Minute No. 538
Report – Standing Policy Committee on Downtown Development, Heritage and Riverbank Management – May 5, 2014

Item No. 2 Historical Resources By-law

COUNCIL DECISION:

Council concurred in the recommendation of the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management and adopted the following:

1. That a new Historical Resources By-law (draft attached as Appendix A to this Report) incorporating the features outlined in this Report and repealing the existing Historical Buildings By-law, be enacted and generally taking effect June 1, 2014.

2. That the fees set out in Appendix E be approved and come into effect on June 1, 2014, the effective date of the new By-law.

3. That a "Commemorative List" of Historic Resources created by the By-law be produced immediately as a means of recognizing those resources that merit commemoration without the imposition of any obligations or controls.

4. That the Director of Planning Property and Development be authorized to send letters to owners of all buildings currently on the Conservation List and Inventory of Historic Buildings, advising them of the status of their buildings and the process the City will follow with respect to them as the new By-law is adopted.

5. That the Public Service report back within 180 days on mechanisms to prevent heritage resources from being allowed to deteriorate by incurring structural and safety concerns (de facto demolition by neglect); by strengthening relevant policy and by-laws including but not limited to the Vacant Buildings By-law.

6. 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 Downtown Development, Heritage and Riverbank Management – May 5, 2014

DECISION MAKING HISTORY:

Moved by Councillor Pagtakhan,

That the recommendation of the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On May 14, 2014, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On May 5, 2014, the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management concurred in the recommendation of the Winnipeg Public Service, with the following amendment:

- Delete “May 1, 2014” in Recommendations 1 and 2 and replace it with “June 1, 2014”.

and submitted the matter to the Executive Policy Committee and Council.

Further on May 5, 2014, the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management received a communication dated May 3, 2014 from David Sanders, in opposition to Historic Resources By-law.

ADMINISTRATIVE REPORT

Title: New Historic Resources By-law

Critical Path: Standing Policy Committee on Downtown Development, Heritage and Riverbank Management - Executive Policy Committee - Council

AUTHORIZATION

Author	Department Head	CFO	CAO
J. Kiernan	B. Thorgrimson	N/A	D. Joshi A/CAO

RECOMMENDATIONS

1. That Council enact a new Historic Resources By-law (draft attached as Appendix A to this Report) incorporating the features outlined in this Report and repealing the existing Historical Buildings By-law, and generally taking effect May 1, 2014.

2. That the fees set out in Appendix E be approved and come into effect on May 1, 2014, the effective date of the new By-law.

3. That a "Commemorative List" of Historic Resources created by the By-law be produced immediately as a means of recognizing those resources that merit commemoration without the imposition of any obligations or controls.

4. That the Director of Planning Property and Development be authorized to send letters to owners of all buildings currently on the Conservation List and Inventory of Historic Buildings, advising them of the status of their buildings and the process the City will follow with respect to them as the new By-law is adopted.

5. That the Public Service report back within 180 days on mechanisms to prevent heritage resources from being allowed to deteriorate by incurring structural and safety concerns (de facto demolition by neglect); by strengthening relevant policy and by-laws including but not limited to the Vacant Buildings By-law.

6. 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

Only Council can enact By-laws. The City Organization By-law (7100/97, section 13.4) delegates the administration of the Historic Buildings By-law to the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management (SPC on DDHRM).

IMPLICATIONS OF THE RECOMMENDATIONS

The proposed new Historic Resources By-law constitutes a reworking of the existing Historical Buildings By-law No. 1474/77. The proposed new by-law will:

- Ensure congruency with *The City of Winnipeg Charter, OurWinnipeg* and *Complete Communities;*
- Incorporate and align with up-to-date best practices for heritage conservation;
- Improve notification and fairness to building owners throughout the process of listing and de-listing buildings;
- Improve public access to and transparency of the process of listing and delisting buildings;
- Ensure fairness, clarity and certainty throughout the process of reviewing and listing historical resources.

The By-law supports the implementation of OurWinnipeg and the Complete Communities Direction Strategy, both of which include Heritage Conservation as distinct sections.

The Historic Resources By-law will not impose an obligation to maintain vacant heritage buildings at a higher standard than is required of all vacant buildings under the Vacant Buildings By-law No. 79/2010. This issue may be dealt with in a subsequent report.

The Historic Resources By-law does not significantly impact the general principles of the Heritage Conservation Tax Credit Program (governed under By-law No. 7155/98.) It does, however, provide that a building that is removed from the List of Historical Resources is no longer eligible for the tax credit.

HISTORY

In August 1978, By-law No. 1474/77, the Historical Buildings By-law, was adopted by City Council. It established the basic procedures for the City's Heritage program, including governance of the Historical Buildings Committee (HBC), process for listing/removing buildings from the Conservation List, Historic Buildings Inventory, etc.

In September 2003, the Planning, Property and Development Department began a review of this by-law to determine whether updates were required after more than 25 years. The process

has involved key stakeholders, other municipalities, Councillors, and the Historical Buildings Committee (HBC) to receive and integrate important feedback.

The resulting Historical Resources By-law proposed in this Report will renew heritage practices, as well as achieve congruency with *The City of Winnipeg Charter and OurWinnipeg.* It will simplify heritage procedures, provide concise, transparent direction for owners of heritage resources, and round out HBC membership. It will align Winnipeg's heritage program with current national and international best practices.

During this review, and to some extent in anticipation of its outcome, various aspects of the City's heritage program have been addressed to accommodate/simplify transition and implementation. These include:

- *Historic Property Notices registered* - A 2010 amendment to *The City of Winnipeg Charter* required the City register a Historic Property Notice against the title of each structure on the Conservation List (Section 157.1.) This Notice alerts owners, potential purchasers and others of a property's heritage status and obligations therein. Registration of these Notices was completed in 2012 and the Notices continue to be registered against new buildings added to the Conservation List.

- *Management of the Historic Buildings Inventory* – the Inventory was created in the late 1970s as a pool of *potential* heritage structures to be evaluated as time and resources permitted. This list initially numbered over 1,000, but has undergone critical review in the past few years in an effort to distill it down to the most eligible properties. In the spring of 2013, the HBC recommended the removal of a number of structures that were felt to have lost their historic integrity, reducing the total to approximately 360 structures.

- *Evaluation criteria revised* – the standard scoring form for evaluating properties for heritage listing is currently being revised to consider new categories (i.e. Structures built post 1940, landscapes, parks, etc.)

- *Heritage Districts studied* – a study is currently underway to examine the feasibility of creating Heritage Districts in Winnipeg. Although this is not addressed in the proposed by-law, it is a potential tool to augment existing programs.

DISCUSSION

Key changes/highlights of the proposed by-law include:

New Types of Recognition for Historical Resources

- Recent changes to *The City of Winnipeg Charter* provide that heritage recognition can now extend beyond buildings to include objects, areas, landscapes, parks, bridges, etc. – but not people or events. The new By-law will reflect this extended scope.
- A new category of recognition will be created: The "Commemorative List" will identify historical resources for historical recognition alone; there will be no controls or restrictions for owners of buildings on this List. The Director of Planning, Property and Development (PP&D) is responsible for placement of resources on the Commemorative List. The creation of the Commemorative List will take place immediately upon enactment of the By-law by Council, notwithstanding that the rest of the By-law will take effect on May 1, 2014.

New Processes for Listing and Delisting

- Two processes are proposed for deciding whether or not to list historical resources – one initiated by the owner; and one initiated by the Director (see Appendix B for flow-chart.) These processes are clearer and fairer than the current process.
- In both processes, the criteria for adding or removing a resource from the List will be:
  - The importance of the resource in illustrating or interpreting history in the city or a neighbourhood of the city;
  - Its association with important individuals, groups or events;
  - Its value in illustrating the architectural or design history of the city;
  - Whether it embodies unusual architectural or design characteristics or a particular style or method of construction;
  - Its location in an area of historical or architectural interest; and
  - The historical or architectural integrity of the resource.

- In addition, the Standing Policy Committee will be able to consider the economic viability of protecting the resource.
- The proposed new By-law will no longer use the numeric grading system to identify protections of historical elements of listed properties. Instead, listings will include a description of "character-defining elements" – those elements of key heritage significance that are being given protection from demolition or alteration.
- Once a decision has been made about adding a resource to or removing a resource from the List, no substantively similar application will be allowed for five years, subject to contrary direction from the Standing Policy Committee.

Owner-initiated process for listing

- Under this process, the property owner will be able to apply to the Director of PP&D to have a resource nominated. The Director can approve or reject an application from the owner. (A building or other resource that is rejected for nomination can still be placed on the Commemorative List.)
- Subject to a refundable $250 fee, the owner will be able to appeal a rejected application to the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management (SPC on DDHRM), who can either order that the resource be nominated (i.e. that it be reviewed by the Historical Buildings and Resources Committee as well as the SPC on DDHRM) or reject the appeal.
- Once a resource is nominated, it cannot be demolished, although it can be altered (unless the Director intervenes to protect it in an emergency - see below).
- All nominations must be reviewed by the Historical Buildings and Resources Committee (HBRC) within a maximum of 36 months. The HBRC must make a recommendation to the SPC on DDHRM concerning a nomination. If it recommends that a resource be listed, it must identify which character-defining elements should be protected by the listing.
- The SPC on DDHRM must make a determination about whether or not to list the resource. If it determines that the resource should be listed, it must identify specific elements that are to be protected. Only elements identified in the nomination or in the HBRC recommendations may be identified by the SPC.
- The SPC's determinations must be considered by Council unless they are identical with the recommendations of the HBRC and the owner does not object; or unless the resource is owned by the City. In these cases, the SPC's determinations become a final decision.

Director-initiated process for listing

- The Director will be able to nominate a resource for listing if:
  - the building is owned by the City of Winnipeg; or
  - the building is not a single family residential building and is of widespread significance to the City or community.
- The owner will be able to appeal the decision of the Director to nominate a resource to the SPC. No fee is payable for this appeal. The SPC can order that the resource should not be nominated or can uphold the Director's decision to nominate.
- A Director-initiated nomination has to be reviewed by the HBRC at no fee to the owner. As with an owner-initiated nomination, the HBRC would then make a recommendation to the SPC on the nomination.

- As with an owner-initiated nomination, if the SPC on DDHRM chooses to list the building, it must identify which elements will be protected.
- As with the owner-initiated process, the SPC determination may not be final. A final decision must be made by Council unless the SPC adopts all of the recommendations of the HBRC and the owner does not object, or unless the building is owned by the City.

Process for delisting or modification of listing

- The Director will be able to apply for delisting of a building or modification of the listing if the character-defining elements have been damaged or destroyed to the point where it no longer meets the criteria for listing or if the listed resource poses a health or safety hazard.
- The owner will be able to apply for a delisting or modification of the listing for any reason.
- Essentially, the same process will apply to applications for delisting or modifications as apply to nominations for listing (see Appendix C for flow chart).
- In hearing an application to delist a resource, the SPC on DDHRM must consider:
  (a) whether the character-defining elements of the resource have been so damaged or destroyed that its heritage values do not justify it being on the list;
  (b) the health or safety hazard posed by the listed element;
  (c) the economic viability of continuing to conserve the resource;
- When considering the merits of other options for redeveloping the property, the SPC on DDHRM can only take into account potential developments that have zoning approvals and building permits.

Fairness for owners

- Owners of buildings will not lose the right to demolish or alter their building without a process that appropriately considers their interests. Owners will be notified throughout the process and be given the chance to make representations to decision-making bodies.
- Owners will be notified:
  - when their building is nominated for listing or the Director decides against nominating it;
  - at least 30 days before the HBRC conducts a review of the nomination for listing or their application to remove the building from the List;
  - when the HBRC has made recommendation(s) to the SPC concerning the nomination or the application to remove the building from the List or modify the listing;
  - at least 14 days before the nomination or application will be considered by the SPC;
  - of the SPC's determinations; and
  - if applicable, Council's decision.
- In addition, the owner will be entitled to submit written material to the HBRC for its deliberations and will have full rights to make representations when the nomination or application is considered by the SPC.
- Although the Director will be allowed to nominate a building, it is expected that as a rule, the current practice of seeking the owner's consent prior to listing would continue. The Director's power to nominate is likely to be used only in extraordinary circumstances.

- Only specifically-listed elements of a building will be protected from alteration or demolition; the owner would be free to alter other parts of the building without having to obtain a Heritage Permit.
- The owner will have the following rights of appeal:
    - Appeal to SPC of Director's decision to reject owner's application to have the resource nominated – fee applicable but may be refunded by SPC
    - Appeal to SPC of Director's decision to nominate – no fee
    - Appeal to SPC of Director's use of emergency preservation powers – no fee.
    - Appeal to SPC of designated employee's decision on Heritage Permit – fee applicable but may be refunded by SPC
- Unlike the current situation with a building on the Inventory, an owner's powers to demolish a building will not be able to be suspended indefinitely by a nomination. A nominated building will have to be considered for listing within a maximum of 36 months. In addition, upon payment of a fee, the owner will be able to apply for an expedited hearing.
- Owners of buildings that are on the Inventory when the By-law takes effect will be notified of the status of the building and given the same rights as owners of nominated buildings.

Transparency for the public

- The Historical Buildings and Resources Committee will be subject to all governance procedures associated with Advisory Committees, including regularly scheduled meetings open to the public, minutes posted in the public record, etc. However, some matters may be considered in camera as per by the In Camera By-law No. 21/2011, and as with Council or other Council committees, members of the HBRC will be able to hold informal seminars and will be able to assign work to sub-committees.
- The HBRC may seek the opinions and advice of experts and advocates as required.
- Meetings at the SPC on DDHRM, Executive Policy Committee and Council which deal with historical resources are open to the public, with agendas published in advance.
- The designated employee will be required to publish a notice on the City's website when a heritage permit is being issued against the advice of the HBRC. The public will have the chance to appeal a designated employee's authorization of alterations of heritage resources that has not been recommended by the HBRC.

Clarity for Historical Buildings and Resources Committee (HBRC)

- The HBRC will function solely as an advisory committee, providing unbiased and independent recommendations and advice to the Standing Policy Committee, the Director of PP&D, and Designated Employees.
- Membership will total up to 13, including a Councillor as Chair and two additional Councillors appointed at the annual organization meeting of Council.
- Membership will continue to include experts from various organizations (e.g. Province of Manitoba, Government of Canada, Manitoba Association of Architects, etc.)
- New members will include a professional engineer, a landscape architect and two members-at-large.
- Advocacy groups will not be represented on the HBRC, as the HBRC's mandate is to provide unbiased and independent advice on heritage matters.

- The current practice of Councillors not voting on the listing or delisting of properties and the issuance of permits for alterations of historical buildings will be reflected in the By-law.

Heritage Permits

- A Heritage Permit will replace a Certificate of Suitability as the mechanism by which owners can alter the character-defining elements of a listed resource.
- Existing fees for approval of alterations will continue unchanged ($132.00)
- Heritage Permits will be issued by the Designated Employee (DE). The DE must follow guidelines created by the HBRC or must consult the HBRC before making a decision about a Heritage Permit.
- Where the DE does not concur with the HBRC recommendations/guidelines, a notice must be published on the City's website and, for a refundable fee of $250; members of the public will be able to appeal the designated employee's decision to the SPC.

Fees & Offences

- Processing and Service fees are recommended for applications, appeals, and requests for expedited decisions (See Appendix E). These can be approved by Council by resolution.
- Offences will be clearly stated in the By-law.
- The minimum fine for demolishing or altering a listed resource without authorization will be $1,000 with a maximum fine of $1.0 million. (Please note, however, that *The Summary Convictions Act* specifically permits Judicial Justices of the Peace to impose fines lower than the minimum amount.)

Powers of Director

- Besides being able to nominate a resource, the Director will be able to intervene to protect a nominated resource from irreparable alterations in emergencies. When this happens, the owner is entitled to an expedited hearing of the nomination without a fee.

Transition

- The existing *Conservation List* (designated buildings) will be renamed the *List of Historic Resources,* with all protections transferred over. This List will continue to appear on the City's website (as did the Conservation List it is replacing.)
- The existing *Inventory of Historical Buildings* will cease to exist. All structures on it when the By-law comes into force will be deemed to have been nominated. These will then be evaluated and either recommended or rejected for listing within a maximum of 36 months. (A rejected resource may nonetheless be placed on the Commemorative List.)
- It is reasonable to expect that by May 1, 2014, (the date the By-law comes into effect) approximately 330 of the 460 structures currently on the Inventory will have been transferred to the Commemorative List; while the remaining 130, (assumed to have moderate to high heritage significance) will have been nominated. As per Recommendation 4, letters informing all 460 owners of this anticipated transition will be sent out immediately should Council approve of this Report.
- The majority of the By-law will come into force on May 1, 2014. However, the Commemorative List will come into effect immediately, permitting the Director to begin placing buildings that are currently on the Inventory onto the Commemorative List.

- Any applications in the system on May 1, 2014 will continue to be dealt with as per the Historical Buildings By-law No. 1474/77. Any new applications submitted after this date will be subject to the new By-law.

Consequential amendments

- The City Organization By-law will be amended to clarify that the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management has exclusive responsibility for historical buildings and resources.
- The Heritage Conservation Tax Credit By-law will be amended to provide that the tax credit is not available to properties that have been removed from the List.
- All by-laws of the City of Winnipeg will be amended by replacing "Historical Buildings Committee" with "Historical Buildings and Resources Committee."

For further information, please refer to Appendices:

A. Draft Historical Resources By-law
B. Flow Chart for Listing Resources
C. Flow Chart for Delisting and Modification of Listings
D. By-law Change Summary
E. Proposed Fee Schedule

FINANCIAL IMPACT

Financial Impact Statement **Date:** April 7, 2014

Project Name:

New Historic Resources By-law

COMMENTS:

While Schedule E does outline fees associated with applications, appeals and expedited hearings, the volume of such items is not reasonably estimable at this time. Also, the related financial implications are not material in nature. As such, there are no financial implications associated with the recommendations contained in this report.

"Original Signed By"
Mike McGinn, CA
Manager of Finance

CONSULTATION

In preparing this report there was consultation with:

Legal Services
Office of the City Clerk
Historical Buildings Committee
Community Stakeholders

SUBMITTED BY

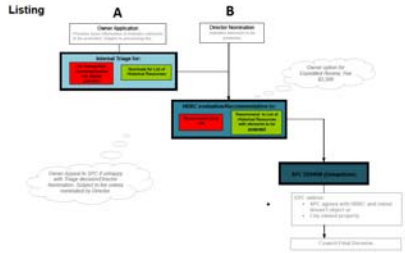
Department:	Planning, Property and Development
Division:	Planning and Land Use
Prepared by:	Jennifer Hansell
Date:	April 8, 2014
File No.:	O:\Reports Directive\Planning and Land Use\Heritage\2014\New Historic Resources By-law March 17, 2014 doc

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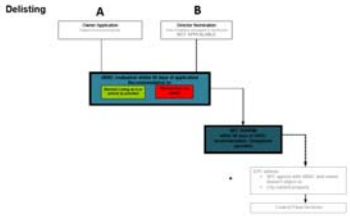
Appendix A. Draft Historical Resources By-law

historic buildings by-law Mar 17.pdf

Appendix B. Flow Chart for Listing Resources



Appendix C. Flow Chart for Delisting and Modification of Listings



Appendix D: By-law Change Summary



Appendix E: Proposed Fee Schedule

Application Fees	
Application by owner to Nominate a Historical Resource	$250
Application to De-list a Historical Resource (by owner)	$2,500 (refundable)
Heritage Permit	$132
Appeal Fees	
Appeal of Director's decision not to nominate (by owner)	$1,500 (refundable)
Appeal of Director's decision to nominate (without owner's consent)	no fee
Appeal of designated employee's decision re. Heritage Permit (by owner)	$250 (refundable)
Appeal of Director's decision not to permit alteration of nominated resource	no fee
Expedited Hearing Fees	
Owner's application for an expedited hearing by the HBRC/SPC	$2,500 (non-refundable)

Withdrawals of any application = 50% of fee refunded

**Note the existing Fee for a Heritage Permit (Certificate of Suitability) of $132 is set out in s. 16 of the Planning, Development and Building Fees By-law. This By-law is being amended to have this fee removed so that, in the future, Council can establish this fee by simple resolution.