Minute No. 36
Report - Executive Policy Committee - December 4, 2002

Item No. 6 Implementation of The City of Winnipeg Charter - File GL-5.1 (Vol. 45)

COUNCIL DECISION:

Council concurred in the recommendation of the Executive Policy Committee and adopted the following:

1. That the Charter Implementation By-law be enacted and the following "stand alone" by-laws:

    - Tax Sale Penalty By-law
    - Records Management By-law
    - Official Languages By-law
    - Execution of Standard Rental Agreements for Recreation Facilities By-law
    - Tree Trimming By-law
    - Untidy Premises By-law

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

Report - Executive Policy Committee - December 4, 2002

DECISION MAKING HISTORY:

Moved by His Worship Mayor Murray,
That the Executive Policy Committee recommendation be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On December 4, the Executive Policy Committee concurred in the administrative recommendation.

Re: **Implementation of *The City of Winnipeg Charter***

For submission to: **Executive Policy Committee**

Submitted by: **City Solicitor/Manager of Legal Services**

Report date: **November 20, 2002**

Recommendation(s): That Council enact the Charter Implementation By-law and the following "stand alone" by-laws:

- Tax Sale Penalty By-law
- Records Management By-law
- Official Languages By-law
- Execution of Standard Rental Agreements for Recreation Facilities By-law
- Tree Trimming By-law
- Untidy Premises By-law

Report Summary

Key Issues:

- *The City of Winnipeg Charter* was enacted in August, 2002 and comes into effect on January 1, 2003.

- This package of by-law amendments will bring the majority of the city's by-laws into compliance with the *Charter.*

Implications of the Recommendation(s):

General Implications

☐ None

X For the organization overall and/or for other departments

☐ For the community and/or organizations external to the City of Winnipeg

☐ Involves a multi-year contract

Comment:

Policy implications

X No

Yes

Comment:

Financial Implications

X Within approved current and/or capital budget

☐ Current and/or capital budget adjustment required

Comment:

Report

Recommendation(s):

That Council enact the Charter Implementation By-law and the following "stand alone" by-laws:

- Tax Sale Penalty By-law
- Records Management By-law
- Official Languages By-law
- Execution of Standard Rental Agreements for Recreation Facilities By-law
- Tree Trimming By-law
- Untidy Premises By-law

Reason for the report:

The by-laws discussed in this report must be enacted by Council at its meeting of December 11, 2002, in order to be in place by January 1, 2003, the date *The City of Winnipeg Charter* comes into effect.

History:

The City of Winnipeg Charter was enacted by the Province of Manitoba in August, 2002. The *Charter* will replace the existing *City of Winnipeg Act* (CWA) when it comes into effect on January 1, 2003. Since the *Charter* was enacted, Legal Services and the CAO Secretariat have met with many of the Departments to provide information regarding the *Charter* and to identify by-law amendments and operational changes that are required in order to achieve transition to the new legislation. The *Charter* has also necessitated education and training at every level of the organization*;* that process has begun and will be an on-going activity.

Discussion:

The *Charter* features some significant enhancements of the City's powers, and grants greater flexibility for the City in responding to a changing world. Of more immediate concern, however, is the need to identify by-law amendments and changes in the City's operational practices that are necessary or desirable to implement prior to year-end in order to achieve an orderly transition to the new legislation. The package of

amendments that are recommended in this report are the result of an extensive analysis of the impact of the Charter upon existing City by-laws which was conducted by Legal Services in consultation with the various civic departments.

The *Charter* represents a significant streamlining through standardization of the rules for many procedural matters. The result of this streamlining is that by-laws, which had been developed in conformity with the requirements of the CWA, need to be changed to reflect the new requirements. This is the primary purpose of the by-law amendments addressed in this report.

The task of reviewing all of the by-laws currently governing the City's operations – more than 200 in total – also revealed certain anomalies and anachronisms in the by-laws. While not intending to engage in a substantive review or overhaul of these by-laws, Legal Services staff have taken the opportunity to correct these anomalies as part of this process. For example, references to Commissioners, the Board of Commissioners and to non-existent Council committees have been updated. Outdated and unused by-laws – some dating back as far as 1899 - are being repealed. The list of repealed by-laws and the reason for their repeal may be found in Appendix "A".

Finally, review of the by-laws revealed various opportunities to make common-sense improvements in consultation with City departments responsible for their administration and to make drafting improvements. Appendix "B" to this report sets out changes to by-laws that are substantive, were not necessitated by the Charter and are not encompassed by the categories set out in this Report.

In some cases, it made more sense to draft a completely new by-law rather than attempt to amend the existing one. Some of the "stand alone" by-laws in this package fall into this category.

The by-laws recommended by this report contain several standard types of amendments.

1. Urgent, High Priority Amendments

There are a number of by-laws that must be amended in order to fill substantive or procedural vacuums created by the withdrawal of detailed, prescriptive provisions in the CWA. These include, for example, provision of the 10% penalty imposed upon property that is sold in tax sale (which was previously imposed under the CWA), setting out methods of determining an address to which orders and decisions can be mailed, designation of appeal bodies to hear appeals that are mandated by the *Charter*, and continuation of the Board of Adjustment until such time as Council has an opportunity to consider whether, and in what form, it wishes to implement a Planning Commission.

2. References to the CWA, to Outdated Committees and Employee Positions

All references to the old *City of Winnipeg Act*, including references in preambles to empowering sections of that Act, are being repealed. References to commissioners, outdated committees of Council and employee positions that no longer exist are being replaced by references to the employees or committees that are actually carrying out the function. Where a change in the status quo is proposed, this is noted in Appendix "B" to this report.

3. Standardization

As noted, *The City of Winnipeg Charter* standardizes many of the procedural and other matters that had previously been different for a variety of services and activities.

As part of the review process, it was necessary to identify those by-law provisions that are inconsistent with the standardized procedures contained in the *Charter*. In most cases, the by-law provisions can simply be repealed with the result that employees having responsibility for administering the by-law will apply the relevant provisions of the *Charter*. In order to assist members of Council, civic employees and members of the public who will need to refer to the relevant Charter provisions that relate to particular by-laws, arrangements are being made with the City Clerk to include the relevant Charter provisions in the unofficial By-law Consolidations through footnoting and attachment of appendices.

The key areas of standardization are:

- powers available to "designated employees",
- procedures when issuing and the effect of compliance orders,
- notice of orders and decisions,
- notice of hearings,
- appeals,
- hearing procedures, and
- definitions.

(a) Powers available to "designated employees": The *Charter* grants powers to "designated employees", defined as employees of the City who have been designated by Council to carry out a responsibility. The powers automatically conferred by the *Charter* upon designated employees include

- entry to lands or buildings in order to enforce a by-law
- issuing orders requiring by-law compliance within a specified period of time
- carrying out an order at a person's expense if the person to whom the order is directed fails to appeal it and fails to comply with it.

In order to access these powers, the amendments identify a "designated employee" responsible for administering and enforcing each by-law. The employee "designated" in a by-law may delegate that power to other employees in the absence of an express statement restricting further delegation.

(b) Procedures when issuing and the effect of compliance orders: As noted, "designated employees" have authority to issue orders requiring persons responsible for complying with a by-law to do so within a specified period of time. The *Charter* sets out standard powers associated with compliance orders, including

- the authority to register them against the title with the Land Titles Office,
- the authority to take immediate action in an emergency,
- the power to recover costs incurred in taking remedial action or acting in an emergency, including the authority to add the costs to the real property taxes.

(c) Notice of orders and decisions: The *Charter* provides that, as a rule, orders and decisions must be served by

- personal service or
- sending a copy of it by registered mail, delivery, fax or some other means by which it may be confirmed that it has been sent to the person at an address to be determined in accordance with a by-law.

Three basic methods of determining an address have been used in the by-law amendments:

- where the person to be served has provided an address as part of an application, that address may be used;
- if the person to be served is the owner of real property, the address maintained by the tax collector for the purpose of issuing the tax notice for that property may be used; and
- if the person to be served is the occupant of real property, the street address for that property may be used.

(d) Notice of hearings: The *Charter* also standardizes the forms and time frames for notices to be given for hearings required by the *Charter*. As a rule, publication in a newspaper is required. However, where a designated employee determines that a hearing involves a specific building or land, notice may be given by posting the property.

(e) Appeals: Aside from any appeals that the City grants on its own accord, the *Charter* sets out that an appeal must be available for

- orders to remedy a contravention of a by-law;
- decisions of the Winnipeg Building Commission or a planning commission; and
- orders or decisions of designated employees with respect to issuing, suspending or cancelling a licence, permit, approval or consent.

Some existing by-laws do not provide for appeals for these items. In these cases, the amending provisions identify an appropriate standing policy committee as having responsibility for hearing the appeals. The identification of a particular standing policy committee to hear an appeal is noted in Appendix “B”.

The *Charter* sets out a standard appeal process. For example, a decision or order that is capable of being appealed must set out details of the appeal procedure. The time limit for appealing a compliance order is the time given in the order for compliance or 14 days after service, whichever is less, unless the by-law permits a longer appeal period.

(f) Hearing procedures: Whether at the point of an initial decision or upon appeal, the *Charter* sets out procedural requirements and powers of hearing bodies. Some of these will be available only if set out in a by-law. The proposed Procedure By-law will grant the following powers to every hearing body:

- the power to establish reasonable time limits for presentations, questions or objections,
- the authority to decline to hear presentations, questions or objections where the matter has already been adequately addressed,
- the power to determine which of several similar presentations to hear,
- authority to expel individuals for disruptive conduct and
- power to adjourn hearings.

Note that amendments to the Procedure By-law are being submitted through a separate report, as those amendments require review by the Secretariat Committee.

(g) Definitions: One of the functions of this exercise has been to ensure that the definitions included in the various by-laws are consistent with those contained in the *Charter.*

4. Drafting Protocols

In order to ensure more consistency and uniformity in City by-laws, the amendments to the by-laws are based on drafting protocols developed by Legal Services in consultation with the City Clerk and other departments. These include the following:

- where a by-law lacks a title, one is being provided;
- cross references within the various by-laws will be made by title;
- enabling provisions are not included within the preambles of by-laws;
- where a power has been given or requirement has been set out in the *Charter*, it is not usually replicated in the by-law. Instead, the by-law will note that compliance with the *Charter* is required. As noted above, the relevant provisions of the *Charter* will be footnoted

unofficially and attached as appendices in the consolidated version of the By-law;

- The Charter Implementation By-law has been prepared in a somewhat different format as a pilot project. Additions to and deletions from the existing by-laws have been highlighted in a manner similar to that used in Provincial legislation in order to assist in the consolidation process.

5. Next steps:

A number of by-laws that require extensive technical revisions will be completely redrafted and will be brought forward to Council in 2003. These are expected to include the following, amongst others:

- Electrical By-law
- Solid Waste By-law
- Waterworks By-law
- Streets By-law
- Traffic By-law
- Animal Control By-law
- Cemeteries By-law
- Derelict Vehicle By-law

In addition, further by-law amendments will, of course, be required in order to implement enhancements provided in the *Charter*. These amendments will proceed as proposals are developed by the various departments in accordance with direction provided by Council.

This Report Submitted By:

Department: Corporate Services
Division: Legal Services
Prepared by: Harold Dick

LIST OF REPEALED BY-LAWS
SCHEDULE "A"

Penalties By-law (No. 1630) (1899)
- outdated

By-law No. 4922 (Spitting) (1907)
- the substantive offence is being added to the Anti-Litter By-law

By-law No. 9872 (Mortgages and Housing) (1919)
- outdated

By-law No. 15516 (Burials) (1942)
- outdated

By-law No. 16286 (Hotels) (1948)
- outdated

By-law No. 16382 (Objectionable Smoke and Dust) (1948)
- outdated

By-law No. 16676 (Interpretation) (1950)
- outdated

By-law No. 19793 (Health) (1971)
- superseded by the Incinerator By-law No. 1979/78

By-law No. 48/72 (Settlement and discharges of social assistance liens)
- irrelevant since the Province assumed responsibility for providing social assistance

By-law No. 430/73 (Custody of Land Titles Deeds)
- no longer a requirement for a by-law to designate who has custody of the City's land titles deeds. This can now be done administratively.

Barber Shops (early closing) By-law No. 658/74
- the relevant provincial legislation was amended some time ago and by-law is not enforced in any event.

By-law No. 762/74 (Untidy and Unsightly Premises)

- repealed and replaced with a new “Unsightly Premises By-law”

By-law No. 864/75 (Tree trimming)

- repealed and replaced with a new “Tree Trimming By-law”

By-law 2690/80 (Bakeries)

- now part of Food Services Establishment By-law

By-law No. 3344/83 (Execution of Rental Agreements for Recreational Facilities)

- replaced with new by-law updating of positions which can sign rental agreements

By-law No. 3702/84 (Zoning requirements for satellite dishes)

- outdated

By-law No. 3862/84 (appointment of Board of Revision for 1984)

- outdated

Retail Food Stores By-law No. 3897/85

- now part of Food Services Establishment By-law

By-law No. 4322/86 (Police Service Members)

- outdated

By-law No. 5392/90 (1990 real property tax phase-in)

- outdated

By-law No. 6162/93 (Municipal assistance)

- irrelevant since the Province assumed responsibility for providing social assistance

By-law No. 6229/93 (1993 business tax phase-in)

- outdated

Home Renovation Tax Assistance Program By-laws (6544/94, 6927/96, 6930/96, 7230/98, 7653/2000)

- programs are expired and no appeals are pending

Documents By-law No. 6875/96

- replaced with a new Records Management By-law that makes definitions consistent with those in new Charter and changes the membership of the Records Committee to be consistent with the new Charter

New Dwellings Tax Assistance By-laws (7076/97, 7199/98)

- programs expired and no appeals are pending

Official Languages By-law No. 7490/99

- replaced with a new by-law containing amendments prompted by the *Charter* and updating the address of the office in historic St. Boniface and names of Civic Departments

LIST OF SUBSTANTIVE AMENDMENTS
SCHEDULE "B"

Minimum Standards of Housing Repair By-law No. 19165

- Appeal to Protection and Community Services Committee rather than the Better Housing Commission.

Heating By-law No. 19791

- Designates Standing Policy Committee on Protection and Community Services as appeal body.

Unsightly Premises (new by-law)

- Old subjective definitions of "untidy" and "unsightly" replaced by objective standards of maintenance.
- Also includes a new requirement permitted by Charter that owners and occupants must maintain premises so that they do not "substantially depreciate the value of other land and buildings in the vicinity.
- Still administered by Directors of Community Services and Planning, Property and Development.

Cheque Signing Authority By-law No. 838/74

- As per *Charter* requirement, amended to specify the number of designated employees who must sign cheques (2 people must sign); no change from *status quo.*

Tree Trimming (new by-law)

- Creates an offence and provides for notice of entry to ensure that it remains possible legally to enter private property to trim trees that are interfering with City works or equipment.
- Designates Standing Policy Committee on Public Works as appeal body.

Anti-Litter By-law No. 1075/75

- Incorporates the anti-spitting provisions of a 1907 by-law.
- Replaces awkward and lengthy provisions re. obligation of vendors of "take out" foods with a provision that borrows language directly from the *Charter*; no change in practical effect.

Fire Prevention By-law No. 1322/76

- Authority to enforce and appoint enforcement officers given to Fire and Paramedic Chief (rather than split between the Chief and the Manager of Development and Inspections of PP&D); change approved by both departments.

Streets By-law No. 1481/77

- Amended to have Corporate Risk Manager, not City Solicitor, approve issuance policies required under these by-laws.
- Designates Standing Policy Committee on Public Works as appeal body.

Incinerator By-law No. 1979/78

- Designates Standing Policy Committee on Public Works as appeal body.

Firearms By-law No. 2890/81

- Designates Standing Policy Committee on Protection and Community Services as appeal body.

Milk and Dairy Products By-law No. 3218/83

- Public health inspectors are designated to enforce by-law, but they cannot further delegate this power.

Claims Settlement By-law No. 3349/83

- Withdrawal of references to General Manager of Hydro.

Meat and Poultry By-law No. 3354/83

- Public health inspectors are designated to enforce by-law, but they cannot further delegate this power.

Demolition Permits in Residential Areas By-law No. 4665/87

- Provides more details on the existing process of applying to community committee to obtain exemptions from the by-law.
- Provides that only those people who made representations and provided their addresses for service to the Community Committee will be given a copy of the committee's decision and will be entitled to appeal the decision.

Winnipeg Building By-law No. 4555/87

- Language reworked to make By-law clearer without altering the meaning substantively (for example, sections 2.2, 3.3, 9.5, 9.6, 12.1). These changes have been cleared with departmental staff.

Tattoo Studio By-law No. 4653/87

- Designates Standing Policy Committee on Protection and Community Services as appeal body.
- New provisions for emergency closures are included.

Maintenance and Occupancy 4903/88

- Provides that only those people who made representations and provided their addresses for service to the Community Committee will be given a copy of the committee's decision and will be entitled to appeal the decision.

Food Services Establishment By-law No. 5160/89

- Public health inspectors are designated to enforce by-law, but they cannot further delegate this power.
- Provisions added to deal with emergency closings and destruction of food
- Designates Standing Policy Committee on Protection and Community Services as appeal body.

Tax Penalty By-law No. 5796/91

- Provides that the due date and penalties for real property taxes also apply to personal property taxes in order to reflect the requirement under the *Charter* that the City prepare a personal property tax roll.

Tax Sale Penalty By-law (new by-law to replace No. 5799/91)

- Provides that a 10% penalty is added to taxes when property is sold in tax sale. (The City of Winnipeg Act imposed this penalty; the *Charter* enables the city to impose such a penalty by by-law, and enactment of a by-law is required prior to January 1st, 2003 in order for the city to continue to impose this penalty.)

Waterways By-law No. 5888/92

- Provides for new maximum penalty of $50,000.00 and minimum penalties of $1,000.00 for a first offence, $2,5000.00 for the second and 5,000.00 for the third.

Boulevard Maintenance No. 5895/92

- New provision imposes an objective requirement that grass and other ground vegetation on boulevards must be kept trimmed to a length of not more than 25 cm (10 inches).
- Designates Standing Policy Committee on Public Works as appeal body.

Bio-medical Waste Sharps By-law No. 6001/92

- Expands on procedures for hearings for suspension or revocations of permits
- Designates Standing Policy Committee on Public Works as appeal body.

X-Rated Store Zoning By-law No. 6087/93

- Designates Standing Policy Committee on Property and Development as appeal body.

Refund of Excess Gas Tax By-law No. 6490/94

- Designates Standing Committee on Fiscal Issues as appeal body.

Licence By-law (No. 6551/95)

- Designates Standing Policy Committee on Property and Development as "default" appeal body for any appeals arising from the operation of the By-law that are not otherwise assigned. It is expected that a Report outlining various alternatives to this system will be forthcoming early in the new year.

Frozen Waterways By-law No. 6581/95

- new maximum penalty of $50,000.00 and minimum penalties of $1,000.00 for a first offence, $2,5000.00 for the second and 5,000.00 for the third.
- Designates Standing Policy Committee on Protection and Community Services as appeal body.

Sewer By-law No. 7070/97

- amended to have Corporate Risk Manager, not City Solicitor, approve issuance policies required under these by-laws.
- new maximum penalty of $50,000.00 and minimum penalties of $1,000.00 for a first offence, $2,5000.00 for the second and 5,000.00 for the third.

City Organization By-law No. 7100/97

- Repeals references to administrative units and employees that no longer apply (eg. Social Services, Winnipeg Hydro, Ombudsman).
- Provides EPC with authority to approve awards of contracts relating to those departments that report through it, in accordance with existing council policy. (This gives EPC comparable authority to that exercised by the various Standing Policy Committees in relation to those departments that report through them.)
- Authorizes the City Clerk to prepare consolidations of by-laws that can then be adopted by resolution of Council for official use pursuant to s.56 of the *Charter*.
- Establishes the reporting requirements to be used by the CFO on the issue and sale of city securities as required by s. 299(1) of the *Charter*.
- Consistent with the budget approval process used by the City in recent years, the requirement for Community Committee review of the current operating budgets, capital budgets and five year capital expenditure programs has been removed.

Execution of Documents By-law No. 7367/99

- As per *Charter* requirements the by-law specifies the number of designated employees who must sign documents, instruments or agreements; no change from status quo.
- Permits the Manager of Materials to sign documents, instruments or agreements for maintenance services for software as well as equipment.

Raffle Lottery Licence By-law No. 7470/99

- Designates Standing Policy Committee on Property and Development as appeal body.

Secondary Dykes No. 7600/2000

- Previously, secondary dykes corridors had to be kept free of trees and the construction of permanent, attached structures in these corridors required a permit. The amendments contain an explicit provision prohibiting non-permitted permanent, attached structures in secondary dyke corridors.

Winnipeg Police Service Regulation By-law No. 7610/2000

- The Chief of Human Resources and Corporate Services is added as a member of the committee hearing appeals.

Vacant Dwellings 7983/2002

- Amendments permit entry to land without notice to owner to determine whether dwelling is vacant and whether it complies with the By-law.
- Before securing an unsecured vacant dwelling, entry would be allowed to the dwelling without notice to owner to ensure that animals and people are not trapped when building is secured.