Minutes – Executive Policy Committee – November 28, 2012

REPORTS

Minute No. 46 City of Winnipeg Police Board

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

The Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and recommends to Council:

1. That the Winnipeg Police Board By-law, attached as Appendix A, be enacted.

2. That the Winnipeg Public Service approach the Province of Manitoba to recover all costs associated with operating the police board.

3. That the funding requirements for Police Board operations be referred to the 2013 operating budget process.

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

DECISION MAKING HISTORY:

Moved by Councillor Fielding,

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.

Carried

Moved by Councillor Fielding,

That the recommendation of the Winnipeg Public Service be concurred in and forwarded to Council.

Carried

ADMINISTRATIVE REPORT

Title: **City of Winnipeg Police Board**

Issue: **As required under the Manitoba Police Services Act, the City of Winnipeg has drafted the Police Board implementation by-law to be put into effect on or before December 1st, 2012**

Critical Path: **EPC - Council**

AUTHORIZATION

Author	Department Head	CFO	CAO
Etoile Stewart	D. Joshi	M. Ruta, CFO	D. Joshi, COO

RECOMMENDATIONS

1. That Council enact the Winnipeg Police Board By-law attached as Appendix A hereto.
2. That the Public Service approach the Province of Manitoba to recover all costs associated with operating the police board.
3. That the funding requirements for Police Board operations be referred to the 2013 operating budget process.
4. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

REASON FOR THE REPORT

The Police Services Act (S.M. 2009, c.32) requires The City of Winnipeg to implement a municipal Police Board by December 1, 2012. (Appendix B)

IMPLICATIONS OF THE RECOMMENDATIONS

In order to meet the legal requirements under Manitoba's Police Service Act, the City of Winnipeg needs to pass the Police Board implementation by-law on or before December 1st.

The purpose of the Police Board is to act as a liaison between the community and the Winnipeg Police Service (WPS). The board will provide civilian governance respecting law enforcement, and the administrative direction and organization required to support an effective police service.

The duties of the Police Board include hiring a police chief; establishing priorities and objectives in consultation with the police chief; establishing policies for effective management; directing the police chief and monitoring his or her performance; ensuring that community needs and values are reflected in policing priorities, objectives, programs and strategies.

The Police Board does not give orders or directions to any individual police officer, on specific operational decisions, individual investigations or the day-to-day operation of the police service. The Board has no role in collective bargaining process between Police and City.

The Winnipeg Police Service will now have a direct reporting relationship to the Board.

In order to ensure alignment between board policies and Council priorities, Council and its committees will have the ability to make policy recommendations to the Board for its consideration.

Regarding budgeting, the Police Board will provide Council with an estimate of the costs required to operate the police service in the next fiscal year. Council retains final authority for providing the global funds in the budget to the police service and the Police Board is responsible for allocating the funds provided to the police service.

Once the by-law is passed a call for applications to the Police Board from the public will be made (managed by the Clerk's office per the City's Board appointment process) with the intention of finalizing all appointments at the January 30th council meeting.

Council will be provided with regular updates throughout the transition.

The Winnipeg Police Board By-Law stipulates:

- Maximum number of board members is 7 – this includes 2 appointments made by the Province.

- Council is responsible for the appointments of the Chair and Vice-Chair of the Police Board . Council shall appoint 5 members in total including the Mayor or his or her nominee and one other member of Council.

- Councillors will be appointed for a 1 year term and citizen members of the Board shall be appointed for a term not to exceed three (3) years for up to eight (8) consecutive years of service. A Councillor may be a Board member only so long as they remain a Councillor.

- Remuneration of board members will be consistent with the Manitoba Police Commission rates: $190 -$109 per half day/ $336-$192 per full day.

- Formal reporting process between the Board and Council will be tied to the City's Budget process and by representation of Council members on the Police Board .

- The City will need to determine a global budget for board operations, which should be a line item in the overall operating budget itself as opposed to a line item within the WPS budget.

- The board shall hold a minimum of (9) nine monthly meetings per year.

- The board will be required to hold 2 or more public consultations each year.

- As the Board is an arm's length entity, it will be responsible for hiring its own staff (Executive Director, administrative staff) and securing its own office space

FINANCIAL IMPLICATIONS

On annual basis, the Board will prepare operating and capital estimates for purposes of delivering police services to The City of Winnipeg. The amount to be provided to the Board for this purpose will be subject to Council's approval.

The Board in carrying out its mandate will require an operating budget. As the Board is a new entity cost certainty is to be determined. The amount noted in the Financial Impact Statement for 2013 are Public Service estimates only and being the start-up year, are prorated for what a full year requirement would be.

The largest part of this budget is to provide the personnel required for the day to day operation and support of the Board

As specified in the by-law, meeting honoraria will be paid to at least five of the seven Board members (the Chair and Vice-Chair, if members of Council, will not be entitled to an honorarium under the by-law).

Finally, the Board will require budget for public consultations, conferences and training, office space, audit, furniture and equipment and other costs.

Pursuant to Recommendation #2, the Public Service will approach the Province of Manitoba to recover all costs associated with operating the Police Board.

HISTORY

An inquiry into the conduct of police surrounding the motor vehicle accident and death of Crystal Taman on February 25, 2005 was called by the Minister of Justice in 2007. In response to the Taman Inquiry Recommendations (2008) the Province of Manitoba amended the Police Service Act in 2009 requiring all Provincial municipalities with police services to establish police boards.

In 2011, the Province created the Manitoba Police Commission (MPC) to support municipal police boards and 'modernize' process. The commission is a permanent body that provides training for all municipal police boards, the policy and procedure manual for use by all police boards in Manitoba and is also consulting on a code of ethical conduct for police board members.

In Spring 2012, the City of Winnipeg was notified that the Winnipeg Police Board must be established by December 1, 2012.

A working group led by the CAO office with representation from Materials Management, Corporate Finance, Corporate Communications, Human Resources, Legal Services, Winnipeg Police Services and Community Services was struck in Fall 2012 to make recommendations regarding the by-law.

A "best practices" survey was prepared to gather logistical information from existing police boards across Canada through the Canadian Association of Police Boards and to evaluate criteria and practices that may be applicable.

FINANCIAL IMPACT

Financial Impact Statement

Date: November 23, 2012

Project Name: Establishment of City of Winnipeg Police Board

First Year of Program 2013

	2013	2014	2015	2016	2017
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	$ 233,588	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	233,588	-	-	-	-
Net Cost/(Benefit)	$ -	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts	-	-	-	-	-
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Direct costs are estimates for the Board's day to day operation. It includes provision for salaries and benefits, office space, Board member honoraria and other operating costs. The estimate for 2013 is a Public Service estimate and may vary once the Board has been implemented. There is no provision for the actual costs associated with Police service delivery nor any services delivered to the Board by City departments. It is presumed that these services will be delivered on a cost recovery basis. The responsibility for the Board's budget request is the Board's and, as such, no estimates have been included here beyond that needed for the start-up year. The incremental revenue assumes Provincial funding of the Board, pursuant to Recommendation #2.

original signed by *Paul D. Olafson, CA*
Corporate Controller

CONSULTATION

In preparing this report there was consultation with:

Community Services
Legal Services
Materials Management
Clerk's Office
Corporate Services
Corporate Finance
Winnipeg Police Service

SUBMITTED BY

Department CAO Office
Division
Prepared by: Etoile Stewart
Date: *November 19, 2012*
File No.

APPENDIX A

THE CITY OF WINNIPEG
BY-LAW NO. _____

A By-law of THE CITY OF WINNIPEG to establish the Winnipeg Police Board and provide for the appointment of its members.

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

1. This by-law may be referred to as the **"Winnipeg Police Board By-law"**.

2. In this by-law:

"Act" means *The Police Services Act*, C.C.S.M., c.P94.5 and the regulations thereto, as amended and replaced from time to time;

"Board" means the Winnipeg Police Board established by this by-law;

"Board Budget" means the annual operating budget of the Board;

"Citizen" means a person, other than a member of Council, who meets the appointment criteria set forth in the Police Board Regulation 130/2012 as amended or replaced from time to time;

"Council" means the Council of The City of Winnipeg;

"Council Appointee" means a member of the Board as appointed by Council;

"Councillor" means a person elected to Council; and

"Records" includes quotations, contracts, correspondence, invoices, vouchers, timesheets, and any other documents that support actions taken by the Board.

Establishment of the Winnipeg Police Board

3. There is hereby established a board to be known as the "Winnipeg Police Board" which shall have such duties as provided in the Act and as hereinafter provided.

Composition of the Board and Term

4. The Board shall be composed of seven (7) members which shall include the Chair and Vice Chair of the Board.

5. Five (5) members of the Board, including the Chair and Vice Chair, shall be appointed by Council as follows:

(a) the Mayor or his or her nominee, subject to ratification by Council, who shall also be appointed as Chair of the Board;
(b) one (1) Councillor; and
(c) three (3) Citizens.

6. Council Appointees who are Councillors shall be appointed for a one (1) year term. Notwithstanding the foregoing, a Councillor may be a Board member only so long as they remain a Councillor.

7. Council Appointees who are Citizens shall be appointed for a term not to exceed the lesser of three (3) years or the term of office of the Council that made the appointment.

8. A Council Appointee shall be eligible for reappointment to the Board if the reappointment does not result in more than eight (8) consecutive years of service on the Board by such Council Appointee.

9. All Council Appointees must meet the qualifications for appointment set out in the Act or this By-law. Council Appointees who are Citizens shall be selected to provide a balance of skills on the Board.

10. Where a Council Appointee resigns or is otherwise unable to carry out and complete his or her term of office, Council may in accordance with Section 5 appoint a person to complete the remainder of that term.

11. Council may revoke the appointment of any Council Appointee for cause including, without limitation, if the Council Appointee:

    (a) is convicted of, or found guilty of, contravening a federal or provincial enactment or has any outstanding charges for contravening a federal or provincial enactment awaiting court disposition;

    (b) fails to attend three (3) consecutive regular meetings of the Board, unless the absences are authorized by a resolution of the Board passed before or at one of those meetings;

    (c) becomes under the Act or this by-law disqualified from being or remaining a Board member;

    (d) ceases to meet the qualifications set out in the Act or this by-law for being or remaining a Board member;

    (e) becomes bankrupt, or suspends payment or his or her debts as they generally fall due, or is declared insolvent; or

    (f) is found to be or becomes of unsound mind.

12. Prior to their appointment, all potential Board members must pass background security checks including, without limitation, any background security checks required pursuant to the Act. Notwithstanding the foregoing, at any time during the term of a Board member, Council may require an updated criminal records search.

13. Each Board member shall sign declarations agreeing to confidentiality and that they have no conflict of interest regarding matters within the Board's jurisdiction.

Meetings

14. The Board shall hold a minimum of nine (9) monthly meetings per year.

15. In addition, the Board shall annually hold a minimum of two additional public consultations to solicit community input on public safety issues and priorities, which public consultations shall be held in locations throughout the city.

Remuneration

16. Citizen members of the Board shall be paid the following remuneration by the City for time spent in attendance at meetings of the Board, including public consultations:

    (a) Chair and Vice Chair:

        (i) $190.00 for four (4) meeting hours or less;
        (ii) $336.00 for more than four (4) meeting hours.

    (b) Other Citizen members:

        (i) $109.00 for four (4) meeting hours hours or less; or
        (ii) $192.00 for more than four (4) meeting hours.

Board Budget and Support Staff

17. The Board shall annually prepare and submit a Board Budget for consideration by Council in accordance with City budget procedures. Council is responsible for establishing the total Board Budget.

18. Within such Board Budget, the Board may hire such persons as it deems appropriate.

Police Budget

19. The Board shall submit operating and capital estimates to Council that will show the amounts that will be required to maintain the Winnipeg Police Service and provide it with equipment and facilities. The format of the estimates, the period they cover, and the timetable for their submission shall be in accordance with City budget procedures.

20. The Board shall provide sufficient information to enable Council to determine the financing requirements of the Winnipeg Police Service including, if directed by Council, strategic plans, variance reports, capital plans and variance analysis. Council is responsible for establishing the total budget of the Winnipeg Police Service.

Reporting

21. The Board shall prepare an annual strategic plan which shall be submitted to Council for information through the Standing Policy Committee on Protection and Community Services.

22. At the end of each year, the Board shall issue an annual report to Council for information through the Standing Policy Committee on Protection and Community Services, which annual report shall include a summary of the Board's activities for the year.

23. The Board shall prepare annual audited financial statements for the Board Budget and the Winnipeg Police Service budget which shall be submitted to Council for information through the Standing Policy Committee on Protection and Community Services.

24. The Board shall provide a quarterly update on the Board Budget and the Winnipeg Police Service Budget to the Standing Policy Committee on Finance for information.

25. In order to assess the effectiveness and efficiency of the Winnipeg Police Service in respect of the funds provided by Council:

    (a) Council may request Records from the Board and the Board shall provide the Records requested; and

    (b) Council may direct the City Auditor or external auditors to audit any Records provided.

Record Retention

26. All Records shall be subject to retention and disposition schedules in accordance with the City's Records Management By-law No. 86/2010 as amended or replaced from time to time.

DONE AND PASSED in Council assembled, this _____ day of _____, 2012.

_____
Mayor

_____
City ClerkApproved as to Content:

_____
Chief Operating Officer

Approved as to Form:

_____
for Director of Legal Services/City Solicitor

APPENDIX B

RELEVANT PROVISIONS OF THE POLICE SERVICES ACT (MANITOBA)

PART 4

MUNICIPAL POLICE SERVICES

DIVISION 1

POLICE CHIEF AND OFFICERS

POLICE CHIEF

Appointing police chief

21 A municipality's police board must appoint a person with prescribed qualifications to serve as the chief of the municipal police service.

Responsibilities of police chief

22(1) The chief of a municipal police service is responsible for the following:

(a) the enforcement of law, the prevention of crime and the preservation of the public peace in the municipality;

(b) the management, administration and operation of the police service;

(c) the maintenance of discipline in the police service;

(d) ensuring that the police service meets all requirements imposed by this Act and that its police officers carry out their duties in accordance with this Act;

(e) implementing policies established by the police board respecting the police service.

Police chief accountable to police board

22(2) The police chief is accountable to the police board for

(a) carrying out the responsibilities set out in subsection (1); and

(b) managing, administering and operating the police service in accordance with the priorities, objectives and policies established by the police board under subsection 28(1).

POLICE OFFICERS

Appointing police officers

23(1) The police board may appoint eligible persons to serve as police officers in the police service, or it may delegate that power to the police chief.

Qualifications

23(2) To be eligible for appointment as a police officer, a person must have the prescribed qualifications.

Status of police officers

24(1) A police officer has all the powers, duties, privileges and protections of a peace officer and constable at common law or under any enactment.

Jurisdiction of police officers

24(2) A police officer has authority to act throughout Manitoba in order to carry out his or her duties, subject to any restrictions or conditions established by regulation or set out in his or her appointment.

Duties of police officers

25 The duties of a police officer include

(a) preserving the public peace;

(b) preventing crime and offences against the laws in force in the municipality;

(c) assisting victims of crime;

(d) apprehending criminals and others who may lawfully be taken into custody;

(e) executing warrants that are to be executed by peace officers, and performing related duties;

(f) laying charges and participating in prosecutions;

(g) enforcing municipal by-laws; and

(h) performing other duties assigned by the police chief.

DIVISION 2

POLICE BOARDS

Police board required

26(1) Every municipality that operates a police service must establish and maintain a police board in accordance with this Division.

Police board responsible for police service

26(2) A municipal police service must operate under the general direction and supervision of the municipality's police board in accordance with this Part.

Purpose of police board

27 The purpose of a police board is to provide

(a) civilian governance respecting the enforcement of law, the maintenance of the public peace and the prevention of crime in the municipality; and

(b) the administrative direction and organization required to provide an adequate and effective police service in the municipality.

General duties of police board

28(1) The police board must

(a) after consulting with the police chief, establish priorities and objectives for the police service;

(b) establish policies for the effective management of the police service;

(c) direct the police chief and monitor his or her performance; and

(d) perform any other prescribed duties.

Specific duties of police board

28(2) Without limiting the generality of subsection (1), the police board must (a) ensure that the police chief establishes programs and strategies to implement the priorities and objectives established by the board for the police service;

(b) ensure that community needs and values are reflected in the policing priorities, objectives, programs and strategies;

(c) ensure that police services are delivered in a manner consistent with community needs, values and expectations; and

(d) act as a liaison between the community and the police service.

Restriction on police board activities

28(3) The police board may give orders and directions to the police chief, but not to other police officers. No individual member of the board may give an order or direction to any police officer.

No role on specific matters

28(4) The police board must not give orders or directions on specific operational decisions, individual investigations or the day-to-day operation of the police service.

No role in personnel matters

28(5) With the exception of the police chief, the police board has no role with respect to the discipline or personal conduct of any police officer.

No right to sensitive information

28(6) The police board is not entitled to any information about individual investigations or intelligence files.

Information from board to develop budget

29(1) To assist the council in developing the municipal budget, the police board must provide the council with

(a) an estimate of the costs required to operate the police service in the next fiscal year; and

(b) any additional information that the council considers necessary to enable it to assess the financial requirements of the police service.

Council has final responsibility for budget

29(2) The council is responsible for establishing the total budget of the police service.

Police board to allocate funds

29(3) The police board is responsible for allocating the funds that are provided to the police service under the municipal budget.

Size of police board

30(1) The council of a municipality must establish the size of its police board by by-law. The police board must

(a) consist of at least three members, in the case of a municipality with a population of 5,000 or less;

(b) consist of at least five members, in the case of a municipality with a population over 5,000; or

(c) consist of at least seven members, in the case of the City of Winnipeg.

Appointing members to police board

30(2) Subject to subsection (3), one member of a police board is to be appointed by the Lieutenant Governor in Council, and the other members are to be appointed by the council.

Police board for City of Winnipeg

30(3) In the case of the City of Winnipeg, two members of the police board are to be appointed by the Lieutenant Governor in Council, and the other members are to be appointed by the council.

Number of council members and employees

30(4) No more than half the members of the police board may be council members or employees of the municipality.

Term of council member

31(1) The term of a council member on the police board ends when the person is no longer a member of the council.

Term of member appointed by council

31(2) The term of a person appointed to the police board by council who is not a council member must be fixed in his or her appointment, but must not extend past the term of office of the council that made the appointment.

Term of member appointed by L.G. in C.

31(3) The term of a person appointed to the police board by the Lieutenant Governor in Council must be fixed in the order appointing the person, but must not exceed four years.

Extension and reappointment

31(4) A person appointed to the police board who is not a council member

(a) may continue to serve on the board after the expiry of his or her term until the appointment of his or her successor; and

(b) is eligible for reappointment, as long as the reappointment does not result in more than eight consecutive years of service on the board.

Council to designate chair and vice-chair

32(1) The council must designate one member of the police board as chair and another member as vice-chair.

Authority of vice-chair

32(2) The vice-chair has the authority of the chair when the chair is absent or unable to act, or when authorized by the chair.

Procedure

33 Subject to the requirements of this Act, a police board may determine its own practice and procedures.

Meetings

34(1) The police board must hold a meeting at least once every three months.

Public meetings

34(2) Subject to subsection (3), meetings of the police board must be open to the public and the board must give public notice of its meetings in the prescribed manner.

Exception

34(3) The police board may exclude the public from all or part of a meeting in order to consider matters involving public security or sensitive financial or personal information.

Policy and procedures manual

35(1) The police board must operate in accordance with the policy and procedures manual developed by the commission for police boards.

Code of ethical conduct

35(2) Every member of the police board must comply with the code of ethical conduct developed by the commission for police board members.

Training

36 Every member of the police board must undergo training arranged by the commission.

Remuneration

37 The council may provide for reasonable remuneration to members of the police board who are not members of the council.

Delegation

38 The police board may delegate to two or more of its members any duty imposed or power conferred on it by this Act.

DIVISION 3

MISCELLANEOUS PROVISIONS RE MUNICIPAL POLICE SERVICES

Employer

39(1) A municipality that operates a police service is deemed to be the employer of the police chief and other police officers in the service.

Pay and other benefits set by council

39(2) A council is responsible for setting the pay and other benefits of the police chief and other police officers in the service.

Municipality liable for torts of officers

40(1) A municipality that operates a police service is jointly and severally liable for a tort committed by a police officer in the performance of his or her duties.

Municipality to indemnify officer

40(2) A municipality that operates a police service must pay the following:

(a) any damages or costs awarded in an action or proceeding against one of its police officers as the result of a tort committed by the officer in the performance of his or her duties;

(b) any costs incurred and not recovered by the officer in the action or proceeding;

(c) any sum required to settle the action or proceeding against the officer.

Municipality may defend officer

40(3) A municipality that may be liable under this section has the right to defend — in the name and on behalf of the police officer — an action or proceeding that may be brought against the officer.

Duty to cooperate

40(4) A police officer whose conduct is the subject of an action or proceeding must cooperate with the municipality in the settlement or defence of the action or proceeding.