

RE: GRAFFITI CONTROL BY-LAW – SPRAY PAINT ACTION PLAN

FOR SUBMISSION TO: STANDING POLICY COMMITTEE ON INFRASTRUCTURE RENEWAL AND PUBLIC WORKS

ORIGINAL REPORT SIGNED BY: DIRECTOR OF PUBLIC WORKS

REPORT DATE: November 2, 2007

RECOMMENDATION:

1. That the proposed Graffiti Control By-Law to restrict the sale of spray paint to minors and the possession of spray paint in public places by minors as outlined in Appendix A of this report be enacted.

2. That the development of an appropriate enforcement strategy be referred for consideration to the City of Winnipeg Public Service and included as part of the Council directed review into the consolidation of responsibility for By-Law enforcement through the creation of a stand-alone By-Law enforcement unit.

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

Report Summary

Key Issues:

The proposed By-Law will:

- Prohibit the sale of spray paint to minors, except in the presence and with the concurrence of the minor's parent or guardian;
- Prohibit possession of spray paint in public places by minors, unless the minor is under the supervision of a parent, guardian, school teacher, employer or other adult in a similar relationship;
- Require that a retailer of spray paint post a sign indicating that it is illegal to sell spray paint to minors.
- Require that a retailer of spray paint ensure that spray paint is kept in a secure storage space inaccessible to the public.

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
Involves a multi-year contract

Comment(s): The draft By-Law would regulate the sale and possession of spray paint by minors. The draft By-Law provides the City with another tool to assist in the challenges that graffiti vandalism presents.

Policy Implications

No
X Yes

Comment(s): The draft By-Law would regulate the sale and possession of spray paint by minors.

Regulatory Implications

None
Eliminates or reduces regulatory impact
X Proposes regulatory impact

Comment(s): Report recommends enactment of a new By-law which regulates the sale and possession of spray paint.

Environmental Implications

No
X Yes

Comment(s): Intent of recommendations are to minimize graffiti vandalism.

Human Resources Implications

No
X Yes

Comment(s): Staff resources will be required to enforce By-Law compliance. However, it is anticipated that the consolidation of By-Law enforcement activities throughout the City will allow existing staff to enforce this new By-Law.

Financial Implications

X Within approved current and/or capital budget
Current and/or capital budget adjustment required

Comment(s): Staff resources will be required to enforce By-Law compliance. However, it is anticipated that the consolidation of By-Law enforcement activities throughout the City will allow existing staff to enforce this new By-Law.

Report

REASON FOR THE REPORT:

On May 2, 2007 the Executive Policy Committee directed the City of Winnipeg Public Service to undergo a consultation process with stakeholders and report back to the Standing Policy Committee on Infrastructure Renewal and Public Works with a draft By-Law incorporating, without limitation, the following:

1. Prohibition of the sale of spray paint to persons under the age of 18;

2. Prohibition of the possession of spray paint in public places by persons under the age of 18;

3. A requirement that spray paint retailers place a sign in clear view to shoppers where the spray paint is located denoting that graffiti and selling spray paint to persons under 18 is against the law and punishable by fine; and

4. A requirement that spray paint be locked in secure storage spaces in retail establishments; and an enforcement strategy for such By-law.

DISCUSSION:

Graffiti Impact

Graffiti vandalism is a criminal act that affects all members of our community. The victims of graffiti include:

- Property owners who are subject to graffiti vandalism;
- Business owners who incur a loss of customers from the negative image that graffiti generates;
- Citizens who may incur devalued property;
- Neighborhoods which are subject to a negative image of a community in decline;
- Taxpayers whose dollars are spent removing graffiti.

Most graffiti is the work of “taggers”. Taggers engage in the most basic forms of graffiti which generally involves a personal, stylized (often difficult to read) signature. The underlying motive of taggers is the desire for public recognition. There are four primary motivating factors for graffiti vandalism: fame, rebellion, self-expression, and power. Taggers gain fame and status amongst other taggers by painting their distinctive “tags” in as many places as possible.

Current Graffiti Control Efforts by the City of Winnipeg

The City's existing Graffiti Control Program was developed to address the following issues:

- Negative impacts of graffiti on the community
- Raising safety awareness
- Economic development
- Quality of life

The operational aspects of the program are directed towards appropriate measures to remove any defacement occurring on exterior surfaces of public and private buildings and structures. Procedures for receiving and tracking service requests and obtaining release of indemnity forms have been developed as well as service priorities for graffiti removal that are based on the following criteria:

1. Hate messages and personal threats.

2. City owned properties and selected Provincial and Federal government properties.

3. Private properties along major streets or in Business Improvement Zones

4. Residential private properties

Note: Special considerations are made for the elderly and the infirm.

Winnipeg Police Services has assigned a constable to liaise with the Graffiti Control Program to help develop education and awareness programs as well as providing an outlet for the distribution of the Free Paint Program vouchers and graffiti removal towels at their service centers.

The budget for the Graffiti Control Program in 2007 was increased significantly to $1,169,000. The funding increases consisted of a $250,000 annual increase and a $250,000 one-time increase for 2007.

Recent Initiatives by Other Local Governments

On May 1, 2006 the City of London, Ontario passed a By-Law to prevent the sale of graffiti implements to minors. Their By-Law prohibits the sale of graffiti making materials such as spray paint, wide tipped markers and other similar implements to persons under the age of 18. Retailers who sell these products are required to post signs advising customers of this By-Law. As a result London became the first large city in Canada to enact such legislation but many other municipalities including Halifax, Ottawa and Toronto and our city are currently considering similar actions.

In the United States, several cities (e.g. New York, Albuquerque) have adopted local ordinances prohibiting the sales of graffiti making products to minors. Some local governments (e.g. Phoenix, Denver) have adopted more stringent "lock-up" provisions that require spray paint retailers to maintain their products in locked display cases. Chicago has taken the even more extreme step of banning all sales of spray paint and wide tipped indelible markers.

Intent of the Proposed Graffiti Control By-Law

Cleaning up graffiti vandalism is important but taking steps to prevent it is a better long term solution.

The purpose of this proposed By-Law is intended to help address the problem of graffiti in the community by keeping spray paint out of the hands of people under the age of 18.

The proposed By-Law is based on two observations. First, spray paint is the most commonly used instrument to create graffiti. Spray paint is easy to use, available at numerous retail outlets in the City and is relatively inexpensive. Second, graffiti is disproportionately applied by minors. Winnipeg Police Service crime statistics as indicated in “Table 1” for the sample period of June 6, 2005 through June 6, 2007 show that, of a total of 38 individuals charged or warned in respect of graffiti events over two years, nearly 90% were minors. This supports the premise that controlling minors’ access to spray paint could make a difference by reducing their opportunity to engage in graffiti vandalism.

“Table 1”

Winnipeg Police Service Statistics – June 6, 2005 to June 6, 2007	
Total Number of Graffiti Events	946
Events Cleared by Charge	39
Events Cleared Otherwise	14
Total Accused	38
Total Adults Charged	4
Total Adults Warned	0
Total Youth Charged	20
Total Youth Warned	14

Feedback from the public consultation

Public consultations were held individually with a number of stakeholders, identified in Appendix B, all of whom are community partners that currently remove graffiti on behalf of the City of Winnipeg. During these meetings the message received was that these organizations were supportive of all four paragraphs of the original EPC motion.

The City also met with the Retail Council of Canada (RCC) whose 40,000 members consist of both the large national “big box” retailers as well as smaller local businesses. This association acts as an advocate for its members at the Federal and Provincial level

and, in this case, agreed to represent their members in providing input to our City. The RCC was supportive of Paragraphs 1, 2 and 3 of the EPC motion as a workable solution for its members but could not support Paragraph 4 which called for "a requirement that spray paint be locked in secure storage spaces in retail establishments". RCC members who responded to the issue stated that locked storage was not a workable option, because significant costs would be incurred ($7,000 - $10,000 minimum cost per business), sales would be lost and staffing costs would have to increase. The secure storage component would also change the format of many of their businesses from a self serve operation to one requiring dedicated personal services. Concerns were also raised that consolidating all of these products may create health and safety concerns.

The RCC strongly disagreed with the objective of Paragraph 4 and felt that its introduction would make it tremendously more inconvenient for the majority of persons who purchase spray paint for legitimate reasons. The RCC was of the view that enacting a requirement for secure storage will result in restricted access by the majority of customers for legitimate uses, lost sales and significant additional operational costs. In fact, one large national retail chain indicated that if Paragraph 4 was adopted that they would consider discontinuing the sale of spray paint in the City of Winnipeg altogether.

Enforcement Strategy for the New Graffiti Control By-law

By-Law Sections 3, 5 and 6 - Retailer Responsibilities

Enforcement of Sections 3, 5 and 6 of the proposed By-Law would focus on retailers who stock spray paint.

Enforcement of Section 5 (requirement to post a notice) and Section 6 (secure storage space) would entail an informational campaign advising retailers that sell spray paint products advising them that the City has enacted the Graffiti Removal By-Law and these businesses will be required to store spray paint in a secure space inaccessible to the public and also place spray paint post signs advising customers of this By-law. Implementation of the By-Law would be done on a self-compliance basis in conjunction with the City delivering an education program to the retail sector.

Enforcement of Section 3 (regulating sale of spray paint to minors) would begin with an information campaign to inform both retailers and the public that it is unlawful to sell spray paint to minors unless the minor's parent or guardian is present and approves of the purchase.

Subsequent enforcement of the By-Law would require periodic spot checks to confirm compliance within retail outlets who sell spray paint. It can be anticipated that enforcement operations would be similar to those used to enforce By-Laws containing age related prohibitions (e.g. smoking By-Laws). This might include hiring minors as "test shoppers" to attempt to purchase spray paint at local retail stores. If charges are

laid as a result but contested by the retailer, the minor might be required to give evidence in Court.

The estimated funding for these enforcement initiatives would be provided by reallocating some of the existing funding in the Graffiti Control Program.

In addition, this enforcement will require some staff resources. However it is recommended that this enforcement requirement be referred to the CAO Committee that is currently considering the consolidation of responsibility for By-Law enforcement through the creation of a stand-alone By-Law enforcement unit. It is anticipated that this review will identify that the consolidation may create some efficiencies that would free up existing resources who could undertake this By-Law enforcement.

By-Law Section 4 - Winnipeg Police Service Responsibilities

The By-Law section prohibiting the possession of spray paint in public places by persons under the age of 18 will be enforced by the Winnipeg Police Service during the course of their regular duties.

Financial Impact Statement — Date: November 2, 2007

Project Name: — **First Year of Program** 2008

Graffiti Control By-Law - Spray Paint Action Plan

	2008	2009	2010	2011	2012
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	$ 20,000	$ 5,000	$ 5,000	$ 5,000	$ 5,000
Less: Incremental Revenue/Recovery	-	-	-	-	-
Net Cost/(Benefit)	$ 20,000	$ 5,000	$ 5,000	$ 5,000	$ 5,000
Less: Existing Budget Amounts	20,000	5,000	5,000	5,000	5,000
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: The 2008 costs include the estimated informational campaign and education program and 'test shoppers" costs. The 2009 and future year costs are for the ongoing periodic spot checks utilizing the "test shoppers".

"Original Signed by D. Stewart, CA"
Manager of Finance & Administration

IN PREPARING THIS REPORT THERE WAS:

Internal Consultation With and Concurrence By:

- Community Services
- Winnipeg Police Services
- Corporate Services
- Planning, Property and Development
- CAO Secretariat

External Consultation With:

- Manager of By-Law Enforcement, City of London

THIS REPORT SUBMITTED BY:

Department: Public Works
Division: Streets Maintenance
Prepared by: Bob Okabe, Supervisor of Public Service Operations
File No. Graffiti Control Spray Paint Action Plan.doc

Appendix "A"

THE CITY OF WINNIPEG

BY-LAW NO.

A By-law of THE CITY OF WINNIPEG to reduce random graffiti by prohibiting sale of spray paint to minors and the possession of spray paint in public places by minors.

WHEREAS graffiti is a blight on properties in the City of Winnipeg;

AND WHEREAS graffiti is frequently applied to buildings and other structures through the use of spray paint;

AND WHEREAS minors are more likely than adults to engage in the application of graffiti;

AND WHEREAS, in addition to providing funds for graffiti removal, the City of Winnipeg desires to take proactive steps to prevent graffiti from occurring;

AND WHEREAS section 130 of *The City of Winnipeg Charter* provides that the Council of the City of Winnipeg may pass by-laws respecting unsightly buildings and premises as well as buildings and premises which, because of their condition or appearance, may substantially depreciate the value of other land and buildings in the vicinity;

AND WHEREAS section 134 of *The City of Winnipeg Charter* provides that the Council of the City of Winnipeg may pass by-laws respecting the protection and safety of property;

AND WHEREAS section 135 of *The City of Winnipeg Charter* provides that the Council of the City of Winnipeg may pass by-laws respecting people, activities and things in, on or near public places or places open to the public;

AND WHEREAS section 148 of *The City of Winnipeg Charter* provides that the Council of the City of Winnipeg may pass by-laws respecting businesses, which may include provisions prohibiting businesses from dealing with minors and provisions respecting standards and requirements for businesses in respect of the exhibiting, selling, offering for sale, providing and offering to provide goods;

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

Short title

1. This By-law may be referred to as the "Graffiti Control By-law".

Definitions
2. In this By-law,

"minor" means a individual under the age of 18 years;

"public place" includes a park, community club, recreation and leisure facility, private club, street, restaurant, store, shopping or business mall, theatre, and a public facility of any kind;

"spray paint" means any aerosol container that is made or adapted for the purpose of applying paint or another liquid colouring material to a surface;

"spray paint retailer" means any person that carries on a business that sells or offers to sell spray paint to the public.

Sale of spray paint to minors prohibited
3. A person may not sell spray paint to a minor unless the minor is accompanied by his or her parent or guardian who approves of the purchase.

Possession of spray paint by minors prohibited
4. A minor may not have spray paint in his or her possession in a public place unless the minor is under the supervision of a parent, guardian, school teacher, employer or other adult in a similar relationship.

Spray paint retailer must post sign
5. A spray paint retailer must ensure that a sign in a form approved by the Director of Public Works, which states that the sale of spray paint to minors is prohibited by by-law, is conspicuously posted and visible to the public near the place where spray paint is sold.

Spray paint must be secured by retailer
6. A spray paint retailer must ensure that spray paint is kept in a secure storage space that is locked or otherwise inaccessible to the public except when the spray paint is under the direct control or supervision of the owner or an employee of the business.

DONE AND PASSED, in Council assembled, this day of , 2007.

_____
Mayor

_____
City Clerk

Approved as to content:

_____
Director of Public Works

Approved as to form:

_____
for City Solicitor/Manager of Legal Services

“Appendix B”

List of stakeholders involved in public consultation process:

City of Winnipeg Graffiti Removal Partners

Take Pride Winnipeg
Exchange District Biz
Transcona Anti-Graffiti
West End Biz
Downtown Winnipeg Biz
Old St. Vital Biz
St. James Village Biz

Retail Sector

Retail Council of Canada – Government Relations & Member Services