Agenda - Council - February 18, 2009

Report - Standing Policy Committee on Protection and Community Services - January 12, 2009

Item No. 2 Roadside Memorials
eFile GL-1.1

STANDING COMMITTEE RECOMMENDATION:

On February 11, 2009, 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 Neighbourhood Liveability By-law No. 1/2008 be amended as outlined in Appendix A to the report from the Director of Public Works and Director of Community Services dated December 10, 2008, to regulate roadside memorials within the street right-of-way in the City of Winnipeg.

2. 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 12, 2009

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On February 11, 2009, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Protection and Community Services and submitted the matter to Council.

On January 21, 2009, the Executive Policy Committee laid over the matter to February 11, 2009.

Further on January 21, 2009, the Executive Policy Committee received a communication dated January 19, 2009, from Wanda Prychitko regarding the topic of Roadside Memorials, which has been placed on file in the City Clerk's Office.

STANDING COMMITTEE RECOMMENDATION:

On January 12, 2009, 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.

On October 6, 2008, the Standing Policy Committee on Protection and Community Services recommended that the Winnipeg Public Service report back to the appropriate Standing Policy Committee of Council on the City of Winnipeg's current processes, guidelines or regulations governing the placement and maintenance of roadside memorials; and if appropriate, identify recommended changes to such processes, guidelines or regulations.

RE: ROADSIDE MEMORIALS

FOR SUBMISSION TO: **STANDING POLICY COMMITTEE ON PROTECTION AND COMMUNITY SERVICES**

ORIGINAL REPORT SIGNED BY: **L.S.W. LARKIN, P. ENG., DIRECTOR OF PUBLIC WORKS**

C. WIGHTMAN, DIRECTOR OF COMMUNITY SERVICES

REPORT DATE: December 10, 2008

RECOMMENDATION:

That:

1) Council amend the Neighbourhood Liveability By-law No. 1/2008 (draft amending by-law attached as Appendix A) to regulate roadside memorials within the street right-of-way in The City of Winnipeg.

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

Report Summary

Key Issues:

- Roadside memorials are being placed within the street right-of-way in The City of Winnipeg.
- Regulations for roadside memorials are not explicitly provided in any existing City of Winnipeg By-law or other public document.
- Regulations for roadside memorials must strike a balance such that the desire to express grief by those who erect roadside memorials and the views of neighbouring property owners and the general public are equally respected.
- Proposed regulations will address roadside memorial location, construction, composition, installation, maintenance, time limits and other limitations relative to City of Winnipeg requirements. A summary of the regulations will be provided to the public (Appendix B).

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): Proposed regulations identify expectations regarding roadside memorials internally to City staff and to the general public.

Policy Implications

- [ ] No
- [x] Yes

Comment(s): The proposed regulations are intended to balance the needs of those expressing grief as well as the concerns of neighbouring residents and the general public.

Regulatory Implications

- [ ] None
- [ ] Eliminates or reduces regulatory impact
- [x] Proposes regulatory impact

Comment(s): The proposed By-law regulates the size, location, duration and maintenance of roadside memorials.

Environmental Implications

- [x] No
- [ ] Yes

Comment(s):

Human Resources Implications

- [x] No
- [ ] Yes

Comment(s): Staff currently tasked with enforcing the Neighbourhood Liveability By-law would be expected to enforce the proposed amendment to the Neighbourhood Liveability By-law regarding roadside memorials.

Financial Implications

- [x] Within approved current and/or capital budget
- [ ] Current and/or capital budget adjustment required

Comment(s): There is no cost associated with the recommendation.

Report

REASON FOR THE REPORT:

The Standing Policy Committee on Protection and Community Services provides policy advice to Council with respect to the Neighbourhood Liveability By-law 1/2008. Council must approve any amendment to the Neighbourhood Liveability By-law, including the addition of roadside memorial provisions to the By-law.

HISTORY:

On October 6, 2008, the Standing Policy Committee on Protection and Community Services recommended that the Winnipeg Public Service report back to the appropriate Standing Policy Committee of Council on the City of Winnipeg's current processes, guidelines or regulations governing the placement and maintenance of roadside memorials; and if appropriate, identify recommended changes to such processes, guidelines or regulations.

Prior to November 1, 2008, in addition to responsibilities for enforcement of The Temporary Street Signs By-law No. 64/2003, direction and advice with respect to roadside memorials was provided by By-law enforcement officers in the Public Works Department. On November 1, 2008, The Temporary Street Signs By-law No. 64/2003 was repealed and the requirements for temporary signs were incorporated into the new Neighbourhood Liveability By-law No. 1/2008, which is enforced by a new By-law enforcement group in the Community Services Department.

DISCUSSION:

A roadside memorial is an on site marker that commemorates the passing of an individual or individuals as a result of a collision. Regulation of roadside memorials is intended to deal with memorials that constitute a hazard to pedestrians and/or motorists and memorials that are an issue for adjacent property owners or the general public.

Objective

The following needs were considered in the development of regulations for roadside memorials:

- Provide rules concerning erecting and maintaining roadside memorials that balance the need for friends and relatives to memorialize their loved ones while ensuring the safety of the travelling public and respecting the views of adjacent property owners and the general public.
- Regulate size, location, duration and maintenance of roadside memorials.
- Ensure that the roadside memorial does not constitute a hazard or obstruction to vehicles or pedestrians.
- Protect infrastructure within the right-of-way and enable the City to undertake required construction and maintenance activities in areas occupied by roadside memorials.
- Facilitate enforcement of regulations for roadside memorials when issues arise.

Background

A search was conducted to identify how other jurisdictions in Canada deal with roadside memorials. The results indicate that many jurisdictions have no formal policy but informally allow roadside memorials to exist in the right-of-way and deal with complaints on a case-by-case basis. Other jurisdictions have formal policies with guidelines but do not necessarily enforce the policy unless the memorial becomes an issue. Two provinces, Ontario and Nova Scotia, permit only standard memorials provided by Mothers Against Drunk Driving. The varied approaches to roadside memorials are likely a reflection of the sensitivity of the issue; however, all researched jurisdictions did permit some form of roadside memorial.

A recent study in Alberta by Dr. Richard Tay, P.Eng. from the University of Calgary[1] examined safety and public perception issues related to roadside memorials. When asked to select their preferred policy for roadside memorials, 38.4% of the 761 respondents to a public survey conducted as part of the report supported a policy of officially or unofficially disallowing roadside memorials, 51.0% supported a policy of officially or unofficially allowing roadside memorials and the remaining 10.6% of respondents supported allowing roadside memorials only under special circumstances or on a case-by-case basis. Although the results indicate there is no public consensus with respect to roadside memorials, responses to the question in the Tay report and the search results from other jurisdictions are supportive of allowing roadside memorials in the street right-of-way.

In its conclusion, the Tay report indicates that studies undertaken to date have not identified a negative safety effect resulting from the presence of roadside memorials and that there may in fact be some positive short term safety effects at some locations.

Proposed Regulations

Appendix A contains the proposed amendment to the Neighbourhood Liveability By-law 1/2008 that would provide for the regulation of roadside memorials. Appendix B provides a one page summary of the regulations that would be made available to the public in various forms, including being posted on The City of Winnipeg website. The following section provides the rationale for the proposed regulations as shown in Appendix B.

[1] *Roadside Memorials and Traffic Safety*, Dr. Richard Tay, P.Eng., 2008

1. Location

Roadside memorials will not be permitted in medians or on traffic islands and should not create a hazard or obstruction to pedestrians or motorists. These limitations will in effect limit the placement of roadside memorials to the boulevard area. Medians and traffic islands are often narrow, in close proximity to vehicular traffic and fully paved. As such, there is a concern about people erecting, visiting or maintaining roadside memorials being exposed to traffic and the ability to maintain elements of the memorial in place. Although there are medians and traffic islands within the City where there is sufficient room to safely accommodate a roadside memorial, it was felt that a total prohibition at these locations is not an unreasonable restriction since it reduces the probability of creating a roadside hazard and it is straightforward from a public understanding and an enforcement perspective.

Regulating the location of the memorial, relative to the potential creation of a hazard or obstruction, gives the City the flexibility to deal with memorials that, by their composition and/or proximity to the roadway or the sidewalk, create a safety risk to the general public.

2. Construction and Composition

Roadside memorials will be limited in size to a cube of space one metre in each direction. The limitation on size is beneficial in terms of reducing the potential for creation of a sight line obstruction and in defining a maximum overall size of the memorial that may be of concern to any fronting property owner and the general public. Without controls on the size of the memorial, the potential exists for a roadside memorial that is a significant roadside hazard and/or results in a significant imposition to the fronting property owner and the general public. Use of objects that can shatter, such as vases or glasses will also be restricted for the safety of the public.

3. Installation

The name and telephone number of the person responsible for the memorial and the date of installation must be included on the memorial. This provides the City with a contact person if the roadside memorial needs to be removed or brought into compliance with the regulations. Inclusion of the date of installation assists the City in determining if the memorial has exceeded the approved time limit for roadside memorials.

Other regulations that restrict roadside memorials from being attached to directional signs, traffic control devices or other government installed signs and supporting infrastructure (poles, posts, etc.) are necessary to protect the visibility of these signs to the travelling public. The need to protect trees and structures in the right-of-way from damage is self evident.

4. Maintenance

The City's expectation is that the roadside memorial will be maintained in a reasonable condition while it is contained within the street right-of-way. Roadside memorials which fall into disrepair, are damaged, vandalized, disfigured or burned will be subject to removal by the City at any time.

5. Gatherings

There have been circumstances in the past where gatherings for memorial type services have occurred in the City and which have resulted in complaints from the public regarding parking and littering near the site. The City's expectation is that participants in this type of gathering will conduct themselves in an orderly and peaceful manner, respecting the privacy of neighbouring residents and existing By-laws.

6. Time Limit

The Tay study asked the public to choose their preferred time limit for the display of roadside memorials. Of the 792 respondents to this question, 26.0% indicated no time limit, 24.9% indicated no time at all (i.e. memorial not permitted) and 49.1% indicated some form of time limit. Of the 49.1% who indicated some form of time limit, the two highest responses were for a one month limit (19.2%) and a one week time limit (11.5%).

In an urban environment such as the City of Winnipeg, there is a relatively high probability that a roadside memorial will be located in close proximity to a residence or commercial property. Balancing the desires of the grieving with the views of neighbouring property owners is an important consideration in determining the need for a time limit and an appropriate length of time for that time limit.

Another consideration is for maintenance activities that occur within the street right-of-way, specifically snow clearing and spring clean-up of boulevards. There is a six month window in which the potential exists for snow clearing equipment to inadvertently destroy a roadside memorial. In addition, in the spring there is a potential conflict between annual boulevard maintenance activities and the roadside memorial.

In consideration of all of the above, a 90 day time limit is proposed for the placement of roadside memorials. The 90 day time limit would be measured from the date of the fatal collision.

7. Limitations

To effectively deal with issues surrounding roadside memorials, the City needs to have the ability to remove a memorial where circumstances such as construction or maintenance activities require removal of the roadside memorial. In addition, the City must be able to remove memorials that do not follow the rules set out in the By-law. When circumstances permit, the City's approach will be to notify the individual responsible for the memorial that the memorial has been, or will be, removed and provide the reasons for the removal.

Conclusion

In developing regulations for roadside memorials, the City acknowledges that although there is a legitimate desire from the public to allow roadside memorials within the street right-of-way, limitations are necessary for the memorials to ensure the safety of the travelling public as well as to respect the views of adjacent property owners and the general public.

Financial Impact Statement Date: December 12, 2008

Project Name:

ROADSIDE MEMORIALS

COMMENTS:

There is no financial impact associated with the recommendation of this report.

original signed by: Darcy Stewart, CA

Manager of Finance & Administration

IN PREPARING THIS REPORT THERE WAS:

Internal Consultation With and Concurrence By: N/A

External Consultation With: Dr. Richard Tay, P.Eng.
University of Calgary

Karen Wilson Baptist
University of Manitoba

THIS REPORT SUBMITTED BY:

Departments: Public Works Department & Community Services Department
Divisions: Transportation Division & Community Resource, Protection & Safety Services Division
Prepared by:
Stephen Chapman, P.Eng., Acting Traffic Management Engineer. 986-5028
Processed by:
Carol Kawaza, Secretary to Transportation……. 986-5288

File No: G-01
File Name: h:\transportation folders\2008 reports\reports 2008\chapman stephen\december\fis - roadside memorials.doc

"median" means a portion of a street in the centre of a roadway that is maintained to improve traffic safety by separating lanes of opposing traffic and is not intended to carry vehicular traffic;

"mobile sign" means a sign which is mounted on a trailer, vehicle, stand or similar support structure which is designed in such a manner that the sign can be readily relocated to another location, and which may include copy that can be changed through the use of removable characters or panels.

"roadside memorial" means a marker constructed, erected, posted or placed within the street to memorialize an event that resulted in a fatality.

"sign" includes
(a) a letter, word or numeral;
(b) a pictorial representation, illustration or decoration; or
(c) an emblem, symbol, logo or trademark; that is placed on an object, including paper, cloth or wood and includes a flag and a poster;

"street" means any place or way, including any structure forming part thereof, which or any part of which the public is ordinarily entitled to use for the passage of vehicles or pedestrians, with or without fee or charge therefore, and includes all the space between the boundary lines thereof and includes:
(a) roadways;
(b) sidewalks;
(c) medians;
(d) boulevards;
(e) traffic islands; and
(f) private accesses; but does not include any place or way that is governed by the Parks and Recreation By-law;

PART 4
HANDBILLS, POSTERS, ROADSIDE MEMORIALS
AND TEMPORARY SIGNS ON STREETS

Delivery of handbills
58(1) A person must not leave a handbill on residential property if

(a) a sign on the property states: "No handbills", "No flyers", "No trespassing", "No peddlers or gents" or otherwise indicates that handbills are not wanted;
(b) the occupant in any other way indicates that handbills are not wanted;
(c) the property is vacant.

58(2) A person who leaves handbills on residential property must place them so that they will not be blown by the wind from the place where they were left.

58(3) A person must not deposit or leave a handbill on or attached to a vehicle.

Posters on private property

59. A person must not post a poster on property without the permission of the occupant or owner of the property.

Posters, roadside memorials and temporary signs on streets

60(1) Subject to section 62, a person must not place or post, or cause the placing or posting of a sign or roadside memorial within a street if it:

(a) is a hazard or obstruction to vehicular or pedestrian traffic;
(b) is attached to or obstructing a directional sign, a traffic control device or a sign erected, placed or authorized by the City of Winnipeg, the Province of Manitoba or the Government of Canada, including the post or standard supporting the sign or traffic control device;
(c) causes damage to property, including trees or a structure within a street;
(d) is located within a median or traffic island;
(e) is attached to a pole, wall or other structure by something other than clear adhesive tape;

60(2) Subject to section 62, a person must not place or post, or cause the placing or posting of a Sign or roadside memorial within any street unless the sign or roadside memorial displays on its face
(a) the name and telephone number of the person responsible for placing the sign or causing it to be placed; and
(b)the date the sign was placed;

60(3) Subject to section 62, the person placing or posting, or causing to be placed or posted, a sign within any street must remove it within 14 days of the date it was posted or within 24 hours after the event identified in the sign, whichever is sooner.

60(4) Notwithstanding subsection 60(3), garage sale signs may not be placed within a street earlier than the day prior to the garage sale.

60(5) Notwithstanding subsection 60(3), the person placing or posting, or causing to be placed or posted, a roadside memorial within any street must remove it within 90 days of the date of the event that resulted in a fatality.

Temporary signs on streets
61(1) Subject to section 62, a person must not place or post, or cause the placing or posting of a sign, other than a poster, within any street which is identified on Schedule "A", which Schedule is attached to and forms part of this By-law.

61(2) Subject to section 62, a person must not place or post, or cause the placing or posting of a sign, other than a poster, within any street which is identified on Schedule "A", if the sign

(a) is within 30 metres of an intersection, measured from the nearest curb of the intersection;
(b) is within 30 metres of a turning lane, deceleration or acceleration lane or traffic storage lane;
(c) is within 2 metres of a curb or the edge of a roadway;
(d) is within 0.5 metres of a sidewalk;
(e) is within 5.0 metres of a private access;
(f) is permanently affixed;
(g) is supported by string, rope, wire or metal stakes;
(h) is a mobile sign;
(i) is greater than 0.6 square metres in size;
(j) is higher than 1 metre, measured from the existing grade to the top of the sign;
(k) has more than 2 faces per sign;
(l) is illuminated, electrified, spins or rotates;
(m) could be reasonably mistaken for a street sign or a traffic control device;

61(3) Subsections 61(1) and 61(2) do not apply to roadside memorials.

61(4) Subject to subsection 61(5) and section 62, a person must not place or post, or cause the placing or posting of a roadside memorial that:

(a) is larger than (1) metre in height as measured from the roadway surface;
(b) is larger than (1) metre in width as measured along the roadway;
(c) is larger than (1) metre in depth as measured perpendicular to the roadway; or
(d) contains or uses breakable objects , including items made of glass or ceramic.

61(5) Notwithstanding subsection 61(4)(d) breakable objects are permitted to be used during a memorial service but must be removed immediately following the completion of the service.

Exceptions to sign and roadside memorials restrictions

62(1) Sections 60 and 61 do not apply to:

(a) signs and roadside memorials placed, posted or erected by the City of Winnipeg;
(b) signs, including advertising, placed, posted or erected on facilities owned by the City of Winnipeg, including Winnipeg Transit facilities, pursuant to agreements with the City of Winnipeg;
(c) signs placed, posted or erected by Manitoba Hydro or other utility companies upon their own poles or structures of the Province of Manitoba or the Government of Canada;
(d) signs placed, posted or erected by a Business Improvement Zone to beautify or improve the zone;
(e) signs specially authorized under or required by:
(i) the Downtown Winnipeg Zoning By-law;
(ii) the Winnipeg Zoning By-law;
(iii) the Winnipeg Building By-law;
(iv) the Encroachment By-law;
(v) the Traffic By-law;
(vi) the Streets By-law.

62(2). Notwithstanding subsection 60(3), the obligation to remove a sign no later than 14 days after it was placed does not apply to an election sign that is placed within the street no earlier than the date notice is given of the opening of nominations and is removed within 7 days after the close of polls for that election.

Removal of signs and Roadside Memorials by City

63(1) A sign or roadside memorial is permitted to be placed within a street on condition that it may be removed by or on behalf of the City of Winnipeg in order to allow work to be done on or within the street without notice to the person who owns or has placed the sign or roadside memorial.

63(2) A sign removed pursuant to subsection (1) must be retained by a designated employee for a period of three days, during which time the person whose name appears on the sign pursuant to clause 61(2)(a) may reclaim it.

63(2.2) Notwithstanding subsection 63(2) a roadside memorial removed pursuant to subsection (1) shall not be retained by the City for reclaiming.

63(3) A sign or roadside memorial that contravenes this By-law or is damaged or falls into disrepair may be removed by a designated employee and destroyed forthwith without notice.

Posters in City buildings

64(1) Members of the public may not post notices and posters on property or in buildings owned or occupied by the City except on notice boards and poster areas designated for this purpose and with the approval of a designated employee.

64(2) A notice board or poster area not less than 60 cm by 60 cm must be provided for use by the public at every branch library, community office, arena, swimming pool and wading pool operated by the City of Winnipeg.

64(3) An employee designated for this purpose must:

(a) record on the poster the date it was received and the date it was posted;
(b) post notices and posters in the order they were received and as space becomes available;
(c) remove a poster immediately after the event it is publicizing or two weeks after it was posted, whichever occurs earlier;

Appendix B

SUMMARY OF REGULATIONS FOR ROADSIDE MEMORIALS

The following is a summary of regulations related to roadside memorials on street rights-of-way in The City of Winnipeg as proposed in an amendment to the City's Neighbourhood Liveability By-law 1/2008.

1. Location

Roadside memorials must not create a hazard or obstruction to vehicular or pedestrian traffic and are not permitted on a median or on a traffic island.

2. Construction and Composition

The entire memorial must occupy a space no more than one metre in height (measured from the road surface), one metre in width (measured along the roadway) and one metre in depth (as measured perpendicular to the roadway). Objects that can shatter such as vases or glasses are not permitted to be a part of the memorial.

3. Installation

The name and telephone number of the person responsible for the memorial and the date of installation must be included on the memorial. Installation of the memorial should not cause any damage to the right-of-way, including trees or structures. Elements of the memorial should not be attached to, or obstruct the view of any signs or traffic control devices.

4. Maintenance

Roadside memorials which fall into disrepair, are damaged, vandalized, disfigured or burned are subject to removal by the City at any time.

5. Gatherings

Participants who gather at a roadside memorial must comply with the law and conduct themselves in an orderly and peaceful manner such that the privacy of the neighbouring residents is respected at all times. The site shall be kept free of any accumulated debris after the gathering.

6. Time Limit

All roadside memorials must be removed within 90 days from the date of the fatal collision.

7. Limitations

The City of Winnipeg will exercise its authority to remove a roadside memorial from the right-of-way at any time when circumstances so dictate. Circumstances permitting, The City of Winnipeg will notify the individual responsible that the memorial has been removed.