Agenda – Council – February 23, 2011

Report "A" – Executive Policy Committee – February 16, 2011

Item No. 1 Review of the City of Winnipeg In Camera By-law No. 5288/89

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On February 16, 2011, the Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and submitted the following to Council:

1. That a new In Camera By-law be enacted as per the draft By-law shown on Attachment A:

    A. To allow, in addition to Executive Policy Committee and Standing Committees, Alternative Service Delivery Committee, Audit Committee, Emergency Control Committee, and Historical Building Committee to meet in camera.

    B. To allow committees specified in the By-law to meet in camera to deal with
    - Confidential information provided by another government; and
    - Actual or possible disasters and other emergencies.

    C. To eliminate the blanket in camera exemption for Record Review Board and license suspension appeals under the License By-law.

    D. To treat matters related to collective bargaining in the same way as matters related to other agreements.

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

Report "A" – Executive Policy Committee – February 16, 2011

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On February 16, 2011, the Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and submitted the matter to Council.

COUNCIL DECISION:

On December 15, 2010, Council concurred in the recommendation of the Executive Policy Committee and approved an extension of time of up to 60 days in order for the Winnipeg Public Service 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.

On July 21, 2010, Council concurred in the recommendation of the Executive Policy Committee and adopted the following:

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.

ADMINISTRATIVE REPORT

Title: **Revised In Camera By-law**

Critical Path: **Executive Policy Committee - Council**

AUTHORIZATION

Author	Department Head	CFO	CAO
Harold Dick, Solicitor	Len Strijack, Director of Legal Services and City Solicitor	N/A	M Ruta A/CAO

RECOMMENDATIONS

1. That a new In Camera By-law be enacted as per the attached draft By-law (Attachment A):

(a) to allow, in addition to Executive Policy Committee and Standing Committees, Alternative Service Delivery Committee, Audit Committee, Emergency Control Committee, and Historical Building Committee to meet in camera;

(b) to allow committees specified in the By-law to meet in camera to deal with

- confidential information provided by another government; and
- actual or possible disasters and other emergencies;

(c) to eliminate the blanket in camera exemption for Record Review Board and licence suspension appeals under the License By-law;

(d) to treat matters related to collective bargaining in the same way as matters related to other agreements.

REASON FOR THE REPORT

On July 21, 2010, Council concurred in the recommendation of the Executive Policy Committee and adopted the following:

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.

On December 15, 2010 Council granted an extension of time for a further 60 days to comply with this direction.

IMPLICATIONS OF THE RECOMMENDATIONS

The current In Camera By-law is heavily weighted towards openness and transparency. In fact, it is among the most restrictive in allowing matters to be dealt with in camera among the major cities in Canada surveyed. This is so for two reasons:

1. The By-law does not currently apply to Council or to most Council committees; and

2. The subject matters that may be dealt with in camera are extremely limited.

On July 21, 2010, the By-law was adjusted. The former broad category of "property related matters" was eliminated, thereby restricting to an even greater extent the ability to deal with matters in camera. At the same time, two new categories were added, providing that confidential personal or business information that The Freedom of Information and Protection of Privacy Act (FIPPA) prohibits the City from disclosing could be dealt with in closed session.

The recommendations in this Report would further adjust the By-law by cleaning up outdated provisions and better protecting confidential and personal information.

- **The By-law would apply to the Alternative Service Delivery Committee, the Audit Committee, the Emergency Control Committee, and the Historical Building Committee**

As noted, Winnipeg's By-law is unique among major Canadian cities surveyed in that it does not permit Council and every Council committee to deal with matters in camera. The requirement that Council must meet in open session has worked well enough that no change is recommended in this Report.

However, the fact that the current By-law applies only to Standing Policy Committees and Executive Policy Committee means that some other Council committees have sometimes had difficulties in dealing with sensitive personnel matters, privileged legal advice, confidential contract negotiations and other matters that should, by almost any measure, be dealt with in closed session. The Alternative Service Delivery Committee deals with reports from the City's special operating agencies which, if disclosed to the public could prejudice their business dealings. The Audit Committee deals with issues which, if dealt with in open session, could disclose protected personal information, information provided confidentially by other governments or businesses, information which could jeopardize criminal investigations or information that could inhibit the defence of lawsuits against the City. The Emergency Control Committee sometimes considers information about actual or pending emergency situations which, if made public, could harm the City's emergency response. The Historical Building

Committee deals with matters associated with commercial properties which, if dealt with publicly, could disclose sensitive business information.

This Report recommends that these committees should be allowed to deal with matters in camera if they fall within the narrow range of subjects set out in the By-law.

- **The grounds for meeting in camera would include:**
  - **consideration of confidential information provided by another government and**
  - **information concerning actual or pending emergencies**

As noted, in July 2010, the By-law was adjusted to allow matters to be dealt with in camera in order to protect confidential personal or business information that the City is prohibited by FIPPA from disclosing. There is one other category of information that the City is also prohibited by FIPPA from disclosing – confidential information provided by other government. In order to avoid violating FIPPA, this Report recommends allowing this information to be dealt with in camera as well.

The Emergency Control Committee is made up of the Mayor and Executive Policy Committee as well as key members of the Public Service. It serves several functions, including providing direction to the Public Service when unexpected circumstances are encountered in the course of preparing for or dealing with a variety of emergencies, including floods and other disasters. In performing these functions, this Committee often considers information about an emergency that should not be made public. Accordingly, it is recommended that this information should be considered in camera.

- **References to Record Review Board and licence suspension appeals under the License By-law would be eliminated**

Clause 1(b) of the existing By-law allows appeals of decisions of the Chief of Police or the Record Review Board under the License By-law or of license suspensions to be heard in camera. Obviously, this reference should be updated to refer to the Doing Business in Winnipeg By-law rather than License By-law. However, more fundamentally, there appears to be no need for such a blanket exception. The In Camera By-law now allows committees to deal in camera with material that would constitute an unreasonable invasion of an individual's privacy or that would reveal protected business information. This is adequate to protect the privacy of licence holders.

- **Matters related to collective bargaining would be treated in the same way as negotiations of other agreements are treated**

Currently, clause 1(a) of the By-law treats collective bargaining issues as if they are "personnel related matters" that are dealt with in camera as a matter of course. In fact, the negotiation of collective agreements does not typically involve sensitive and confidential personnel issues. It makes more sense to treat collective agreements in the same way as other contracts and agreements being negotiated by the City. The By-law already permits matters related to these to be dealt with in camera but only if discussing them in open session would prejudice negotiations.

HISTORY

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

> *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 currentlyclassified as in camera; and*
>
> *(ii) a process for regular review of the In Camera By-law No. 5288/89 to ensure that the Cityof Winnipeg is following municipal best practices for transparency, openness and accountability.*

On July 21, 2010, Council concurred in the recommendations of the Executive Policy Committee as follows:

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.

Financial Impact Statement

Date: February 4, 2011

Project Name:
Revised In Camera By-law

First Year of Program **2011**

	2011	2012	2013	2014	2015
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:

There are no additional financial implications to the recommendations of this report.

Radhika Abeysekera
Manager of Finance - Campus Departments
Corporate Finance Department

Original signed by Radhika Abeysekera

CONSULTATION

In preparing this report there was consultation with:
City Audit Department
City Clerk's Department
Historical Buildings Committee

SUBMITTED BY

Department: Legal Services
Division: N/A
Prepared by: Harold Dick
Date: February 4, 2011
File No.

ATTACHMENT A – DRAFT IN CAMERA BY-LAW

THE CITY OF WINNIPEG

BY-LAW NO.

A By-law of THE CITY OF WINNIPEG to allow specified committees to consider specified categories of matters in camera

WHEREAS *The City of Winnipeg Charter* provides that Council may by by-law specify categories of matters that may be considered at in camera meetings of council or a committee of council or a subcommittee thereof;

AND WHEREAS *The City of Winnipeg Charter* further provides that a matter may be considered in camera where, in the opinion of not less than 2/3 of the total number of members of council or the committee or subcommittee of council, as the case may be,

(a) the matter comes within a category mentioned in such a by-law; and

(b) the matter should be considered in camera;

AND WHEREAS *The City of Winnipeg Charter* further provides that, where a matter is considered in camera, the reasons for considering the matter in camera must be recorded in the minutes of the meeting;

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

Short title

1 This By-law may be cited as the **In Camera By-law.**

Committees that may meet in camera

2 The following committees may consider in camera the categories of matters referred to in section 3:

(a) Executive Policy Committee;

(b) Standing Committees;

(c) Audit Committee;

(d) Alternative Service Delivery Committee;

(e) Emergency Control Committee;

(f) Historical Building Committee.

Matters that may be considered in camera

3 The following categories of matters may be considered in camera:

(a) reports or information concerning personnel-related matters;

(b) reports or information which, if disclosed, could prejudice contractual or other negotiations carried on by or on behalf of the City of Winnipeg, including collective bargaining;

(c) reports or information which, if disclosed, could be prejudicial or injurious to existing or anticipated claims or legal proceedings;

(d) reports or information which, if disclosed, would violate solicitor-client privilege;

(d) reports or information containing personal information which, if disclosed, would be deemed to be an unreasonable invasion of an individual's privacy under section 17 of *The Freedom of Information and Protection of Privacy Act*;

(e) reports or information containing information about a business, disclosure of which would be prohibited under section 18 of *The Freedom of Information and Protection of Privacy Act*;

(f) reports or information containing information provided explicitly or implicitly in confidence by another government or governmental body, disclosure of which is prohibited under section 20 of *The Freedom of Information and Protection of Privacy Act*;

(g) information concerning actual or pending emergencies.

By-law No. 5288/89 repealed

4 The In Camera By-law No. 5288/89 is repealed.

DONE AND PASSED, this day of , 2011.

_____
Mayor

_____
City Clerk

Approved as to form and content:

_____
For Director of Legal Services and
City Solicitor