Agenda – Council – July 21, 2010

Report - Executive Policy Committee - July 14, 2010

Item No. 8 Review of the City of Winnipeg In Camera By-law No. 5288/1989
eFile GL-5.8

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On July 14, 2010, the Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and submits the following to Council:

1. That the draft By-law, shown as Attachment A to the report of the Winnipeg Public Service dated July 7, 2010, be enacted, which will amend the City of Winnipeg In Camera By-law No. 5288/89 to:

   A. Eliminate the current requirement that all property matters be dealt with in camera; and
   B. Allow in camera proceedings for personal and business information that is protected by The Freedom of Information and Protection of Privacy Act (FIPPA).

2. That the Winnipeg Public Service be directed to further review the operation and application of the City of Winnipeg In Camera By-law No. 5288/89 to determine if further improvements are possible and report back within 60 days.

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

Report - Executive Policy Committee - July 14, 2010

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On July 14, 2010, the Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and submitted the matter to Council.

On April 14, 2010, the Executive Policy Committee passed the following motion, namely:

WHEREAS the City of Winnipeg Charter provides that City Council may pass by-laws specifying the categories of matters that may be considered at in camera meetings or a committee of Council or a subcommittee thereof;

AND WHEREAS the City of Winnipeg is committed to transparency, openness and accountability;

AND WHEREAS in camera items are currently determined by the In Camera By-law No. 5288/89 and recommendations based on past precedence or at the discretion of the departments and/or committee and/or Clerk;

AND WHEREAS clarifying and evaluating the categories of reports that should genuinely be classified as in camera agenda items will ensure that the processes and accessibility to information are transparent;

AND WHEREAS the Vancouver Charter, Alberta Municipal Act, Cities Act in Saskatchewan, Ontario Municipal Act, the City of Toronto Act and Halifax Regional Municipality Charter address issues as defined in the Freedom of Information and Protection of Privacy Act;

AND WHEREAS the Vancouver Charter, Cities Act in Saskatchewan, Ontario Municipal Act and the City of Toronto Act refer to in camera meetings as closed meetings;

THEREFORE BE IT RESOLVED THAT the Chief Administrative Officer be requested to report back to the Executive Policy Committee in 90 days with a report recommending amendments to the City of Winnipeg In Camera By-law No. 5288/89 to address the following issues:

(i) an evaluation of the current categories of reports classified as in camera agenda items, with the goal of reducing the number and/or categories of agenda items that are currently classified as in camera; and

(ii) a process for regular review of the In Camera By-law No. 5288/89 to ensure that the City of Winnipeg is following municipal best practices for transparency, openness and accountability.

ADMINISTRATIVE REPORT

Issue: **In Camera By-law amendments**

Critical Path: Executive Policy Committee - Council

AUTHORIZATION

Author	Department Head	CFO	CAO
H. Dick	L. Strijack	n/a	A. Robinson, Deputy CAO

RECOMMENDATIONS

1. That Council enact the attached draft By-law (Attachment A), which will amend the In Camera By-law to:

- Eliminate the current requirement that all property matters be dealt with in camera; and
- Allow in camera proceedings for personal and business information that is protected by FIPPA.

2. That Executive Policy Committee direct the Public Service to further review the operation and application of the In Camera By-law to determine if further improvements are possible and report back within 60 days.

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

REASON FOR THE REPORT

A review of the current In Camera By-law has determined that the By-law should be amended to increase transparency to the public of City operations while ensuring appropriate protection for personal information and confidential business information.

IMPLICATIONS OF THE RECOMMENDATIONS

A survey of Vancouver, Calgary, Edmonton, Regina, Saskatoon, Toronto and Halifax (Attachment B) reveals that the City of Winnipeg's In Camera By-law is already one of the most restrictive in allowing Committees of Council to deal with matters on an in camera basis. Nevertheless, the Legal Services Department conducted a review of the By-law to determine:

- if some matters that are currently being dealt with in camera could be dealt with in open session; and
- if some matters that are not currently addressed in the By-law should be dealt with in camera.

The survey of Canadian cities (Attachment B) also suggested some ways of reducing the grounds for proceeding in camera set out in the current by-law as well as some possible additional matters that should be considered for inclusion in the In Camera By-law.

Consultation within the Public Service resulted in the conclusion that it is not necessary for all property matters to proceed on an in camera basis. While some property-related matters do need to be dealt with on a confidential basis, both to protect the City's interests and to protect the legitimate business interests of other parties, other property-related matters are not particularly confidential and dealing with them in camera is simply not justified. The "blanket" approach to property-related matters is simply too broad and requires matters to be dealt with in camera that can and should be addressed publicly.

However, a review of the By-law also suggested that it currently fails cover situations which should be dealt with on a confidential basis. Most notably, the By-law fails to allow committees to proceed in camera even if it is discussing information that *The Freedom of Information and Protection of Privacy Act* (FIPPA) prohibits the City from releasing. The result is that Council Committees are put in the impossible position of having to discuss in open session personal information that FIPPA deems to be an "unreasonable invasion of privacy" and confidential business information that is protected by FIPPA. (These provisions are set out in Attachment C.)

It is noteworthy that both Alberta and Saskatchewan law allows municipalities to deal with confidential business information and sensitive personal information that is protected by FIPPA in camera.

It is also noteworthy that, even with the proposed amendments, Winnipeg's In Camera By-law requires considerably more openness and transparency than is required by legislation in Alberta and Saskatchewan.

The changes being proposed are expected to result in a net reduction of reports and other matters that are dealt with in camera.

HISTORY

The current In Camera By-law was enacted by Council on November 29, 1989.

FINANCIAL IMPACT

Financial Impact Statement

Date: July 6, 2010

Project Name:

In Camera By-law amendments

First Year of Program **2010**

	2010	2011	2012	2013	2014
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Grants (Enter Description Here)	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Other - Enter Description Here	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ -	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	-	-	-	-	-
Net Cost/(Benefit)	$ -	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts	-	-	-	-	-
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: No financial implications

original signed by R. Abeysekera
Manager of Finance (Campus)
Corporate Finance Department

CONSULTATION

In preparing this report there was consultation with:

Office of the City Clerk
Real Estate Division, Planning Property and Development Department
Materials Management Division, Corporate Finance Department
Office of the Director, Community Services Department
Office of the Director, Planning Property and Development Department

SUBMITTED BY

Department: Legal Services
Division: N/A
Prepared by: Harold Dick
Date: July 7, 2010
File No.

ATTACHMENT A

THE CITY OF WINNIPEG

BY-LAW NO.

A By-law of THE CITY OF WINNIPEG to amend the In Camera By-law No. 5288/89

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

1 *The In Camera By-law No. 5288/89 is amended as follows:*

(a) clause 1(c) is repealed;

(b) the following clauses are added immediately after clause 1(f):

(g) reports or information which contain personal information the disclosure of which would be deemed to be an unreasonable invasion of the person's privacy under section 17 of *The Freedom of Information and Protection of Privacy Act*:

(h) reports or information which contain information about a business the disclosure of which would be prohibited under section 18 of *The Freedom of Information and Protection of Privacy Act*.

DONE AND PASSED, this day of , 2010.

_____
Mayor

_____
City Clerk

Approved as to form and content:

_____
For City Solicitor/Manager of
Legal Services

ATTACHMENT B

SURVEY OF CANADIAN CITIES

Matters considered in camera	Winnipeg	Vancouver	Calgary Edmonton	Saskatoon Regina	Toronto	Halifax
Labour relations (collective bargaining)	Yes	Yes		Yes	Yes	Yes
Personnel matters	Yes	Yes	Yes		Yes	Yes
Appeals re. licence (good character)	Yes					
Property transactions (including expropriation)	Yes	Yes			Yes	Yes
Prejudice negotiation of contracts	Yes			Yes		Yes
Prejudice claims or legal proceedings	Yes	Yes			Yes	Yes
Legal advice (solicitor/client privilege)	Yes	Yes	Yes	Yes	Yes	Yes
Security of City property		Yes			Yes	
Request under FIPPA (Council is "head")		Yes			Yes	
Education and training of members if no discussion that "materially advances" the decision-making					Yes	
Long-range and strategic planning if no business conducted					Yes	
Identifiable individual being considered for award or honour or is providing gift anonymously		Yes				
Law enforcement (open discussion could harm an investigation or enforcement action)		Yes	Yes	Yes		Yes[1]
Disclosure that would be prohibited under FIPPA as harming		Yes	Yes	Yes		

[1] Halifax's legislation refers to "public security".

business interests						
"Unreasonable invasion of privacy" under FIPPA			Yes			
Disclosure harmful to individual or public interest under FIPPA			Yes	Yes		
Disclosure harmful to intergovernmental relations under FIPPA			Yes			
Drafts of resolution or by-law - FIPPA			Yes	Yes		
Advice, consultations and deliberations of elected or non-elected officials - FIPPA			Yes	Yes		
Information harmful to economic or other interests of City – FIPPA			Yes	Yes		
Confidential testing or audit procedures – FIPPA			Yes	Yes		
Damaging to conservation of heritage sites - FIPPA			Yes			
Information that is or will be available to the public - FIPPA			Yes			
Preliminary negotiations or discussions on an "activity, work or facility" that could reasonably be expected to harm the interests of the City		Yes				
Discussion of whether a meeting should be held in camera or who to let in to an in camera meeting		Yes				
Confidential information received re. intergovernmental negotiations		Yes				

Confidential information from other governments or governmental institutions - FIPPA				Yes		
Ombudsman investigation		Yes				
Scientific information that an employee plans to publish - FIPPA				Yes		
Certain test results (done under contract, to calibrate tests or to help decide about purchase) - FIPPA				Yes		
Other issues						
Applies to Council as well as Council committees	X	Yes	Yes	Yes	Yes	Yes
May take votes in camera		No	No	Yes[2]	No	No
Requires resolution stating why meeting is in camera					Yes	

[2] Saskatchewan cities may not pass by-law but are not prohibited from taking votes

ATTACHMENT C

EXERPTS FROM
THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

PRIVACY OF A THIRD PARTY

Disclosure harmful to a third party's privacy

17(1) The head of a public body shall refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's privacy.

Disclosures deemed to be an unreasonable invasion of privacy

17(2) A disclosure of personal information about a third party is deemed to be an unreasonable invasion of the third party's privacy if

(a) the personal information is personal health information;

(b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of a law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

(c) disclosure could reasonably be expected to reveal the identity of a third party who has provided information in confidence to a public body for the purposes of law enforcement or the administration of an enactment;

(d) the personal information relates to eligibility for or receipt of income assistance, legal aid benefits, social service benefits or similar benefits, or to the determination of benefit levels;

(e) the personal information relates to the third party's employment, occupational or educational history;

(f) the personal information was collected on a tax return or for the purpose of determining tax liability or collecting a tax;

(g) the personal information describes the third party's source of income or financial circumstances, activities or history;

(h) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations; or

(i) the personal information indicates the third party's racial or ethnic origin, religious or political beliefs or associations, or sexual orientation.

Determining unreasonable invasion of privacy

17(3) In determining under subsection (1) whether a disclosure of personal information not described in subsection (2) would unreasonably invade a third party's privacy, the head of a public body shall consider all the relevant circumstances including, but not limited to, whether

(a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Manitoba or a public body to public scrutiny;

(b) the disclosure is likely to promote public health or safety or protection of the environment;

(c) the disclosure will assist in a fair determination of the applicant's rights;

(d) the disclosure may unfairly expose the third party to harm;

(e) the personal information has been provided, explicitly or implicitly, in confidence;

(f) the personal information is highly sensitive;

(g) the personal information is likely to be inaccurate or unreliable;

(h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant; and

(i) the disclosure would be inconsistent with the purpose for which the personal information was obtained.

When disclosure not unreasonable

17(4) Despite subsection (2), disclosure of personal information is not an unreasonable invasion of a third party's privacy if

(a) the third party has consented to or requested the disclosure;

(b) there are compelling circumstances affecting the mental or physical health or the safety of the applicant or another person and notice of the disclosure is mailed to the last known address of the third party;

(c) an enactment of Manitoba or Canada expressly authorizes or requires the disclosure;

(d) the disclosure is for research purposes and is in accordance with section 47;

(e) the information is about the third party's job classification, salary range, benefits, employment responsibilities or travel expenses

(i) as an officer or employee of a public body,

(ii) as a minister, or

(iii) as an elected or appointed member of the governing council or body of a local public body or as a member of the staff of such a council or body;

(f) the disclosure reveals financial or other details of a contract to supply goods or services to or on behalf of a public body;

(g) the disclosure reveals information about a discretionary benefit of a financial nature granted to the third party by a public body, including the granting of a licence or permit;

(h) the information is about an individual who has been dead for more than 10 years; or

(i) the record requested by the applicant is publicly available.

Disclosure with third party's consent

17(5) If the third party consents to or requests disclosure under clause (4)(a), the head of the public body may

(a) require the consent or request to be in writing; and

(b) comply with the requirement to disclose by disclosing the information directly to the third party rather than to the applicant.

Volume disclosure from a public registry

17(6) The head of a public body shall not disclose to an applicant under this Part personal information in a public registry on a volume or bulk basis.

BUSINESS INTERESTS OF THIRD PARTIES

Disclosure harmful to a third party's business interests

18(1) The head of a public body shall refuse to disclose to an applicant information that would reveal

(a) a trade secret of a third party;

(b) commercial, financial, labour relations, scientific or technical information supplied to the public body by a third party, explicitly or implicitly, on a confidential basis and treated consistently as confidential information by the third party; or

(c) commercial, financial, labour relations, scientific or technical information the disclosure of which could reasonably be expected to

(i) harm the competitive position of a third party,

(ii) interfere with contractual or other negotiations of a third party,

(iii) result in significant financial loss or gain to a third party,

(iv) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied, or

(v) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.

Tax return information

18(2) The head of a public body shall refuse to disclose to an applicant information about a third party that was collected on a tax return or for the purpose of determining tax liability or collecting a tax.

Exceptions

18(3) Subsections (1) and (2) do not apply if

(a) the third party consents to the disclosure;

(b) the information is publicly available;

(c) an enactment of Manitoba or Canada expressly authorizes or requires the disclosure; or

(d) the information discloses the final results of a product or environmental test conducted by or for the public body, unless the test was done for a fee paid by the third party.

Disclosure in the public interest

18(4) Subject to section 33 and the other exceptions in this Act, a head of a public body may disclose a record that contains information described in subsection (1) or (2) if, in the opinion of the head, the private interest of the third party in non-disclosure is clearly outweighed by the public interest in disclosure for the purposes of

(a) public health or safety or protection of the environment;

(b) improved competition; or

(c) government regulation of undesirable trade practices.