Agenda - Council – May 14, 2008

Report - Executive Policy Committee - May 7, 2008

Item No. 1 Amendments - Unsightly Premises By-law, Boulevard Maintenance By-law and Neighbourhood Liveability By-law
File GL-1

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On May 7, 2008, the Executive Policy Committee concurred in the recommendations of the Standing Policy Committee on Property and Development, the Standing Policy Committee on Infrastructure Renewal and Public Works, and the Winnipeg Public Service, and submits the following to Council:

1. That the amendments to the Unsightly Premises By-law No. 8151/2002 outlined in Attachment "A" of the report dated March 26, 2008, from the Director of Public Works, be enacted.

2. That the amendments to the Boulevard Maintenance By-law No. 125/2007 outlined in Attachment "A" of the report dated March 26, 2008, from the Director of Public Works, be enacted.

3. That the amendments to the Neighbourhood Liveability By-law No. 1/2008 outlined in Attachment "A" of the report dated March 26, 2008, from the Director of Public Works, be enacted.

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

Report - Executive Policy Committee - May 7, 2008

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On May 7, 2008, the Executive Policy Committee concurred in the recommendations of the Standing Policy Committee on Property and Development, the Standing Policy Committee on Infrastructure Renewal and Public Works, and the Winnipeg Public Service, and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On April 29, 2008, the Standing Policy Committee on Property and Development concurred in the recommendation of the Winnipeg Public Service and recommends to the Executive Policy Committee and Council:

1. That the amendments to the Unsightly Premises By-law No. 8151/2002 outlined in Attachment "A" of the report dated March 26, 2008, from the Director of Public Works, be enacted.

On May 1, 2008, the Standing Policy Committee on Infrastructure Renewal and Public Works concurred in the recommendation of the Winnipeg Public Service and recommends to the Executive Policy Committee and Council:

1. That the amendments to the Boulevard Maintenance By-law outlined in Attachment "A" of the report dated March 26, 2008, from the Director of Public Works, be enacted.

RE: Amendment to the Unsightly Premises By-law, Boulevard Maintenance By-law and Neighbourhood Liveability By-law

FOR SUBMISSION TO: Executive Policy Committee, the Standing Policy Committee on Property and Development and the Standing Policy Committee on Infrastructure Renewal and Public Works

ORIGINAL REPORT SIGNED BY: Director of Public Works

REPORT DATE: March 26, 2008

RECOMMENDATION:

That the Standing Policy Committee on Property and Development make recommendation on the following:

1. That the amendments to the Unsightly Premises By-law (as proposed in the draft By-Law - Attachment A) be enacted.

That the Standing Policy Committee on Infrastructure Renewal and Public Works make recommendation on the following:

1. That the amendments to the Boulevard Maintenance By-law (as proposed in the draft amending By-law - Attachment A) be enacted.

That the Executive Policy Committee make recommendation on the following:

1. That the amendments to the Neighbourhood Liveability By-law (as proposed in the draft amending By-law – Attachment A) be enacted.

Report Summary

Key Issues:

- Presently, the Public Works Department enforces the Provincial Noxious Weeds Act within City of Winnipeg boundaries holding private property owners to a minimum standard relative to vegetation management.
- The current minimum charge of $60 to mow a non-compliant property is low. It fails to adequately cover the City's costs and does not act as significant deterrent.
- The by-law amendments create an objective standard of maintenance, increase the minimum charge of not complying with an Order from $60 to $135, and set up an appeal body and process in accordance with City of Winnipeg Charter requirements.

- This report proposes that two improvements in the Neighbourhood Liveability By-law – an administrative appeal body for quicker appeals and an appeal fee - should also be included in the Unsightly Premises By-law for the 2008 season. The appeal body can sit regularly throughout the spring and summer to hear appeals in an expedited fashion. An appeal fee of $250 (refundable if in the opinion of the Appeals Committee the appeal has been made in good faith and has some merit) would discourage frivolous appeals.

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): This report proposes By-law amendments that will increase the City's recovery of costs for bringing properties into compliance with weed control provisions, will expedite appeals of weed control orders and will discourage frivolous appeals of those orders.

Policy Implications

(x) No

( ) Yes

Comment(s):

Regulatory Implications

( ) None

( ) Eliminates or reduces regulatory impact

(x) Proposes regulatory impact

Comment(s): This report proposes By-law amendments that will increase the City's recovery of costs for bringing properties into compliance with weed control provisions, will expedite appeals of weed control orders and will discourage frivolous appeals of those orders.

Environmental Implications

(x) No

( ) Yes

Comment(s):

Human Resources Implications

(x) No

( ) Yes

Comment(s):

Financial Implications

(x) Within approved current and/or capital budget

( ) Current and/or capital budget adjustment required

Comment(s): The extent to which negligent property owners adjust their yard care standards as a result of the proposed fee structure may impact the actual increase in revenue realized.

Report

REASON FOR THE REPORT:

Council has the authority to amend By-laws.

HISTORY:

In October of 2007, during preliminary 2008 budget review, the Public Works Department proposed to increase the fee to more fully cover the costs of bringing properties into compliance and to bring forward amendments to by-laws as necessary.

DISCUSSION:

Presently, the Public Works Department enforces the Noxious Weed Act on private property, holding property owners to a minimum standard relative to vegetation (grass and weeds) management. This enforcement extends to all properties within City of Winnipeg boundaries ranging from residential to vacant undeveloped lands.

Ultimately, should property owners not adhere to a contravention notice specific to the Act, the Department takes remedial action and recovers the direct costs by invoicing the owner. Cost recovery is restricted to the direct costs of bringing the property into compliance (mowing of grass) as well as a $25 administration fee. Generally, this results in a $60 charge for the typical residential property.

In the spring of 2007, a number of media reports relating to the City's approach in dealing with unkempt (grass and weeds) private properties, resulted in expressions of frustration from both the public and members of City Council. Discontent related primarily to the fee charged by the City when having to take remedial action (mowing of grass) against negligent property owners. Opinion was that the associated charge was deficient from both a cost recovery and deterrent perspective.

In order to address the problem of appropriate cost recovery for bringing properties into compliance with weed control regulations, this report proposes utilizing a power granted by section 175 of The City of Winnipeg Charter to impose a monetary penalty for a by-law contravention "that is in addition to a fine or imprisonment if the penalty relates to a fee, rate, charge or cost that is associated with the conduct that gives rise to the contravention or is related to the enforcement of the by-law". Specifically, this report proposes an amendment of the Unsightly Premises By-law (draft By-law attached as Appendix A) that would establish a monetary penalty of $100 related to the contravention and enforcement of the By-law. This $100 penalty would replace the current $25 administration fee. When coupled with the hourly rate recovery related to the direct remedial actions, this would result in a $135 recovery for the typical non-compliant residential property as compared to the current $60 recovery.

Because the Unsightly Premises By-law will be repealed when the Neighbourhood Liveability By-law takes effect in November 2008, it is necessary to amend the

Neighbourhood Liveability By-law as well to ensure that this cost recovery continues past 2008.

As noted, the Public Works Department has traditionally used The Noxious Weeds Act in order to ensure that vegetation on yards and grounds in the City are maintained appropriately. However, the Noxious Weeds Act is designed for use in rural, agricultural settings and is not really appropriate in an urban setting. For a variety of reasons, including the fact that it allows for better recovery of both the direct and indirect costs of enforcement, it makes more sense to enforce City by-law provisions.

To make expectations clearer for property owners about what level of vegetation control is required, the new Neighbourhood Liveability By-law (which takes effect in November 2008) sets out a specific, objective standard for vegetation control. It specifies that, except for agricultural properties, turf must be kept trimmed to no more than 6 inches long.

Although it is anticipated that clarity around the requirements of the By-law combined with mitigation efforts at the front-line level will effectively resolve the vast majority of appeal situations resulting in a minimal number of appeals having to be heard by the hearing body, the Neighbourhood Liveability By-law also provides for an expedited approach to appeal orders dealing with weeds and overgrown grass. Rather than having appeals heard by a Standing Policy Committee, it creates a process for appeals of orders to be dealt with by a hearing body made up of the Chief Administrative Officer, the Chief Financial Officer, the Director of Planning, Property and Development and the Director of Water and Waste or their delegates. This will ensure that appeals can be heard within days rather than weeks, even during the summer, when Council is prorogued.

To deal with property owners who use the appeal procedure frivolously or as a delaying tactic, a refundable appeal fee of $250 has been imposed in the Neighbourhood Liveability By-law. This fee can be refunded by the appeal body if the appeal has been made in good faith and has some merit. The goal of this fee is to ensure that the costs to the City of hearing an appeal are borne by individuals who launch appeals as a delay tactic without valid grounds for the appeal.

Because the Neighbourhood Liveability By-law will not come into effect until November 1, 2008, this Report proposes amendments to the Unsightly Premises By-law and the Boulevard Maintenance By-law to make these two improvements – an administrative appeal body to facilitate quicker appeals and an appeal fee – effective for the summer of 2008 (see Attachment A).

Financial Impact Statement

Date: March 25, 2008

Project Name:

Amendment to the Unsightly Premises By-law, Boulevard Maintenance By-law and Neighbourhood Liveability By-law

First Year of Program 2008

	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	$ -	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	70,000	70,000	70,000	-	-
Net Cost/(Benefit)	$ (70,000)	$ (70,000)	$ (70,000)	$ -	$ -
Less: Existing Budget Amounts	(70,000)	(70,000)	(70,000)	-	-
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: An expected increase in revenues of $70,000 has been included in the preliminary 2008-2010 operating budget.

"original signed by Darcy Stewart, CA"

Manager of Finance & Administration

IN PREPARING THIS REPORT THERE WAS:

Internal Consultation With and Concurrence By:

Internal Services Department
Community Services Department
Planning, Property and Development Department
Water and Waste Department

External Consultation With:

N/A

THIS REPORT SUBMITTED BY:

Department:	Public Works
Division:	Parks and Open Space
Prepared by:	Jeff Swereda, Coordinator of IPM Services, 986-3820; and Harold Dick, Solicitor, Legal Services, 986-2290
File No.	

ATTACHMENT A

DRAFT

THE CITY OF WINNIPEG

BY-LAW NO. _____

A By-law of THE CITY OF WINNIPEG to amend the Unsightly Premises By-law, the Boulevard Maintenance By-law and the Neighbourhood Liveability By-law.

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

Unsightly Premises By-law amended

1(1) The Unsightly Premises By-law No. 8151/2002 is amended by this section.

1(2) Section 2 is amended by adding the following definition in alphabetical order:

"turf" *means a layer of grass, whether planted or not, but does not include ornamental grasses that have been planted;*

1(3) Section 6 is repealed and the following is substituted:

Appeals

6(1) Subject to this section, an appeal from an order to remedy a contravention of this By-law may be made in accordance with The City of Winnipeg Charter to the Standing Policy Committee on Property and Development.

6(2) An appeal from an order to remedy a contravention of clause 5(1)(c) and subsection 5(2) of Schedule A may be made in accordance with The City of Winnipeg Charter to a hearing body consisting of the following individuals:

(a) the Chief Administrative Officer of the City;

(b) the Chief Financial Officer of the City;

(c) the Director of Planning, Property and Development of the City; and

(d) the Director of Water and Waste of the City;

or their delegates.

6(3) The Chief Administrative Officer of the City or his or her designate shall serve as the Chair of the hearing body referred to in subsection (2) and the Chief Financial Officer of the City or his or her designate shall be the vice-chairperson.

6(4) The hearing body referred to in subsection (1) shall sit in panels of three members selected by the chairperson.

6(5) Sections 54.10 and 54.11 of the Procedure By-law apply to hearings conducted under this section and the hearing body may adopt other rules of practice and procedure.

Administration fee for appeals
6.1(1) Subject to subsections (2) and (3), an administration fee of $250.00 is hereby imposed for an appeal made under section 6.

6.1(2) An appeal may not be accepted by the City Clerk until the fee imposed by subsection (1) has been paid to the City Clerk.

6.1(3) The appeal body hearing the appeal may order the administration fee referred to in subsection (1) to be refunded to the appellant if the appeal has been made in good faith and has some merit.

Monetary penalty imposed
6.2(1) A monetary penalty in the amount of $100.00 is hereby imposed on the owner or occupant of a property who fails to comply with an order to remedy a contravention of clause 5(1)(c) and subsection 5(2) of Schedule A.

6.2(2) The monetary penalty imposed by subsection (1) is in addition to a fine or imprisonment imposed for a contravention of this By-law and is in addition to the costs of the actions or measures taken by the City of Winnipeg pursuant to subsection 185(1) of The City of Winnipeg Charter that are added to the real property taxes on the property.

1(4) Subsection 5(2) of Schedule A is repealed and the following is substituted:

5(2) Other than on properties zoned for agricultural grazing and feeding and agricultural cultivation, turf must be kept trimmed to a maximum length of 15 cm (6 inches).

Boulevard Maintenance By-law amended
2. The Boulevard Maintenance By-law No. 125/2007 is amended by repealing section 14 and substituting the following:

14(1) Subject to this section, an order or decision made pursuant to this By-law that is subject to appeal may be appealed to the Standing Policy Committee on Infrastructure Renewal and Public Works in accordance with The City of Winnipeg Charter.

14(2) An appeal from an order to remedy a contravention of section 3 may be made in accordance with The City of Winnipeg Charter to a hearing body consisting of the following individuals:

(a) the Chief Administrative Officer of the City;

(b) the Chief Financial Officer of the City;

(c) the Director of Planning, Property and Development of the City; and

(d) the Director of Water and Waste of the City;

or their delegates.

14(3) The Chief Administrative Officer of the City or his or her designate shall serve as the Chair of the hearing body referred to in subsection (2) and the Chief Financial Officer of the City or his or her designate shall be the vice-chairperson.

14(4) The hearing body referred to in subsection (1) shall sit in panels of three members selected by the chairperson.

14(5) Sections 54.10 and 54.11 of the Procedure By-law apply to hearings conducted under this section and the hearing body may adopt other rules of practice and procedure.

Administration fee for appeals
14.1(1) Subject to subsections (2) and (3), an administration fee of $250.00 is hereby imposed for an appeal made under subsection 14(2).

14.1(2) An appeal may not be accepted by the City Clerk until the fee imposed by subsection (1) has been paid to the City Clerk.

14.1(3) The appeal body hearing the appeal may order the administration fee referred to in subsection (1) to be refunded to the appellant if the appeal has been made in good faith and has some merit.

Monetary penalty imposed
14.2(1) A monetary penalty in the amount of $100.00 is hereby imposed on the owner or occupant of a property who fails to comply with an order to remedy a contravention of section 3.

14.2(2) The monetary penalty imposed by subsection (1) is in addition to a fine or imprisonment imposed for a contravention of this By-law and is in addition to the costs of the actions or measures taken by the City of Winnipeg pursuant to subsection 185(1) of The City of Winnipeg Charter that are added to the real property taxes on the property.

Neighbourhood Liveability By-law amended
3. The Neighbourhood Liveability By-law No. 1/2008 is amended by adding the following immediately before section 109:

Monetary penalty for violation of order under section 8
108.1(1) A monetary penalty in the amount of $100.00 is hereby imposed on the owner or occupant of a property who fails to comply with an order to remedy a contravention of section 8.

108.1(2) The monetary penalty imposed by subsection (1) is in addition to a fine or imprisonment imposed for a contravention of section 8 and is in addition to the costs of the actions or measures taken by the City of Winnipeg pursuant to subsection 185(1) of The City of Winnipeg Charter that are added to the real property taxes on the property.

DONE AND PASSED, in Council assembled, this day of , 2008.

_____
Mayor

_____
City Clerk

Approved as to content:

_____
Director of Public Works

Certified as to form:

_____
City Solicitor/Manager of
Legal Services