Report - Standing Policy Committee on Protection and Community Services - May 20, 2003

Item No. 1 Mosquito Control By-law
File PA (Vol. 11)

STANDING COMMITTEE RECOMMENDATION:

On May 21, 2003, 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 proposed Mosquito Control By-law be approved by Council.

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

Report - Standing Policy Committee on Protection and Community Services - May 20, 2003

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On May 21, 2003, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Protection and Community Services and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On May 20, 2003, the Standing Policy Committee on Protection and Community Services concurred in the administrative recommendation and submitted its recommendation to Executive Policy Committee and Council.

Re: Mosquito Control By-law

For Submission To: Standing Policy Committee on
Protection and Community Services

Submitted By: K. Knudsen, Acting Director
Community Services Department

U. Goeres, City Solicitor
Legal Services Division, Corporate Services Department

Report Date: May 15, 2003

RECOMMENDATION(S):

- That Council approve the attached proposed By-law.

Report Summary

KEY ISSUES:

- The proposed By-law is an element of the overall comprehensive Mosquito Control Strategy – A Blueprint for Action.

- The proposed By-law will:
    - Prohibit property owners/occupants from allowing mosquito breeding sites to remain on the property;
    - Permit employees of the City's Insect Control Branch to enter to inspect land after providing reasonable notice in order to ensure compliance with the By-law;
    - Use the new authority provided under The City of Winnipeg Charter to give public notice of inspections of land (not buildings);
    - Allow designated employees to order property owners/occupants to take action to deal with mosquito breeding sites;
    - Authorize City employees to eliminate mosquito breeding sites if the property owner/occupant fails to comply with an order;
    - Create an administrative hearing body for the purpose of hearing appeals;
    - Delegate to the CAO authority to act in an emergency.

- The By-law will be particularly important given the potential presence of West Nile Virus, as the mosquito that carries West Nile Virus breeds in sites commonly found in residential yards such as rain barrels, old tires, bird baths, etc.

- This report recommends that the proposed By-law be reviewed within one year to determine its effectiveness.

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 of Winnipeg
	Involves a multi-year contract
	Comment(s):

- The By-law proposes the creation of an administrative appeal hearing body for hearing appeals; the members of this body are proposed to be the following, or their designates:
    - Chief Administrative Officer,
    - Chief Financial Officer,
    - Director of Planning, Property and Development, and the
    - Director of Water and Waste
- There may be members of the public who will view the proposed By-law as an infringement of their property rights.

Policy Implications

	None
X	Yes
	Comment(s):

- The proposed By-law represents a new regulatory structure for mosquito control in response to concerns about West Nile Virus, and will support overall mosquito control efforts by allowing Insect Control staff access to private land (not buildings) in order to identify potential mosquito breeding sites, sample standing water for larvae, and require that appropriate control measures be applied. This will further attempts to reduce the requirement to adulticide.
- The proposed By-law also delegates to the CAO the power granted by the new City of Winnipeg Charter to act quickly to forestall or alleviate the effects of emergencies.

Environmental Implications

	None
X	Yes
	Comment(s):

	As residents and property owners/occupants of the City reduce the mosquito breeding sites on their properties, the need to adulticide (fog) for mosquitoes will be reduced.

Human Resources Implications

X	None
	Yes
	Comment(s):

Financial Implications

X	Within approved current and/or capital budget
	Current and/or capital budget adjustment required
	Comment(s):

REASON FOR THE REPORT:

This By-law is required to complement other aspects of a comprehensive mosquito control strategy, which was approved by Council on April 30, 2003. Council must enact all by-laws.

HISTORY:

On April 24, 2003, the Standing Policy Committee on Protection and Community Services approved a Mosquito Control Strategy – Blueprint for Action. This document was approved by Council on April 30, 2003.

Part of the strategy set out in the Blueprint for Action was a proposal to develop a By-law that would "allow Insect Control staff access to private land in order to identify potential mosquito breeding sites, sample standing water for larvae and require that appropriate control measures be applied." It was also proposed that the By-law would "utilize the authority provided in the recently revised City of Winnipeg Charter to permit public notice to be given of an inspection program affecting private property rather than having to provide individual notice to each property owner."

The attached By-law proposed for enactment fulfills that aspect of the Blueprint for Action.

DISCUSSION:

Background

Until recently, the focus of mosquito control efforts in Winnipeg has been on nuisance mosquitoes. The Insect Control Branch's larval control efforts have been focused on larviciding ditches, large low-lying areas in publicly-owned properties and large privately-owned lands whose owners/occupants have authorized entry.

In recent years, larval control efforts have taken on increased importance. First, concerns about the health and environmental effects of mosquito fogging have become more widespread. More frequent larviciding and extending larval control efforts to mosquito breeding sites that have not been targeted in the past is intended to reduce the need for fogging. Second, and more importantly, the threat of West Nile Virus (WNV), a mosquito-borne disease, has enhanced the need to increase efforts to reduce the number of mosquitoes likely to transfer this disease to humans. Larval control of these species of mosquitoes represents an efficient and effective method of preventing transmission of WNV.

The location of larval control efforts for the prevention of WNV is also important. A significant element of the City's Blueprint for Action on Mosquito Control includes a contract with the Province of Manitoba for the mapping and larval sampling of areas within and outside the City that breed the mosquito species known as the *Culex tarsalis* mosquito, that are likely to carry the West Nile Virus and to transfer it to humans. The *Culex tarsalis* mosquito is known to breed in containers and receptacles such as old tires, upturned canoes, rain barrels, ornamental ponds, birdbaths, children's inflatable wading pools and clogged eavestroughs and drainpipes. Many of these standing water sites may typically be found in residential yards and industrial properties.

By-law summary

The proposed By-law is an element of the overall Mosquito Control – A Blueprint for Action framework. This By-law prohibits property owners/occupants from keeping mosquito breeding sites on their property and permits entry to property by City employees to determine compliance. If there are mosquito breeding sites on the property, City staff can simply notify the owner/occupant and seek voluntary compliance or, if circumstances warrant, staff can order that the property be brought into compliance with the By-law. Assuming that no appeal is filed or that an appeal is unsuccessful, if the owner/occupant fails to comply with the order, the City can take steps to bring the property into compliance and charge the costs of doing so to the property taxes.

The By-law's focus on eliminating mosquito breeding sites is important both to minimize the numbers of nuisance mosquitoes and to deal with the threat of an outbreak of West Nile Virus. In the past, less attention was paid to mosquito breeding sites on residential property, largely because the City did not have the resources necessary to address these issues. However, as residential properties contain many breeding sites favoured

by *Culex tarsalis*, the elimination of these sites has become more important. In addition, the Insect Control Branch is now in a position to expand its larviciding activities to many large privately-owned properties that have not been targeted in the past.

In order to determine the effectiveness of the proposed By-law, it is recommended that it be reviewed within one year.

Entry to private property

The City of Winnipeg Charter provides that City staff may enter private property in order to determine compliance with a by-law only after providing reasonable notice to the owner/occupant of the property. The standard approach to giving notice is to serve each owner/occupant individually. However, the Charter also provides that designated City staff can enter private property in accordance with a public notice of inspection. This is a new power that the attached By-law proposes to put into effect.

The City of Winnipeg Charter provides that, where a public notice of inspection is used, the public notice must set out:

- the purpose of the inspection;
- when the inspections may take place; and
- the neighbourhood, district or area of the city in which the inspections will occur.

The Charter further specifies that only employees specifically designated by by-law may enter properties where public notice has been given of the inspection. The proposed By-law designates the City Entomologist, Entomology Technicians and Technical Assistants as being authorized to enter properties pursuant to a public notice of inspection.

Whether notice is provided individually or by public notice of inspection, where owners/occupants refuse entry or interfere with the entry of City staff, the City is entitled to seek a warrant to enter the property.

Appeals

The proposed By-law will permit Insect Control staff to order the alleviation of mosquito breeding sites and will permit the City to take action if the owner/occupant has failed to comply with the order. The City of Winnipeg Charter provides that anyone to whom such an order is issued is entitled to appeal the order. The order must include information about the appeal process. The Charter provides that the appeal must be filed within the time given for compliance with the order or within 14 days, whichever is less.

The appeal process for this particular By-law, including the hearing, must be dealt with in a timely manner in order for mosquito control efforts to be effective, as control measures must be applied within a five-day period (or less) to prevent the hatching of mosquito larvae. Accordingly, the proposed By-law establishes a hearing body made up of members of the Administration to hear appeals.

The hearing body would be comprised of:

- Chief Administrative Officer,
- Chief Financial Officer,
- Director of Planning, Property and Development, and the
- Director of Water and Waste.

Any three of these individuals or their delegates would constitute a hearing panel.

Emergency Powers

The By-law also delegates to the CAO the City's power to act when an emergency arises that affects the health or safety of people or affects property. In such a circumstance, the City of Winnipeg Charter authorizes the City to "take whatever actions and measures are necessary to meet the emergency and to eliminate or reduce its effects". The proposed amendment to the City Organization By-law will allow the CAO to exercise this power rather than requiring that Council be called into session to exercise the power. This could be particularly important in a situation involving an outbreak of West Nile Virus, where immediate actions may be necessary.

FINANCIAL IMPACT:

The Departmental Controller concurs that there is no financial impact associated with this report.

IN PREPARING THIS REPORT, THERE WAS CONSULTATION WITH AND CONCURRENT BY:

N/A

THIS REPORT SUBMITTED BY:

Department	Community Services Department Legal Services Division, Corporate Services Department
Prepared By:	Harold Dick, Solicitor; Gwen Howe, Community Resource Coordinator

File No.

APPENDIX A

DRAFT

REFERENCE FILE NO. .

THE CITY OF WINNIPEG

BY-LAW NO. /2003

A by-law of the City of Winnipeg to prevent mosquito breeding and otherwise suppress and control mosquitoes.

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

Short Title

1. This By-law may be cited as "The Mosquito Control By-law".

Definitions

2. In this By-law

inspector means the City Entomologist and any employee of the City to whom he or she has delegated authority to carry out actions or functions under this By-law.

larvicide means any chemical or combination of chemicals, other compound or any material used for destroying mosquitoes at the larval stage of development.

low-lying area means an area in which standing water is able to accumulate or other wet location where mosquitoes are or are likely to congregate or breed at any stage of development and includes pools, ponds, sloughs, lakes, and ditches, whether natural or created by humans, but does not include flowing rivers and streams.

mosquito means any insect of the family classification of Culicidae in any stage of its development.

mosquito larva means a mosquito in the larval stage of development.

mosquito breeding site includes a low-lying area, receptacle or any other place or thing that contains mosquitoes in the egg, larval or pupal stages of development, or in which mosquitoes in those stages of development can reasonably be expected to be found in the appropriate environmental conditions.

owner means a person in whose name a subject property is registered.

property means real property within the boundaries of the City of Winnipeg but does not include the interior of a building.

receptacle means an object in which standing water can accumulate and which mosquitoes can breed as a result of its location and position and includes but is not limited to such objects as basins, barrels, pots, cans, tarpaulins, swimming and wading pools, boats, canoes, spare tires and clogged eavestroughs and drainpipes.

Prohibition on mosquito breeding sites

3 No person may permit a mosquito breeding site to exist on property of which he or she is the owner or occupant.

Powers of designated employees

4 The City Entomologist and inspectors to whom the City Entomologist has delegated authority may conduct inspections and take steps to administer and enforce this By-law or remedy a contravention of this By-law in accordance with The City of Winnipeg Charter and, for those purposes, have the powers of a "designated employee" under The City of Winnipeg Charter.

Inspection programs conducted by public notice

5(1) In order to determine whether this By-law is being complied with, the City Entomologist may conduct an inspection program by public notice in accordance with The City of Winnipeg Charter.

Employees designated to conduct inspection program by public notice

5(2) Employees of the City of Winnipeg who hold the following positions within a period of one year after the coming into force of this By-law are hereby appointed as designated employees for the purpose of entering on and inspecting land in accordance with a public notice of an inspection to determine whether this By-law is being complied with:

(a) City Entomologist
(b) Entomology Technicians and
(c) Technical Assistants

Orders to deal with mosquito breeding sites

6(1) Where an inspector finds one or more mosquito breeding sites on a property, he or she may order the owner or occupier to implement a program or measure for the elimination of the site or the prevention and control of mosquito breeding in the site and the order shall specify a reasonable time for compliance.

Possible orders

6(2) A program or measure under subsection (1) ordered by an inspector may require several actions or options for preventing or controlling mosquito breeding, including one or more of the following:

(a) relocating, resituating or repositioning receptacles so that they will not permit the accumulation of stormwater;

(b) removing obstacles to the drainage of stormwater from eavestroughs, drainpipes, and similar sites;

(c) eliminating low-lying areas by filling them in or elevating them, installing or creating a system of drainage or taking some other action to prevent the possibility of the accumulation of storm water;

(d) introducing fish or other natural organisms to ornamental ponds and other similar sites in order to reduce or eliminate the proliferation of mosquito larvae through breeding;

(e) draining or cleaning receptacles on a regular basis;

(f) applying a larvicide to a mosquito breeding site;

(g) taking other actions to eliminate or reduce the possibility of mosquito breeding.

Continuing actions

6(3) An order made under subsection (1) may specify a continuing action or series of actions to be taken.

Service of orders

7 Any order to remedy a contravention of this By-law must be issued in accordance with The City of Winnipeg Charter.

Address for service

8 Where an address for service of an order is required, the following shall be used:

(a) if the person to be served is the owner of real property, the address maintained by the tax collector for the purpose of issuing the tax notice for that property; and

(b) if the person to be served is the occupant of real property, the street address for that property.

Appeals

9(1) An appeal from an order to remedy a contravention of this By-law may be made in accordance with The City of Winnipeg Charter to a hearing body consisting of

(a) the Chief Administrative Officer of the City;
(b) the Chief Financial Officer of the City;
(c) the Director of Planning, Property and Development; and
(d) the Director of Water and Waste;

or their delegates.

Chair and vice-chair of hearing body
9(2) The Chief Administrative Officer of the City or his/her designate shall serve as the chairperson of the hearing body referred to in subsection (1) and the Chief Financial Officer of the City or his/her designate shall be the vice-chairperson.

Panels permitted
9(3) The hearing body shall sit in panels of three members selected by the chairperson.

Rules of practice and procedure
9(4) Sections 54.10 and 54.11 of the Procedure By-law apply to hearings conducted under this section and the hearing body may adopt other rules of practice and procedure.

DONE AND PASSED, in Council assembled, this 28th day of May, 2003.

_____
Mayor

_____
City Clerk

Approved as to content:

_____
Director of Community Services

Certified as to form:

_____
for City Solicitor/Manager of
Legal Services