Agenda – Council – October 23, 2013

Report – Standing Policy Committee on Protection and Community Services – October 3, 2013

Item No. 2 Amendments to the Neighbourhood Liveability By-law No. 1/2008 – Set Fines for Heating Standards

STANDING COMMITTEE RECOMMENDATION:

On October 9, 2013, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Protection and Community Services and submitted the following to Council:

1. That the Neighbourhood Liveability By-law No. 1/2008 be amended as per attached Appendix A, which will create set fines for non-compliance with heating standards in residential dwellings.

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 – October 3, 2013

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On October 9, 2013, 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 October 3, 2013, the Standing Policy Committee on Protection and Community Services concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

COUNCIL DECISION:

On March 20, 2013 Council concurred in the recommendation of the Standing Policy Committee on Protection and Community Services and adopted the following:

1. That the Winnipeg Public Service be directed to take into consideration the Council Motion of February 27, 2013 during the ongoing Set Fines Review for report back at the October 7, 2013 meeting of the Standing Policy Committee on Protection and Community Services.

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

STANDING COMMITTEE RECOMMENDATION:

On March 11, 2013, the Standing Policy Committee on Protection and Community Services recommended to Council:

1. That the Winnipeg Public Service be directed to take into consideration the Council Motion of February 27, 2013 during the ongoing Set Fines Review for report back at the October 7, 2013 meeting of the Standing Policy Committee on Protection and Community Services.

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 – October 3, 2013

DECISION MAKING HISTORY (continued):

COUNCIL DECISION:

On February 27, 2013, Council ruled automatic referral of the following motion to the Standing Policy Committee on Protection and Community Services:

Moved by Councillor Smith,
Seconded by Councillor Eadie,

WHEREAS Winnipeg has freezing cold winters;

AND WHEREAS in 2012 there were over 300 landlords of rental accommodation who were in violation, not providing 70°F of heat to their tenants;

THEREFORE BE IT RESOLVED that the City issue tickets to these landlords similarly to our system of traffic tickets, where the landlord knows the penalty and pays the fine.

ADMINISTRATIVE REPORT

Title: **Proposed Amendments to the Neighbourhood Liveability By-law No. 1/2008 - Set Fines for Heating Standards**

Critical Path: **Standing Policy Committee on Protection and Community Services, Executive Policy Committee, Council**

AUTHORIZATION

Author	Department Head	CFO	CAO
P. de Graaf	C. Wightman	M. Ruta	D. Joshi COO

RECOMMENDATIONS

1. That Council approve amendments to the *Neighbourhood Liveability By-law No. 1/2008* (draft amending By-law attached as Appendix A), which will create set fines for non-compliance with heating standards in residential dwellings.

2. 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

On February 27, 2013, Council automatically referred the following motion to the Standing Policy Committee on Protection and Community Services:

> *That the City issue tickets to landlords similarly to our system of traffic tickets, where the landlord knows the penalty and pays the fine, for not providing 70 ºF of heat to their tenants in the winter.*

On March 20, 2013, Council adopted the following motion:

> *That the Winnipeg Public Service be directed to take into consideration the Council Motion of February 27, 2013 during the ongoing Set Fines Review for report back at the October 3, 2013 meeting of the Standing Policy Committee on Protection and Community Services.*

Council approval is required to amend the *Neighbourhood Liveability By-law No. 1/2008* (NLB) to establish set fines.

IMPLICATIONS OF THE RECOMMENDATIONS

- The NLB creates the following requirements with respect to the heating of residential dwellings:

    43(1) A dwelling must be provided with a heating system
    (a) installed under permit and in compliance with Code;
    (b) maintained in a safe and good working condition; and
    (c) supplied with fuel or power so as to provide the dwelling with sufficient heat in compliance with this section.

    43(2) Subject to subsection (4), a room temperature of not less than 70 ºF (21 ºC), measured at a height of 75 cm from the floor in the centre of each occupied room within a dwelling, must be maintained between the hours of 7:00 a.m. and 11:00 p.m.

    43(3) Subject to subsection (4), a room temperature of not less than 65 ºF (18 ºC), measured at a height of 75 cm from the floor in the centre of each occupied room within a dwelling, must be maintained between the hours of 11:00 p.m. and 7:00 a.m.

- Similar to other NLB offenses, fines for violations of the requirements for residential heating standards are the default penalties established by section 178(1) of the *City of Winnipeg Charter*:

    (a) in the case of an individual, to a fine of not more than $1,000, or imprisonment for a term of not more than six months, or both; and
    (b) in the case of a corporation, to a fine of not more than $5,000.

Rationale for Determining Set Fines

When determining the dollar values of set fines, it is important to note that *The Summary Convictions Act* specifically permits a justice to impose a fine lower than a set fine (or, for that matter, a minimum fine) if the justice concludes that the offence is not wholly attributable to the fault of the charged person. In fact, a justice could simply let the person off with a reprimand. Therefore, the set fine contained in a by-law may not be the fine actually imposed on the offender.

As a general rule, by-law violations that have a significant impact on public safety or well-being should have higher penalties. Furthermore, penalties should be set high enough to deter behaviour. Repeat offenders that have been previously penalized for the same offence should be penalized a greater amount.

Early payment reductions are also proposed for some contraventions. An offender who chooses to participate in the early payment option pays a reduced amount and is then not prosecuted for the offence. This means that he or she is not required to appear in by-law court before the Judicial Justice of the Peace, which also helps to reduce the workload burden on the courts, prosecutors and enforcement staff.

Proposed Set Fines for Section 43(1) – The Provision of a Heating System

Since the failure to provide a heating system or the failure to take the reasonable steps necessary to repair a defective heating system when a room is cold can have significant impacts on residents, set fines of $1,000 are proposed for individuals and $5,000 for corporations with no early reduced payment option.

Proposed Set Fines for Sections 43(2) and 43(3) – Adequate Heat

Lack of adequate heat in a room can have a significant impact on well-being and can be very uncomfortable; as a result, the following set fines are proposed:

Individuals:

• First Offence:	$ 500	Early Reduced Payment Option:	$250
• Second Offence:	$ 750	Early Reduced Payment Option:	$375
• Third or Subsequent Offence:	$1,000	Early Reduced Payment Option:	$500

Corporations:

• First Offence:	$1,000	Early Reduced Payment Option:	$500
• Second Offence:	$1,500	Early Reduced Payment Option:	$750
• Third or Subsequent Offence:	$2,000	Early Reduced Payment Option:	$1,000

Financial Impact and Implementation Timeframe for Heating Standard Set Fines

Revenue from fines is directed to the City's Legal Services Department to defray the costs of prosecution. An estimate of revenue from fines is not feasible as the final determination of fine amounts are within the purview of the Provincial court system.

It is proposed that these new set fines will take effect immediately upon Council approval of the by-law amendments and would then apply on a go-forward basis to all charges laid.

If approved by Council, the set fines and early payment options proposed in this report would be added to a number of minimum fines with early payment options already set out in the By-law. Because the number of set and minimum fines is becoming large and complex, a legislative drafting decision has been made to include all set and minimum fines as well as early consent payment options in a single table attached to the By-law. Accordingly, this is the format of the attached draft amending by-law. Please note, however, that no changes have been made to the fine and early payment structure already enacted by Council.

HISTORY

On February 27, 2013, Council automatically referred the following motion to the Standing Policy Committee on Protection and Community Services:

> *That the City issue tickets to landlords similarly to our system of traffic tickets, where the landlord knows the penalty and pays the fine, for not providing 70 ºF of heat to their tenants in the winter.*

On March 11, 2013, the Standing Policy Committee on Protection and Community Services recommended that Council adopt the following motion:

> *That the Winnipeg Public Service be directed to take into consideration the Council Motion of February 27, 2013 during the ongoing Set Fines Review for report back at the October 3, 2013 meeting of the Standing Policy Committee on Protection and Community Services.*

On March 20, 2013, Council adopted the following motion:

> *That the Winnipeg Public Service be directed to take into consideration the Council Motion of February 27, 2013 during the ongoing Set Fines Review for report back at the October 3, 2013 meeting of the Standing Policy Committee on Protection and Community Services.*

FINANCIAL IMPACT

Project Name: **First Year of Program** **2013**

Proposed Amendments to the NLB - Set Fines for Heating Standards

	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	$ -	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	-	-	-	-	-
Net Cost/(Benefit)	$ -	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts	-	-	-	-	-
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Revenue from fines is directed to the City's Legal Services Department to defray the costs of prosecution. An estimate of revenue from fines is not feasible as the final determination of fine amounts are within the purview of the Provincial court system.
It is proposed that these new set fines will take effect immediately upon Council approval of the by-law amendments. They would then apply on a go-forward basis to all charges laid after the new fines are in place.

original signed by
Acting Controller,
Kelly Lemoine, CA

CONSULTATION

In preparing this report there was consultation with:

Legal Services Department

SUBMITTED BY

Department: Community Services
Division: Community By-law Enforcement Services
Prepared by: Peter de Graaf, Manager
Date: September 3, 2013
File No.

APPENDIX A

THE CITY OF WINNIPEG

BY-LAW NO.

A By-law of THE CITY OF WINNIPEG to amend the Neighbourhood Liveability By-law

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

Neighbourhood Liveability By-law amended

1 The Neighbourhood Liveability By-law No. 1/2008 is amended by this By-law.

Sections 109 to 109.2 replaced

2 Sections 109, 109.1 and 109.2 are replaced with the following:

Minimum and set penalties, reduced early consent payment

109(1) Subject to subsection (2), a person who contravenes a provision of this By-law referred to in Schedule "B" to this By-law is guilty of an offence and is liable, upon summary conviction, to a minimum or set fine, as the case may be, set out in the applicable column of Schedule "B".

109(2) Notwithstanding subsection (1), a person who contravenes a provision of this By-law referred to in Schedule "B" may pay a reduced consent payment in the amount set out in the applicable column of Schedule "B" within 15 days after the date the offence notice alleging the contravention was issued, and thereafter will not be prosecuted for the contravention.

109(3) In addition to paying a fine or consent payment set out in Schedule "B", the person must pay any applicable court costs, surcharges and fees imposed pursuant to The Summary Convictions Act*.*

Monetary penalty imposed

109.1 A monetary penalty is hereby imposed penalty pursuant to sub-clause 175(d)(i) of The City of Winnipeg Charter *for a contravention of section 6 or Part 3 of this By-law. The monetary penalty is in the amount of the costs of any collection, clean-up and disposal of litter or garbage that is associated with the conduct that is in contravention of the provision.*

Schedule B added

3 The table attached as Attachment A to this amending By-law is hereby attached as Schedule “B” to the Neighbourhood Liveability By-law and forms part of that By-law.

DONE AND PASSED, this day of , 2013.

_____
Mayor

_____
City Clerk

Approved as to content:

_____
Director of Community Services

Approved as to form:

_____
For Director of Legal Services/City Solicitor

ATTACHMENT A

SCHEDULE "B"

DIVISION 4 - PENALTIES[1]

Offence	***Penalty categories***	***Minimum or set fine[2]***	***Reduced early consent payment***
s. 6(1) - Allow garbage to accumulate on property	*- Individual* *- Corporation*	*$600* *$1,200*	*$300* *$600*
s. 6(1.1) – Allow large scale accumulation of garbage on property	*- Individual* *- Corporation*	*$2,000* *$4,000*	*--* *--*
s. 43(1) - Failure to provide heating system	*- Individual* *- Corporation*	*$1,000** *$5,000**	*--* *--*
s. 43(2) or (3) - Lack of adequate heat	*- Individual* *- first offence* *- second offence* *- third and subsequent offences* *- Corporation* *- first offence* *- second offence* *- third and subsequent offences*	 *$500** *$750** *$1,000** *$1,000** *$1,500** *$2,000**	 *$250* *$375* *$500* *$500* *$750* *$1,000*
s. 53(2) – Littering		*$100*	*$50*
s. 53(3) - Dumping garbage	*- Individual* *- Corporation*	*$600* *$1,200*	*$300* *$600*
s. 53(4) – Large scale dumping of garbage	*- Individual* *- Corporation*	*$2,000* *$4,000*	*--*
s. 53(5) - own or operate a vehicle used in large scale dumping of garbage	*- Individual* *- Corporation*	*$2,000* *$4,000*	*--*
s. 54 - spitting		*$100*	*$50*
s. 55 - (garbage escaping vehicle)	*- Individual* *- Corporation*	*$600* *$1,200*	*$300* *$600*
s. 56 – duty of property owners and occupants	*- Individual* *- Corporation*	*$600* *$1,200*	*$300* *$600*
s. 57 – duty of business owners	*- Individual* *- Corporation*	*$600* *$1,200*	*$300* *$600*
Part 5 – Noise Control	*- Individual* *- first offence* *- second offence* *- third and subsequent offences* *- Corporation* *- first offence* *- second offence* *- third and subsequent offences*	 *$50* *$100* *$150* *$100* *$200* *$300*	 *--* *--* *--* *--* *--* *--*

1 NOTE: In addition to fines and consent payments set out on this table, court costs, surcharges and fees payable under The Summary Convictions Act may also be applicable.

*2 NOTE: Set fines are designated with an asterisk**