Agenda – Executive Policy Committee – May 12, 2010

Moved by Councillor

That Rule 10(3) of The Procedure By-law No. 50/2007 be suspended in order that the following item, which was received less than 96 hours preceding the committee meeting, be considered by Committee.

Report – Standing Policy Committee on Infrastructure Renewal and Public Works – May 11, 2010

Item No. 6 Amendments to the Streets By-law No. 1481/77 - Management and Enforcement of Activities within the Public Right-of-way and the Restoration of Excavations
eFile ST-5.3

STANDING COMMITTEE RECOMMENDATION:

On May 11, 2010, the Standing Policy Committee on Infrastructure Renewal and Public Works concurred in the recommendation of the Winnipeg Public Service and submits the following to Council:

1. That the Streets By-law No. 1481/77 be amended, as per the draft amending by-law contained in the report from the Winnipeg Public Service dated March 16, 2010, to reflect changes in the City's operating environment, to enable better management of the public right-of-way and enforcement of the by-law.

2. That the revised by-law come into effect on June 14, 2010, to provide an opportunity to educate the industry and property owners about the new requirements before the beginning of the 2010 construction season.

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

Report – Standing Policy Committee on Infrastructure Renewal and Public Works – May 11, 2010

DECISION MAKING HISTORY:

STANDING COMMITTEE RECOMMENDATION:

On May 11, 2010, the Standing Policy Committee on Infrastructure Renewal and Public Works concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

ADMINISTRATIVE REPORT

ISSUE: **Amendments to the Streets By-law No. 1481/77**

Critical Path: **Standing Policy Committee on Infrastructure Renewal & Public Works – Executive Policy Committee – Council**

AUTHORIZATION

Author	Department Head	CFO	CAO
L. Escobar, P.Eng. Manger of Transportation B. Woroby, P. Eng. A/Manager of Engineering T. Esposito Manager of Customer Services & Strategic Support	L. Deane, P. Eng. A/Director of Public Works	J. Ferrier Acting CFO	G. Laubenstein

RECOMMENDATIONS

1. That the Streets By-law No. 1481/77 be amended as outlined in this report to reflect changes in the City's operating environment, to enable better management of the public right-of-way and enforcement of the by-law (draft amending By-law attached as Attachment 1).
2. That the revised By-law come into effect on June 14, 2010 to provide an opportunity to educate the industry and property owners about the new requirements before the beginning of the 2010 construction season.

IMPLICATIONS OF THE RECOMMENDATIONS

There will be no financial implications with these recommendations for people who are compliant with the by-law.

The proposed amendment addresses needed improvements in two key areas of the current Streets By-law No. 1481/77: 1) management and enforcement of activities within the public right-of-way; and 2) the restoration of excavations (cuts).

1. Management and enforcement of activities within the public right-of-way:
   Enactment of this proposed amendment will provide for improved public safety and traffic flow by clarifying, in plain language terms, what activities are allowed within the public right-of-way and providing for adequate enforcement capability to ensure compliance. Specifically, the amendment provides:
   - New definitions for "Manual of Temporary Traffic Control", "Standard Construction Specifications", "street cut" and "Streets Cuts Manual".

- Enhanced regulation over the gates of construction sites which open onto the right-of-way (Clause 2.13(b))
- Enhanced regulation over the doors of enclosures around garbage bins (Clause 2.13(c))
- Clarification around regulation of any markings on streets (Section 2.14)
- Clarification around the requirement for submission and approval of drawings before carrying out any installation, reconstruction, renewal or realignment of a structure in a street (Section 2.20)
- Clarification around licensing requirements for person conducting work in the right-of-way (Section 3.01)
- Enhanced authority to the Director of Public Works to suspend and revoke licenses for not complying with requirements of the Streets By-law (Sections 3.06 and 3.07)
- Clarification around what activities require a Use of Street permit when conducted in the right-of-way as well as defining the conditions and fees associated with such permits (Sections 4.01-4.06). However, the amendments do not alter the current fees being charged for Use of Street permits.
- Enhanced authority to the Director of Public Works to suspend and revoke Use of Street permits for not complying with requirements of the Streets By-law (Sections 4.07 - 4.09)
- Clarification on the requirements and conditions of a street cut permit and clarification on powers of the Director, including the authorization to issue a Street Cuts Manual (Section 4.12.01(1) – 4.12.02)
- Enhanced regulation over the inspection and quality of street cut restorations (Subsection 4.12.05)
- Creation of a restoration contractor's licence and consequences of non-compliance (Section 4.12.06 to 4.12.08)
- Clarification on remedies for non-compliance with By-law (Section 4.12.09)
- Improved enforcement of requirements of the Manual of Temporary Traffic Control for working in the right-of-way by the introduction of specific fines detailed in Schedule "H" (Subsections 4.13.02 and 4.13.03)
- Clarification on conditions of Crossing Permits including associated damage deposits (Section 5.01)
- Clarification around damage deposits for Building Permits (Section 5.02)
- Clarification around remedial actions and specific authority granted to special constables which includes having vehicles towed at owner's expense for contravention of the By-law (Subsection 7.02 and 7.03)
- Enhanced enforcement through the introduction of Schedule "H", titled Penalties for Contraventions of By-Law, which lists minimum fines for each offence under the By-law, along with discounted fines if paid within 15 days – court costs are in addition to the fines (Sections 8.01 - 8.04 and Schedule "H")
- Recognition of existing practice with respect to the applicability of the By-law to the activities of the City in streets (Section 9)

The introduction of Schedule "H", Penalties for Contraventions of By-law, will allow the by-law officers to more adequately enforce the Streets By-law No. 1481/77 and create a more convincing deterrent to future offences. There will be no financial impact with these proposed amendments.

2. Restoration of excavations (cuts):
The proposed By-law amendment provides the Director with the authority to direct permit applicants or their agent to restore their own cuts in the right-of-way when deemed appropriate by the Director. The Director will be authorized to set out the locations and

conditions for full restorations in the Street Cuts Manual, which must be published on the City's website.

The Public Works Department proposes in 2010 to require cut permit applicants or their agents to fully restore their own pavement cuts made on regional streets between May 31st and October 30th at the time of backfill. Only contractors who are licensed under the Streets By-law to restore pavement cuts in the right-of-way will be allowed to do so. No fees for this licence are being proposed at this time.

HISTORY

The Public Works Department realizes that in order to simplify and clarify the process for working in the right-of-way and to reduce "red tape" for citizens and organizations conducting business in the City, a streamlined, plain language Streets By-law is needed. The current Streets By-law uses outdated and inappropriate terminology and lacks clarity as to the obligations of property owners and licensed contractors. The goal of an amended By-law would be to make the process of working in the right-of-way more straightforward, less frustrating and easier to enforce while better protecting the public interest and safety as well as enhancing the flow of traffic. The amendments being proposed are a temporary measure until a completely overhauled Streets By-law can be developed.

As time has passed and as the city landscape has continued to change, operations in the public right-of-way have become more complicated, requiring more oversight and better management by the City. The Streets By-law needs updating to reflect the changing environment. Some ongoing issues that have been identified are:

- A need to protect the City's investment in infrastructure from damage caused by negligence and inappropriate working techniques
- Work is performed in the public right-of-way without appropriate permits and City approval
- Excavations (cuts) in the right-of-way are often inadequately restored, compromising the integrity of the City's infrastructure, reducing life-expectancy of pavements and adversely impacting traffic flow and vehicles
- Restoration of excavations (cuts) is taking too long to be completed, resulting in delays and impediments to traffic flow
- Inadequate City resources to restore excavations/cuts in a timely manner
- Inability to enforce requirements of the Streets By-law due to inadequate or non-existing fines for offences (currently there is only a minimum fine of $50.00 plus costs for any offence under the By-law)

Currently the majority of cut restorations are restored by the City or its agent. To ensure the timely restoration of cuts, it is proposed that the director have the authority to direct permit applicants or their agent to restore their own cuts in the right-of-way when deemed appropriate. The Public Works Department proposes that, beginning May 31, 2010, permit applicants or their agents be directed to restore their own pavement cuts on regional streets made between May 1st and October 30th. This By-law and policy change will:

- ensure that pavement cuts on regional streets are restored at the time of backfill, eliminating the need to temporarily patch the cut until final restoration can be completed
- eliminate the need to close off lanes of traffic twice to facilitate final restoration at a later date.
- eliminate complaints and claims that arise when temporary patches sink.

- reduce the permit applicant's overall costs for restoration of their regional street cuts.

The existing By-law currently sets out in detail the rules and standards for excavation and the restoration of cuts. However, the standards set out in the By-law are outdated and inconsistent with the Standard Construction Specifications which are revised annually. This By-law amendment specifically requires compliance with the Standard Construction Specifications and the Manual of Temporary Traffic Control, published by the Department of Public Works. This provides certainty and predictability for permit applicants and contractors.

In order to ensure that cut restorations meet the standards set out in the By-law, the permit applicant or their agent will be responsible for arranging an inspection prior to installing the surfacing material. A failure to call for an inspection will result in the permit holder having either to demonstrate to the satisfaction of the inspector that the cut has been properly located and constructed, or to re-construct the cut.

FINANCIAL IMPACT

Financial Impact Statement **Date:** March 24, 2010

Project Name:

Amendments to the Streets By-law No. 1481/77

COMMENTS:

It is anticipated that the introduction of the Schedule "H", Penalties for Contraventions of By-law, will act as a deterrent to future offences and therefore no financial impact is expected as a result.

There is also no financial impact expected as a result of permit applicants restoring their own resotration of excavations (cuts). These restorations were previously funded by deposits made by the permit taker.

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

CONSULTATION

In preparing this Report there was consultation with:

- Licensed sewer and water contractors
- Utilities (MTS, Shaw, Hydro)
- Legal Services Department
- Water & Waste Department

SUBMITTED BY

Department: Public Works
Division: Engineering/ Transportation
Prepared by: T. Esposito, S. Payne, C.E.T., D. Emerson, P. Eng.
Date: March 16, 2010
File No. BYL-01-02
File Name: L:\Admin\Reports 2010\S. Payne\March\Amendments to Streets Bylaw Report March 22 10.doc

Attachment – The City of Winnipeg By-Law No. /10

THE CITY OF WINNIPEG

BY-LAW NO. /10

A By-law of THE CITY OF WINNIPEG to amend the Streets By-law No. 1481/77.

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

Streets By-law amended

1 The Streets By-law No. 1481/77 is amended by this By-law.

Definitions amended

2 Section 1 is amended by

(a) adding the following definitions in alphabetical order:

"designated employee" means an employee of the City of Winnipeg to whom the Director has delegated authority to administer or enforce all or part of this By-law;

"Manual of Temporary Traffic Control" means the Manual of Temporary Traffic Control in Work Areas on City Streets approved by Council from time to time and, unless otherwise specified, refers to the most recent edition;

"Standard Construction Specifications" means the City of Winnipeg Standard Construction Specifications issued by the Director from time to time;

"street" means any place or way, including any structure forming part thereof, which or any part of which has been dedicated as a roadway, lane, avenue, footpath, walkway, road or highway pursuant to *The Real Property* Act or which the public is ordinarily entitled to use for passage, with or without fee or charge therefor, and includes all the space between the boundary lines thereof;

"street cut" means any cut, break, tear or excavation in a street surface or the removal of any part of a street surface;

"Street Cuts Manual" means the Streets Cuts Manual issued by the Director under clause 4.12.02(1) of this By-law and, unless otherwise specified, refers to the edition of the Manual posted on the City of Winnipeg website at the relevant time;

(b) adding "and any person to whom the Director has delegated authority given to the Director under this By-law" *to the definition of* **"Director".**

Section 2.02 amended

3 Section 2.02 is repealed and the following is substituted:

2.02.01 Subject to subsection 2.02.02 and subsection 4.01.01, no person shall:

DRAFT

(a) throw, pile, deposit or leave any articles, merchandise, water or material of any kind on a street;

(b) carry out or permit any action causing or resulting in the creation of a nuisance in a street;

(c) carry out or permit any action causing or resulting in the creation of a dangerous condition in a street.

2.02.02 Subsection 2.02.01 does not apply to the reasonable portion of a street for a reasonable time during the pick up or delivery of goods, wares or merchandise or if solid waste picked up under the Solid Waste By-law.

Section 2.03 amended

4 Section 2.03 is repealed and the following is substituted:

2.03 Without the permission of the Director, the driver of a vehicle must not allow or cause:

(a) earth, stone, refuse, garbage or other solid waste, or any other substance to fall, spill or be deposited from the vehicle onto a street; or

(b) mud, clay or other material to be deposited from the wheels of the vehicle on a street.

Section 2.13 amended

5(1) Section 2.13 is amended by

(a) renumbering it as "2.13.01"*;*

(b) adding "Subject to this section" *at the beginning of the section; and*

(c) adding "or gate" *after* "door".

5(2) The following is added after subsection 2.13.01:

2.13.02 The prime contractor for a construction project, as defined in *The Workplace Health and Safety Act*, must not allow the gate of a fence at the site of the construction project to swing over a street unless he or she ensures that it is closed at all times other than when allowing a vehicle to enter or exit the site.

2.13.03 The door of an enclosure around a garbage container may swing over a street or lane but the owner or occupant of property on which the enclosure is located must ensure that the door is closed at all times except when the garbage container is being emptied and must also ensure that the door does not obstruct or inhibit vehicular traffic on the street or lane at any time.

Section 2.14 amended

6 Section 2.14 is repealed and the following is substituted:

2.14 No person may paint, chalk, stencil or mark any advertisement, logo, sign or writing of any kind on the sidewalk, roadway or any structure in a street unless he or she has been given permission to do so by the Director.

Section 2.20 added

7 The following is added after section 2.19:

SUBMISSION AND APPROVAL OF DRAWINGS REQUIRED

2.20(1) In addition to obtaining any permit that is required under this By-law, a person must submit drawings to and obtain approval from the designated employee before carrying out any installation, reconstruction, repair, renewal or realignment of a structure in, on, over or under a street.

2.20(2) The drawings required by subsection (1) must be in a form acceptable to the designated employee, must include any information reasonably required by the designated employee in order to approve the drawings and, except in the case of emergency work, must be submitted to the designated employee at least seven days prior to the work referred to in subsection (1). In the case of emergency work, the drawings referred to in subsection (1) must be submitted as soon as reasonably possible.

2.20(3) Where the work referred to in subsection (1) results in changes of alignment or grade or when required by the designated employee to do so, the person carrying out the work must submit "as built" drawings to the designated employee within 60 days after the work has been completed.

Section 3.01 amended

8 Section 3.01 is repealed and the following is substituted:

LICENCE REQUIRED FOR WORK ON STREET

3.01 Unless a person holds a subsisting and applicable licence issued under this section or issued under the Private Access By-law, the Waterworks By-law or the Sewer By-law, or unless authorized by Part 8 (Boulevard Maintenance) of the Neighbourhood Liveability By-law, a person must not do any of the following within or to a street:

(a) landscaping;

(b) excavating, including making street cuts;

(c) constructing or repairing streets;

(d) constructing road grades or drainage ditches;

(e) constructing or repairing water pipes, wastewater and storm sewer pipes;

(f) any other work or repair or construction.

Section 3.06 amended

9 Section 3.06 is repealed and the following is substituted:

SUSPENSION OF LICENCE

3.06.01 The Director may immediately, without prior notice to the licence holder, suspend a licence for up to 30 days if the Director determines that the licence holder

(a) is engaged in an activity for which a permit is required in a way that poses a significant threat to people, property or the environment; or

(b) is not carrying insurance coverage as required by subsection 3.05.

3.06.02 Within 30 days of suspending a licence, the Director must either reinstate the licence or revoke the licence under section 3.07.

10 The following is added after section 3.06:

REVOCATION OF LICENCE

3.07.01 Whether the licence holder's licence has been suspended or not, the Director may revoke a licence where

(a) the licence was issued on the basis of misleading or false information and the licence would not have been issued if the accurate information had been known;

(b) the facts on which the decision to issue the licence was based have changed and would not now justify issuing the licence;

(c) the licence holder has repeatedly failed to observe conditions imposed on a permit or has failed to comply with this by-law or other applicable laws, by-laws, codes and regulations;

(d) after being suspended for up to 30 days for not carrying insurance coverage, the licence holder is still not carrying insurance coverage as required by section 3.05.

3.07.02 The Director must not revoke a licence unless the licence holder has been notified that a revocation is being considered and has been given a reasonable opportunity to be heard concerning the revocation.

3.07.03 In revoking a licence, the Director must specify a date after which the licence holder is permitted to re-apply for a licence.

***Sections* 4.01 to 4.10 amended**

11 Sections 4.01 to 4.10 are repealed and the following is substituted:

USE OF STREET PERMITS

4.01.01 A person must not engage in any of the following in a street unless he or she holds a Use of Street Permit issued by a designated employee which authorizes the activity:

(a) engaging in an activity, including parking or stopping a vehicle in a street, that obstructs vehicular traffic on a street;

(b) engaging in an activity that obstructs pedestrian traffic on a roadway or sidewalk;

(c) subject to subsection 4.01.02, engaging in a commercial transaction on a street;

(d) depositing or storing equipment, materials, garbage, waste materials or any other thing on a street;

(e) engaging in work on or over a street, including operating equipment on or over a street;

(f) erecting a fence, hoarding or protective cover on or over a roadway or sidewalk;

(g) erecting or operating a construction crane which extends over a street in any way.

4.01.02 Clause 4.01.01(c) does not apply to a mobile food vendor that is operating pursuant to a valid mobile food vendor licence issued under the Doing Business in Winnipeg By-law.

4.01.03 A designated employee may issue Use of Street Permits for particular times and places or may issue Use of Street Permits for unlimited locations within the City over a period of time not exceeding one year.

4.01.04 A vehicle that is parked or stopped in a portion of a street covered by a Use of Street Permit in order to engage in an activity authorized by the Use of Street Permit is not in contravention of the provisions of the Traffic By-law which would otherwise prohibit it from being parked or stopped. However, unless the Use of Street Permit specifically provides for an exemption from the Parking Meter By-law, the vehicle must still comply with that By-law.

4.01.05 Except for items installed by or on behalf of the City of Winnipeg, a person must not install temporary or seasonal street furniture, including bicycle racks, public art installations, benches, vending machines, garbage or recycling bins or other street furniture without a Use of Street Permit authorizing the installation of the street furniture.

EXCLUSIVE USE OF STREET

4.02.01 A designated employee may issue a Use of Street Permit granting a person the exclusive right to use all or part of a street for a period of time specified in the permit. Such a permit prohibits any other person from using that portion of the street for the period of time specified in the permit.

4.02.02 A permit under clause 4.02.01 may grant the permit holder the right to park or stop a vehicle in curb lanes

(a) in areas and at times where parking and stopping are not otherwise permitted; and

(b) for periods of time in excess of the time limits posted on traffic control devices.

4.02.03 A designated employee may not issue a permit giving a person the exclusive right to use all or part of a street under 4.02.01 for the purposes of engaging in commercial transactions.

FEES FOR USE OF STREET PERMITS

4.03.01 Subject to 4.03.02, Council may establish permit fees for Use of Street Permits issued under this section, which must be paid before a permit is issued.

4.03.02 No fee is payable when a Use of Street Permit is issued authorizing the use of a street for film production.

RENTAL FEES FOR USE OF STREETS

4.04 In addition to a permit fee and an administration fee, a Use of Street Permit issued under this section is conditional upon the payment of fees established by Council for the rental or use of the street or portion of the street authorized in the permit, which fees may be based on:

(a) the size of the area of the street being used;

(b) the length of time the area of the street is being used;

(c) the part of the street being used; and

(c) other factors determined by Council.

AUTHORITY TO ISSUE USE OF STREET PERMITS

4.05.01 A designated employee may issue a Use of Street Permit for a period of up to 12 months if he or she has reason to believe that the proposed activity or use of the street will be conducted in a way which

(a) will not create an undue hazard to people or property;

(b) will not unduly disrupt or interfere with vehicular or pedestrian traffic;

(c) will not unduly disrupt or interfere with police, fire, paramedic or other emergency services;

(d) will not result in harm or damage to the street or structures on the street or to private property or, where it is likely to result in harm or damage, the applicant will rectify any harm or damage or will provide appropriate compensation for the harm or damage;

(e) will comply with this By-law and other applicable laws, by-laws, codes and regulations.

4.05.02 A designated employee must refuse to issue a Use of Street Permit where he or she reasonably concludes that the proposed activity or use of street cannot be conducted in compliance with clauses 4.05.1(a) to (e), even with appropriate conditions imposed upon the permit pursuant to section 4.06.

4.05.03 A designated employee may renew a Use of Street Permit for a specified period of time if the permit holder pays the renewal fee established pursuant to this By-law. The provisions of this Part apply to the decision to issue the renewal and the terms and conditions of a renewal as if it were an initial permit.

4.05.04 A designated employee may refuse to issue or renew a Use of Street Permit where an applicant or permit holder is in arrears for fees or charges imposed pursuant to this By-law.

CONDITIONS ON USE OF STREET PERMITS

4.06.01 A designated employee may impose reasonable conditions upon a Use of Street Permit in order to

(a) prevent, reduce, mitigate or compensate for any potential harm or damage to people, property or the environment, including harm to the City of Winnipeg or damage to its property;

(b) prevent or minimize any disruption or interference with vehicular or pedestrian traffic caused by the permitted activity;

(c) ensure that the activity will not result in harm or damage to the street or structures on the street or to private property or, where it is likely to result in harm or damage, the applicant will rectify any harm or damage or will provide appropriate compensate for the harm or damage;

(d) ensure that the permitted activity will comply with this By-law and other applicable laws, by-laws, codes and regulations;

(e) reduce the impact of the permitted activity on businesses or residents in the area; or

(f) facilitate the administration of the permit.

4.06.02 Without limiting the generality of subsection 4.06.01, a designated employee may require as a condition of a Use of Street Permit, that the applicant

(a) provide proof of insurance naming the City as an additional insured party in any amount sufficient to compensate the City of Winnipeg or any other person for harm or damage suffered as a result of the permitted activity;

(b) provide a deposit of monies, bond, letter of credit or other surety sufficient to compensate the City of Winnipeg for harm or damage suffered as a result of the permitted activity;

(c) agree, in a form satisfactory to the City Solicitor, to indemnify the City of Winnipeg and save it harmless from any harm or damage suffered as a result of the permitted activity;

(d) conduct the activity in a particular manner, at specified locations and at specified times;

(e) utilize certain persons or categories of persons to carry out specified aspects of the activity;

(f) provide details of plans for the activity before the permit becomes effective;

(g) provide evidence of compliance with applicable laws, by-laws, codes and regulations and/or with conditions imposed upon the permit;

(h) complete the activity by a specified date or within a specified period of time;

(i) obtain approval of corporations responsible for utilities that might be affected by the activity prior to the initiation of the activity;

(j) construct hoardings or other protective structures; or

(k) ensure that the site of the activity is maintained during the activity and leave upon completion of the activity in a clean and safe condition.

4.06.03 A permit holder who violates a condition imposed on a Use of Street Permit or who permits a condition to be violated is in violation of this By-law and is subject to a fine set out in Schedule H.

SUSPENSION OF USE OF STREET PERMIT

4.07.01 The Director may immediately, without prior notice to the permit holder, suspend a Use of Street Permit for up to 30 days if the Director concludes that allowing the activity authorized by the permit to proceed or to continue would or be likely to

(a) create an undue hazard to people or property;

(b) unduly disrupt or interfere with vehicular or pedestrian traffic;

(c) result in harm or damage to the street or structures on the street or to private property or, where it is likely to result in harm or damage, the applicant will not rectify any harm or damage and will not provide appropriate compensate for the harm or damage; or

(d) not comply with this By-law and other applicable laws, by-laws, codes and regulations; or

4.07.02 Within 30 days of suspending a permit, the Director must either reinstate the Use of Street Permit or revoke the permit under section 4.08.

REVOCATION OF USE OF STREET PERMIT

4.08.01 Whether the Use of Street Permit has been suspended or not, the Director may revoke a permit where

(a) misleading or false information was provided upon which the decision to issue the permit was based;

(b) the facts given on which the decision to issue the permit was based have changed and would not now justify issuing the permit;

(c) the Director concludes that, if the activity authorized by the permit were to proceed, it would or would be likely to

(i) create an undue hazard to people or property;

(ii) unduly disrupt or interfere with vehicular or pedestrian traffic;

(iii) result in harm or damage to the street or structures on the street or to private property or, where it is likely to result in harm or damage, the applicant will not rectify any harm or damage and will not provide appropriate compensate for the harm or damage; or

(iv) not comply with this By-law and other applicable laws, by-laws, codes and regulations; or

(d) a permit holder has failed to observe a condition imposed on a permit or has failed to comply with this and other applicable laws, by-laws, codes and regulations;

4.08.02 The Director must not revoke a permit unless the permit holder has been notified that a revocation is being considered and has been given a reasonable opportunity to be heard concerning the revocation.

ADMINISTRATION OF USE OF STREET PERMITS

4.09.01 The Director may impose requirements reasonably required to administer the issuance of Use of Street Permits, including requirements concerning:

(a) the completion and submission of application forms;

(b) the provision of information reasonably required in order to consider an application;

(c) reasonable time limitations for the submission of application forms.

4.09.02 Where a fee for a Use of Street Permit has been imposed pursuant to this By-law, the Director must not issue a permit until the fee has been paid.

4.09.03 Where the Director has required, as a condition of issuing a Use of Street Permit, that the applicant provide a deposit under clause 4.06.02(b), the Director:

(a) may use all or some of the deposit to pay the reasonable costs of remedying damage caused by the actions of the permit holder or to compensate the City of Winnipeg for harm or damage caused by or as a result of the permitted activity, or both; and

(b) must refund the deposit or the remainder of the deposit to the applicant as soon as reasonably possible after the activity has been concluded.

Section 4.12 replaced

12 Section 4.12 is repealed and the following is substituted:

STREET CUT PERMITS

4.12.01(1) Subject to this section, a person must not make a street cut unless a Street Cut Permit has been issued by the Director which authorizes the street cut.

4.12.01(2) Subsection (1) does not apply to

(a) a person who makes a street cut under a subsisting and applicable licence and permit issued under the Private Access By-law; or

(b) a person who makes a street cut in a boulevard that is authorized under Part 8 (Boulevard Maintenance) of the Neighbourhood Liveability By-law,

4.12.01(3) Except in the case of emergency repair work, the person responsible for making a street cut must make an application for a Street Cut Permit at least 48 hours prior to the actions being initiated. The person responsible for engaging in emergency repair work must obtain a Street Cut Permit as soon as reasonably possible after the work is completed.

4.12.01(4) The Director may require as part of the application any information required to assess the application, including alignment, grade and structural details concerning the proposed street cut.

4.12.01(5) As part of an application, the applicant must pay a Street Cut Permit fee and one or more street cut repair fees established by Council from time to time. A street cut repair fee may be based on the size of the street cut or on the size of the street surface that, in the reasonable opinion of a designated employee, may be damaged or undermined by the street cut.

4.12.01(6) In addition to any other conditions imposed on a permit by the Director, the following conditions are imposed on all Street Cut Permits:

(a) the permit holder must notify the Director at least 24 hours before backfilling of the street cut begins;

(b) the permit holder must ensure that trees or structures within the street or under the street are not damaged as a result of the work authorized by the permit

4.12.01(7) A Street Cut Permit lapses 60 days after being issued unless the permit holder has initiated the street cut within that time.

COMPLIANCE WITH STREET CUTS MANUAL REQUIRED

4.12.02(1) The Director is authorized to issue from time to time and to post on the City of Winnipeg website a Street Cuts Manual which sets out the requirements and rules for street cuts and restoration of street cuts in City streets. The Director is authorized to require in the Street Cuts Manual that different categories of streets be restored differently and that specified types of restoration may only be carried out by restoration contractors licensed under subsection 4.12.06 or by employees of the City of Winnipeg.

4.12.02(2) If required by the Street Cuts Manual, the person who has made a street cut in a portion of a street must ensure that the street surface is restored in compliance with the Street Cuts Manual..

TEMPORARY RESTORATION

4.12.03 Where the Street Cuts Manual authorizes restoration to be done in stages, the person who has carried out the street cut must ensure that the temporary restoration of the street surface is maintained at all times in a condition that is safe for the use to which that portion of the street is reasonably expected to be put. This obligation continues until the street surface is fully restored to the satisfaction of the Director.

FULL RESTORATION MAY BE REQUIRED

4.12.04 Notwithstanding any other provision in this section, the Director may at the time of issuing a Street Cut Permit direct a permit holder to carry out the full restoration of the street surface at locations where the permit holder has been authorized to make street cuts. Where a full or partial restoration is carried out by the permit holder to the satisfaction of the Director, the Director may issue a full or partial refund of the Street Cut Permit repair fee.

CALL FOR INSPECTION

4.12.05(1) The person who has carried out the street cut or, where the restoration is being carried out by a restoration contractor licensed under subsection 4.12.06, the licensed restoration contractor, must, at least 24 hours prior to the street cut

being resurfaced, ensure that arrangements are made with a designated employee to inspect the restoration.

4.12.05(2) Where restoration of the street cut has been completed without an inspection having been arranged in compliance with subsection (1), the permit holder must, at no cost to the City of Winnipeg, either demonstrate to the satisfaction of a designated employee that the restoration meets the requirements of this By-law, including compliance with the Standard Construction Specifications, or must remove the surface material and re-construct the restoration.

RESTORATION CONTRACTOR'S LICENCE

4.12.06(1) Subject to 4.12.06(2), the Director shall issue an annual Restoration Contractor's Licence to a person who

(a) pays a fee for a licence in an amount established by Council from time to time;

(b) provides evidence of a policy of commercial general liability insurance consistent with part 6 of this By-law;

(c) provides security in a form satisfactory to the Director and in an amount determined by the Director to adequately protect the City from risks associated with the inappropriate or inadequate restoration of street cuts; and

(d) satisfies the Director that the person has the knowledge and ability to meet the requirements of this By-law and other applicable by-laws, the Standard Construction Specifications, the Street Cuts Manual and the Manual of Temporary Traffic Control.

4.12.06(2) For the purposes of issuing Restoration Contractor's Licenses, the Director may distinguish between different categories of restoration and, without restricting the generality of the foregoing, may draw a distinction between the restoration of street cuts on regional and non-regional streets.

4.12.06(3) The Director may impose conditions upon a Restoration Contractor's Licence.

4.12.06(4) A Restoration Contractor's Licence expires on December 31 of the year for which it was issued.

4.12.06(5) A licence fee is payable in full notwithstanding that a licence may be issued during the course of a calendar year.

QUALIFICATIONS FOR RESTORATION CONTRACTOR'S LICENCE

4.12.07 Without limiting the generality of clause 4.12.06(1)(d), in determining whether an applicant for a licence is able to meet the requirements of this By-law and other applicable by-laws, the Standard Construction Specifications, the Street Cuts Manual and the requirements of the Manual of Temporary Traffic Control, the Director may:

(a) require that the applicant or, if appropriate, an employee of the applicant complete a written or verbal examination;

(b) rely on observations and reports of the applicant's past work;

(c) issue a probationary licence to the applicant, and subject the work of a probationary contractor to a specific inspection regime.

CONSEQUENCES OF NON-COMPLIANCE

4.12.08(1) Where a licensed contractor fails to call for an inspection in compliance with subsection 4.12.05, or fails to comply with the Standard Construction Specifications, the Street Cuts Manual or the requirements of the Manual of Temporary Traffic Control, or otherwise fails to comply with this or another By-law, the Director may

(a) require that the contractor and, if appropriate, the contractor's employees complete a written or verbal examination concerning the contents of:

(i) this By-law and other applicable by-laws;

(ii) the Standard Construction Specifications;

(iii) the Street Cuts Manual; and/or

(iii) the Manual of Temporary Traffic Control;

(b) substitute the contractor's licence with a probationary licence;

(c) impose conditions upon the contractor's licence;

(d) subject the contractor to a specific inspection regime;

(e) suspend the contractor's licence for a period of less than 12 months;

(f) revoke the contractor's licence;

(g) refuse to renew the contractor's licence.

4.12.08(2) Before acting under subsection (1), the Director must give the contractor a reasonable opportunity to be heard.

4.12.08(3) Where the Director has revoked or refused to renew a contractor's licence, the Director must specify a period of time after which the contractor may re-apply for a licence and the period of time may not be greater than 12 months.

4.12.08(4) A contractor's licence is conditional upon the maintenance of a policy of commercial general liability insurance as required by clause 4.12.06(1)(b) and a failure to maintain the policy of insurance renders the licence immediately invalid.

REMEDYING NON-COMPLIANCE

4.12.09(1) Where a street cut that has been restored by a licensed contractor does not comply with this By-law, the conditions imposed on a permit, the Standard Construction Specifications or the Street Cuts Manual, the licensed contractor must bring the street cut into compliance within a reasonable period of time specified by the Director.

4.12.09(2) Where a licensed contractor fails to comply with subsection (1), the Director may bring the street cut into compliance and may utilize all or part of the security provided by the licensed contractor under clause 4.12.06(1)(c) in order to pay the costs of doing so.

4.12.09(3) Where the Director utilizes all or part of a security pursuant to subsection (2), the Restoration Contractor's Licence is suspended until such time as the contractor provides additional security sufficient to meet the requirements of section 4.12.06(1)(c).

4.12.09(4) The Director may retain a security provided by a licensed restoration contractor for a period of up to one year following the expiration of the contractor's licence as a guarantee that work done by the contractor during the period of the licence complies with this By-law.

4.12.09(5) The Director must refund the deposit required under subsection 4.12.06(1)(c) or the remainder of the deposit to the applicant as soon as reasonably possible after the activity has been concluded.

Section 4.13 amended

13 Subsections 4.13.02 and 4.13.03 are repealed and the following is substituted:

4.13.02 A person who:

(a) uses a street in a manner referred to in section 4.01 or 4.02 or in any other way takes actions that obstruct or inhibit or are likely to obstruct or inhibit traffic in a street; or

(b) excavates or creates or exposes a hole within a roadway or sidewalk or creates some other hazard to traffic in a street;

must comply with the *Manual of Temporary Traffic Control*.

4.13.03(1) Subject to subsection (2), a person who contravenes subsection 4.13.02 commits an offence punishable upon summary conviction by a fine referred to in Schedule "H".

(2) Notwithstanding subsection (1), a person who contravenes subsection 4.13.02 by failing to place and maintain any traffic control devices whatsoever as required by the *Manual of Temporary Traffic Control* is guilty of an offence punishable upon summary conviction by a fine referred to in Schedule "H".

Subsections 5 to 5.02 amended

14 Subsections 5 to 5.02 are repealed and the following is substituted:

CROSSING PERMITS

5.01.01 Except at a private approach or unless the Director has issued a Crossing Permit authorizing it, a person must not drive or tow a vehicle across a curb, boulevard or sidewalk.

5.01.02 As a condition of issuing a Crossing Permit, the Director may require that the applicant provide a deposit of monies, bond, letter of credit or other surety in an amount sufficient to

(a) reimburse the City for the costs of repairing possible damage to the street or structures in the street resulting from the crossing; or

(b) compensate the City for damage to the street resulting from the crossing that cannot be repaired.

5.01.03 The Director may retain the deposit required under subsection 5.01.02 until the activity for which the Crossing Permit is required is complete and an inspection is made of the site to determine the amount of damage or harm, if any, resulting from the crossing.

5.01.04 Where

(a) the person who has provided a deposit under subsection 5.01.02 fails to comply with an order requiring that he or she ensures that the damage resulting from the crossing is repaired by a licensed contractor; or

(ii) the damage resulting from the crossing cannot be repaired;

the deposit required under subsection 5.01.02 may be used to repair the damage or to compensate the City, or both.

5.01.05 Subject to subsection 5.01.03, the Director must refund the deposit required under subsection 5.01.02 or the remainder of the deposit to the applicant as soon as reasonably possible.

DAMAGE DEPOSITS

5.02.01 The Director may require that a person who requires a building permit under the City of Winnipeg Building By-law provide a deposit of monies, bond, letter of credit or other surety in an amount sufficient to

(a) reimburse the City for the costs of repairing possible damage to the street or structures in the street or to City property resulting from the construction activity; or

(b) compensate the City for damage to the street or to City property resulting from the construction activity that cannot be repaired.

5.02.02 Where a damage deposit is required under subsection 5.02.01, the person must not engage in construction work until the deposit has been paid.

5.02.03 The Director may retain the damage deposit required under subsection 5.02.01 until all work, including lot grading, has been completed on the construction site.

5.02.04 Where

(i) the person who has provided a damage deposit under subsection 5.02.01 fails to comply with an order requiring that he or she ensure that the damage to a street or a structure in a street resulting from the construction activity is repaired by a licensed contractor; or

(ii) damage to a street resulting from the construction activity cannot be repaired;

the damage deposit required under subsection 5.02.01 may be used to repair the damage or to compensate the City, or both.

5.02(e) The Director must refund the deposit required under subsection 5.02.01 or the remainder of the deposit to the applicant as soon as reasonably possible after the activity has been concluded.

Part 6 amended

15 Part 6 is amended by striking out everything after "in the amounts of $250,000.00" *and substituting* "in an amount covering personal injury and property damage and with a deductible that, in the opinion of the Corporate Risk Manager, is sufficient to adequately protect the City of Winnipeg from risk."

Subsection 7.02 amended

16 Subsection 7.02 is repealed and the following is substituted:

REMEDIAL ACTION

7.02.01 A dangerous or hazardous condition in a street constitutes an emergency and, pursuant to section 185 of *The City of Winnipeg Charter*, the Director and any person authorized by the Director is hereby given authority to take whatever actions or measures are reasonable to remedy such a condition without notice to any person.

7.02.02 Without restricting the general authority granted in subsection 7.02.01, where the operator of a vehicle cannot be readily located or fails immediately to comply with a written or verbal order to remove the vehicle, and where the vehicle is:

(a) creating a hazardous condition in a street;

(b) obstructing traffic without having obtained permission to do so, in contravention of subsection 4.01; or

(c) parked or stopped in a street without complying with the *Manual of Temporary Traffic Control*;

any special constable authorized by the Director to do so is hereby authorized to have the vehicle removed to a compound and the costs of the removal and storage must be borne by the owner of the vehicle.

Subsection 7.03 repealed

17 Subsection 7.03 is repealed.

Subsection 7.04 amended

18 Subsection 7.04 is amended by renumbering it as 7.04.01 and the following is added after it:

7.04.02 Without restricting the generality of subsection 7.04.01, where a special constable authorized by the Director to administer or enforce subsection 7.02.02 has ordered that a vehicle be removed to a compound under subsection 7.02.01), a person who is in the vehicle must exit the vehicle in order to allow it to be removed.

Subsections 8.01 and 8.02 replaced

19 Subsections 8.01 and 8.02 are repealed and the following is substituted:

8.01 A person who contravenes a provision of this By-law that is referred to in Schedule "H" to this By-law is liable, upon summary conviction, to a fine of not less than the amount set out in the column entitled "Minimum Amount" in Schedule "H" which corresponds to the offence for which the person has been convicted.

8.02 Notwithstanding subsection 8.01, a person who contravenes a provision of this By-law that is referred to in Schedule "H" may pay the amount set out on the column entitled "Minimum Amount" in Schedule "H" which corresponds to the offence for which the offence notice was issued plus mandatory court costs before the date set out in the offence notice for the payment of the minimum fine and thereafter will not be prosecuted for the contravention.

8.03 Notwithstanding subsections 8.01 and 8.02, a person who contravenes a provision of this By-law that is referred to in Schedule "H" may, within 15 days of the date that an offence notice has been served in accordance with *The Summary Convictions Act* in respect of a contravention of this By-law, pay the amount set out on the column entitled "Discounted Amount if paid within 15 Days" in Schedule "H" which corresponds to the offence for which the offence notice was issued plus mandatory court costs and thereafter will not be prosecuted for the contravention.

8.04 In addition to a fine imposed under subsection 8.01 or amount paid under subsections 8.02 or 8.03, a person who contravenes subsections 4.01.01, 4.01.05, 4.02.03 and 4.12.01 must obtain the permit referred to the subsection the person has contravened.

Section 9 replaced

20 Section 9 is repealed and the following is substituted:

APPLICATION TO CITY

9(1) The following provisions of this By-law do not apply to employees or agents of the City of Winnipeg acting under the direction of the City:

(a) 2.02.01;

(b) 2.03;

(c) 2.14;

(d) 5.01.01.

9(2) The Director is authorized to waive the need to obtain a permit or licence under this By-law for departments or administrative units of the City or for employees or agents of the City where the Director concludes that obtaining a permit or licence is not necessary in order to accomplish the purposes for which the permit or licence is required.

Schedule H added

21 The following is added immediately following Schedule "G" and forms part of the By-law:

SCHEDULE H
(Subsections 8.01, 8.02 and 8.03)

PENALTIES FOR CONTRAVENTIONS OF BY-LAW

Offence	Minimum Amount (not including court costs)	Discounted Amount if paid within 15 days (not including court costs)
s. 2.02.01(a) Throw, pile, deposit, or leave any articles, merchandise, water or material on a street	$250.00	$150.00
s. 2.02.01(b) Carry out or permit any action causing or resulting in the creation of a nuisance in a street	$250.00	$150.00
s. 2.02.01(c) Carry out or permit any action causing or resulting in the creation of a dangerous condition in a street	$500.00	$300.00

Offence	Minimum Amount (not including court costs)	Discounted Amount if paid within 15 days (not including court costs)
s. 2.03(a) Deposit or permit to be deposited, fall or spill earth, stone, refuse, garbage or other solid waste, or other substance from a vehicle onto a street	$100.00	$75.00
s. 2.03(b) Allow mud, clay or other material to be deposited in a street from the wheels of a vehicle	$100.00	$75.00
s. 2.05 Repair vehicle in street	$100.00	$75.00
s. 2.06 Wash non-passenger vehicle in a street	$150.00	$100.00
s. 2.08 Move snow and ice from private property into a street	$150.00	$100.00
s. 2.13 Allow door or gate to swing into street	$250.00	$150.00
s. 2.14 Place markings on street	$100.00	$75.00
s. 2.15 Place or leave unattended electrical wire, cord or cable on or across City street	$100.00	$75.00
s. 2.16 Allow tree, shrub or sapling growing on private property to extend over street or public place so as to interfere with, impede or endanger persons using street or public place	$150.00	$100.00
s. 3.01 Excavate or landscape in a street, make a street cut, repair or construct paved or unpaved roadway surfaces or sidewalks, construct road grades or drainage ditches, construct or repair water pipes, wastewater and storm sewer pipes without a licence	$350.00	$250.00
s. 4.01.01(a) Engaging in an activity including parking or stopping a vehicle in a street, that obstructs vehicular traffic on a street without a Use of Street Permit	$350.00 plus must obtain a permit	$250.00 plus must obtain a permit
s. 4.01.01(b) to (g) Engaging in any of the activities set out in clauses 4.01.01(b) to (g) without a Use of Street Permit	$250.00 plus must obtain a permit	$150.00 plus must obtain a permit
s. 4.01.05 Install street furniture without Use of Street Permit	$250.00 plus must obtain a permit	$150.00 plus must obtain a permit
s. 4.06.3 Violation of condition imposed on Use of Street Permit	$350.00	$250.00
s. 4.12.01(1) Make a street cut without a Street Cut Permit	$150.00 plus must obtain a permit	$100.00 plus must obtain a permit
s. 4.12.01(2) Fail to apply for street cut permit as soon as possible after emergency work carried out	$100.00 plus must obtain a permit	$50.00 plus must obtain a permit

Offence	Minimum Amount (not including court costs)	Discounted Amount if paid within 15 days (not including court costs)
s. 4.13.03(1) Fail to comply with Manual of Temporary Traffic Control when working in or obstructing the normal use of a street	$250.00	$150.00
s. 4.13.03(2) Fail to display any traffic control devices when working in or obstructing the normal use of a regional street	$500.00	$300.00
s. 5.01.01 Drive vehicle on, across or along a sidewalk, boulevard or curb without a Crossing Permit	$350.00 plus the cost of a permit	$250.00 plus the cost of a permit
s. 7.04.01 Interfere with official or other individual acting under authority of the By-law	$250.00	$150.00
s. 7.04.02 Refuse to exit vehicle that is subject to removal under s. 7.02	$250.00	$150.00

Coming into force

18 This By-law comes into force on June 14, 2010.

DONE AND PASSED, this day of , 2010.

_____
Mayor

_____
City Clerk

Approved as to content:

_____
Director of Public Works

Approved as to form:

_____
For City Solicitor/Manager of
Legal Services