**Agenda - Council - July 16, 2008**

**Report - Standing Policy Committee on Protection and Community Services - July 4, 2008**

**Item No. 4 Doing Business in Winnipeg By-law Amendments**
**File GL-1**

STANDING COMMITTEE RECOMMENDATION:

On July 9, 2008, 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 amendments to the Doing Business in Winnipeg By-law No. 91/2008 as outlined in the report from the Chief of Police and Director of Community Services dated July 2, 2008, be enacted.

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 - July 4, 2008**

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On July 9, 2008, 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 July 4, 2008, the Standing Policy Committee on Protection and Community Services concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

**RE: Doing Business in Winnipeg By-law Amendments**

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| **FOR SUBMISSION TO:** | Standing Policy Committee on Protection & Community Service |
| **ORIGINAL REPORT SIGNED BY:** | Clive Wightman<br>Director of Community Services |
| | Keith McCaskill<br>Chief of Police |
| **REPORT DATE:** | July 2, 2008 |

**RECOMMENDATION:**

1. That Council enact the amendments to the *Doing Business in Winnipeg By-la*w as outlined in this report.

## Report Summary

**Key Issues:**

- The new *Doing Business in Winnipeg By-law No. 91/2008* was enacted by City Council on April 23, 2008 and came into effect of June 1, 2008. The new By-law replaced the *License By-law No. 6551/95* and is now the primary means for regulating business activities in Winnipeg.

- This report identifies amendments that are required to the *Doing Business in Winnipeg By-law*. The proposed amendments are in response to some logistical issues and concerns raised by stakeholders since the implementation of the new By-law. This includes:
  - a minor By-law amendment is proposed to the definition of a "social or banquet hall" to close an unintended loophole when a banquet hall is "rent free" if food and beverages are purchased.
  - that the requirements for a massagist to operate within a licensed massage parlour be temporarily removed and that the definition of a massage parlour be amended to reflect the former definition of where the business of massaging is carried on by more than one massagist. This would re-align the definition of a massage parlour to that of the definition used in the Zoning By-law. The issue will be further addressed under the pending review.
  - that the requirement that a business licence for a converted residential dwelling and/or shared facility dwelling must not be issued without verification of compliance with the *Neighbourhood Liveability By-law* be removed as the *Neighbourhood Liveability By-law* can be enforced at any time. This issue will

be reviewed further as part of a larger report on By-law Enforcement Services in March 2009.

- a number of amendments to Division 9 – Used Goods and Precious Metals are being proposed in response to stakeholder feedback. These amendments are proposed to make is easier for used goods and precious metals dealers to comply with the new By-law:
    - the addition of a new licence category for 'Temporary Trade Shows' in response to concerns from the numismatic community.
    - removing the 15-day hold period for investment grade precious metals.
    - relaxing the item tagging requirements for coins, stamps, and investment grade precious metals beyond the 15-day hold period.
    - removing the business licence requirements for a person who deals in used goods and precious metals exclusively in one or more of the following ways:
        - footwear, clothing, used costume jewellery, hats, handbags and other accessories.
        - furniture
        - children's toys, car seats and strollers
        - used goods acquired exclusively by commercial transaction (by cheque, dated a minimum of 7 days after the date of transaction, and mailed to the original vendor)
    - temporarily remove the new regulations imposed on scrap metals until such time that a new licence category of scrap metals dealer can be sufficiently studied and implemented.
    - provide an amendment so that the designated employee (CAO or delegated authority) may waive or reduce the licence fee imposed by 'Division Three - Food Services' for community organizations in instances where the organization or event is not for the preponderant purpose of earning a profit. It is important that regulatory provisions such as public health be conducted for all operations; however, on occasion the licensing fee may be cost prohibitive to a not-for-profit organization, such as in the case of a soup kitchen or food bank.

**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 amendments to the *Doing Business in Winnipeg By-law.*

**Policy Implications**

( ) No

(X) Yes

Comment(s): This report proposes amendments to the *Doing Business in Winnipeg By-law.*

**Regulatory Implications**

( ) None

(X) Eliminates or reduces regulatory impact

(X) Proposes regulatory impact

Comment(s): This report proposes amendments to the *Doing Business in Winnipeg By-law.*

**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)**:** Adoption of the recommendations proposed in this report is projected to be mill rate support neutral.

## Report

### REASON FOR THE REPORT:

The new *Doing Business in Winnipeg By-law No. 91/2008* was adopted by City Council on April 23, 2008. The new by-law was an outcome of recommendation #3 of the *Final Report of the Mayor's Red Tape Commission.* It replaced the *License By-law* and came into force on June 1, 2008.

Subsequent to implementing the new By-law a few technical amendments and other logistical issues were identified requiring amendments to the By-law. Council approval is required to amend a by-law.

### HISTORY:

On December 19, 2007, Council received the final report on Red Tape Recommendation 3 and adopted the principles upon which a new *Doing Business in Winnipeg By-la*w would be based. The Winnipeg Public Service was directed to prepare a *Doing Business in Winnipeg By-law*, including a new fee structure, to come into force on June 1, 2008 and report back to Council with same by April 2008.

The new *Doing Business in Winnipeg By-law No. 91/2008* was adopted by City Council on April 23, 2008. It replaced the *License By-law No. 6551/95* and came into force on June 1, 2008.

### DISCUSSION:

The new *Doing Business in Winnipeg By-law No. 91/2008* was adopted by City Council on April 23, 2008. The new by-law was an outcome of recommendation #3 of the *Final Report of the Mayor's Red Tape Commission.* It replaced the *License By-law* and came into force on June 1, 2008.

The By-law is a new streamlined regulatory framework that is based on three rationales for regulation: public health protection, fire protection and law enforcement/crime prevention. The new By-law is the primary means for regulating ongoing business activities in Winnipeg and is a streamlined approach to regulation. During the course of developing the By-law all 80 of the existing business licences were examined; 55 existing business licences were eliminated, and the new By-law licences 27 business types.

In addition, as approved by Council on December 19, 2007, several business activities would continue to be licensed pending a more substantial review of the regulations that affect them. These activities include massagists and massage parlours, escorts and escort service.

Subsequent to implementing the new By-law a few technical amendments and other logistical issues were identified requiring amendments to the By-law.

In addition, the Winnipeg Public Service has received considerable feedback from business operators on by-law provisions that they perceive as being too onerous or cost prohibitive to effectively implement. The Winnipeg Public Service has listened carefully to the feedback with the view of incorporating, where feasible, changes to improve this first version of a very large and complex By-law. This type of "tweaking" was expected given the broad scope of the By-law. The following amendments to the *Doing Business in Winnipeg By-law* are proposed.

**Licence Fees: Division 3 – Food Services**

Under the current By-law licence fees are not refundable and may not be waived or reduced.

Most business activities regulated and licensed under the By-law only apply to a business, which is operated for the preponderant purpose of earning a profit. However, due to health and safety concerns a few business licences such as food service establishments apply to both the for-profit and not-for-profit sector alike. While it is important that regulatory provisions such as public health and fire inspections be conducted for all operations, on occasion the licensing fee may be cost prohibitive to a not-for-profit organization providing a public service, such as in the case of a soup kitchen or food bank. To address this concern, it is proposed that section 13(4) of the By-law be amended so that the designated employee (CAO or delegated authority) may waive or reduce the licence fee imposed by 'Division Three - Food Services' for community organizations in instances where the organization or event is not for the preponderant purpose of earning a profit.

**Division 5 – Large Public Venues**

Large public venues with assembly occupancy are regulated for fire prevention under the *Doing Business in Winnipeg By-law.* Social or banquet halls require a large public venue business licence.

By definition a "social or banquet hall means any building or part of a building that is rented to the public for receptions, private banquets, socials or other functions to which the general public is not admitted and at which liquor is served". In the course of implementing the By-law, it was identified that some banquet halls are inadvertently exempt from requiring a 'social or banquet hall' business licence by virtue of their practise of providing free hall rental when food and/or beverage services is purchased in conjunction with the hall rental. Consequently, a minor By-law amendment is proposed to the definition of a "social or banquet hall" to close this unanticipated loophole.

## Division 6 – Massagists and Massage Parlours

Massage services is one of the business activities previously identified that will continue to be licensed under largely the same regulatory scheme until a broader review of the regulation of all adult-oriented businesses can take place.

The new *Zoning By-law 200/2006* and the *Downtown Winnipeg Zoning By-law* regulates the location where Massage Parlours can operate (defined as a premise where massaging is carried on by more than one massagist). The *Zoning By-law 200/2006* prohibits massage parlours from being located outside the area regulated by the *Downtown Zoning By-law*. The *Downtown Zoning By-law* allows them as a conditional use. This change appropriately consolidates land use regulations for Winnipeg businesses within the City's Zoning By-laws. Any future changes with regard to regulating the location of these businesses would be done by Council amendments to the Zoning By-laws, which require public hearing processes.

While waiting for a more extensive review however, some streamlining and improvements to regulatory requirements were instituted immediately. One of these provisions required that massagists must not provide a massage except in a licensed massage parlour.

Under the previous *License By-law* a massage parlour by definition was a place in which the trade of massaging is carried on by more than one massagist. During the course of implementing the new By-law it was determined that a small number of previously licensed massagists, who do not meet the criteria to be a massage therapist, were operating independently throughout the city. Most of these individuals work out of some form of holistic centre. As the By-law is currently written, there is no mechanism to issue a business licence to this small group of individuals under the new By-law, other than requiring them to work for a licensed massage parlour.

Consequently, until such time that a broader review of the regulation of all adult-oriented businesses can take place and the impact of permitting independent massagists outside the area regulated by the *Downtown Zoning By-law* can be further studied, it is proposed that the requirements for a massagist to operate within a licensed massage parlour be temporarily removed and that the definition of a massage parlour be amended to reflect the former definition of where the business of massaging is carried on by more than one massagist. This would also align with the current definition of a massage parlour under the *Zoning By-law*. This issue will be further addressed under the pending review.

## Division 7 – Multiple Family Dwellings

As the By-law is currently written, all new applicants for a converted residential dwelling, shared facility dwelling, and converted residential dwelling with shared facilities licence are required to obtain verification that the dwelling meets the requirements of the *Neighbourhood Liveability By-law*. This provision is proving to be operationally challenging and as the *Neighbourhood Liveability By-law* can be enforced at any time, it

is therefore proposed that this provision be removed. This issue will be reviewed further as part of a larger report on By-law Enforcement Services in March 2009.

The *Neighbourhood Liveability By-law* sets standards applicable to all property owners alike. Inspections of converted residential dwelling and/or shared facility dwellings will still be conducted upon complaint.

**Division 9 – Businesses Dealing in Used Goods and Precious Metals**

Licences under this division include: Antique Dealer, Auctioneer, Bicycle Dealer, Precious Metal Dealer, and Used Goods Dealer (formerly Pawnbroker and Second Hand Dealer). Each of these business activities were licensed and regulated under the *City of Winnipeg License By-law.* The purpose of these regulations is to protect dealers and the public from purchasing stolen goods and to assist law enforcement personnel in recovering stolen goods.

The By-law requires that people and organizations that are carrying on a business must get a licence and comply with the By-law requirements; it does not affect those who are not in business. The By-law uses the phrase "for the preponderant purpose of earning a profit" to make this distinction.

In response to stakeholder feedback a number of refinements to this division of the By-law are proposed.

Temporary Trade Shows

The numismatic community has raised concerns regarding the elimination of the Flea Market Promoter business licence and the potential impact on numismatic shows where precious metals, collectables, and other used goods are bought and sold. The Flea Market Promoter licence was one of the licences eliminated in developing the new By-law as part of Red Tape reduction.

Under the previous *License By-law*, the Flea Market Promoter licence provided a legitimate means for temporary events to display and sell handicrafts, second hand and used goods without having to obtain a Second Hand Dealer licence. Without this avenue, as the By-law is currently written, all sellers from Winnipeg and those coming from outside of Winnipeg will be required to obtain a business licence and comply with the requirements of the *Doing Business In Winnipeg By-law* if they are a business selling used goods for the preponderant purpose of earning a profit.

To address this concern, the Winnipeg Public Service is proposing to add a new licence category under Division 9 for Temporary Trade Shows. Under the proposed new business licence, temporary trade show organizers will be required to provide a list of all vendors at the trade show five business days prior to the event and provide access to the event to Winnipeg Police Service, and By-law Enforcement Officers upon request.

Precious Metal Dealers

Precious metals dealers have expressed concern that the hold period for gold, platinum and silver bullion, commonly traded on the Canadian financial market, is cost prohibitive. Consequently the Winnipeg Public Service is recommending that the 15-day hold period be removed for investment grade precious metals, using the same definition as is used by the Revenue Canada Agency. Furthermore it is proposed that the requirement to continue to tag, or otherwise identify, a particular coin, stamp, or investment grade precious metal with a particular transaction after the 15-day hold period has lapsed also be removed.

Businesses Dealing in the Occasional Used Goods Transaction

A number of small business owners have raised concerns that a small segment of their business operations involves the buying and selling of used goods, thus requiring them to obtain a used goods dealer business licence and adhere to the recording, reporting and hold provisions of the By-law. Several amendments to the By-law are proposed to address this. Business licences are no longer required for a person who deals exclusively in one or more of the following ways:

- Footwear, clothing, used costume jewellery, hats, handbags and other accessories.
- Furniture
- Children's toys, car seats and strollers
- Used goods acquired exclusively by commercial transaction (a cheque must be mailed to the original vendor dated a minimum of 7 days after the date of transaction)

The last exclusion in particular will provide a mechanism for small business owners to acquire used goods through a commercial transaction, exempting them from the licensing and associated reporting requirements. The commercial transaction process is both a deterrent to the resale of stolen goods and a mechanism to trace the seller if necessary.

Scrap Metals

The theft of copper piping, wiring, street signs, manhole covers, parts of billboards and even phone booths has become a significant problem in Canada due to rising scrap metal prices. Consequently the *Doing Business in Winnipeg By-law* proposed to regulate the buying and selling of scrap metals acquired in single shipments of 4 tons or less.

Subsequent to implementing the new regulations, the scrap metals industry has raised concerns with their ability to inventory and hold scrap metals. Other jurisdictions are currently in the process of adopting new legislation to regulate the scrap metal industry. In particular the lower mainland municipalities of British Columbia have worked cooperatively to develop a new by-law regulating scrap metal dealers. Due to the complexity of the issues, the Winnipeg Public Service is proposing to temporarily

remove the new regulations imposed on scrap metals until such time that a new licence category of scrap metals dealer can be sufficiently studied and implemented.

Other

A number of other minor amendments to Division 9 of the By-law are proposed including:

- Additional clarification to several of the definitions such as coins, collectibles and precious metals is proposed.
- Amend the definition of transaction to exclude goods acquired from a charitable organization. (This is to remove the licence requirements for businesses such as Value Village).
- Provide further clarification as to when the Winnipeg Police Service may access a Record of Identification on the person selling the used goods.
- Provide further clarification on the record of identification requirements for Internet and mail order transactions.

**Schedule A (Fee Structure)**

The Winnipeg Public Service is proposing to add a new licence category for Temporary Trade Shows (up to 7 consecutive days), with a licence fee of $260. A minor technical amendment to the licence year under Part 2 is also being proposed.

**FINANCIAL IMPACT**

Adoption of the recommendations proposed in this report is projected to be mill rate support neutral.

## Financial Impact Statement

**Date:** June 26, 2008

## Project Name:
**Doing Business in Winnipeg By-law Amendments**

**COMMENTS:**

There are no financial implications associated with the adoption of this report.

original signed by

Cindy Fernandes
Manager of Finance & Administration

**IN PREPARING THIS REPORT THERE WAS:**

**Internal Consultation With and Concurrence By:**

- Internal Services Department: Legal Services Division

**External Consultation With:**

**THIS REPORT SUBMITTED BY:**

| | |
|---|---|
| Department: | Community Services Department |
| Division: | Community By-law Enforcement Services |
| Prepared by: | Peter Parys, Manager |
| | Karen Mathieson, Project Coordinator |
| File No. | |