Agenda – Council – July 16, 2014

Report - Standing Policy Committee on Downtown Development, Heritage and Riverbank Management – July 7, 2014

Item No. 1 Frozen Waterways By-law

STANDING COMMITTEE RECOMMENDATION:

On July 9, 2014, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management and submitted the following to Council:

1. That a new Frozen Waterways By-law (draft attached as Appendix A) that will require permits for specific activities on rivers, streams, creeks and retention ponds and will repeal the existing By-law, be enacted.

2. That a new permit fee of $121 for issuing frozen waterway activity permits be established.

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

Report - Standing Policy Committee on Downtown Development, Heritage and Riverbank Management – July 7, 2014

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On July 9, 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.

Further on July 9, 2014, David Sanders submitted a communication dated July 9, 2014, with respect to the Frozen Waterways By-law.

STANDING COMMITTEE RECOMMENDATION:

On July 7, 2014, the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

Further on July 7, 2014, David Sanders submitted a communication dated June 5, 2014, with respect to the Frozen Waterways By-law.

ADMINISTRATIVE REPORT

Title: **Frozen Waterways By-law**

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

AUTHORIZATION

Author	Department Head	CFO	CAO
S. Dueck	B. Thorgrimson	n/a	D. Joshi A/CAO

RECOMMENDATIONS

1. That Council enact a new Frozen Waterways By-law (draft attached as Appendix A) that will require permits for specific activities on rivers, streams, creeks and retention ponds and will repeal the existing By-law.
2. That Council establish a new permit fee of $121 for issuing of frozen waterway activity permits.
3. That the proper officers of the City be authorized to do all things necessary to implement the foregoing.

REASON FOR THE REPORT

Increasingly, the City is receiving permit requests for events / activities such as the River Trail at the Forks or for structures and commercial activities such as the pop up restaurant for which the policy and legal foundation necessary to respond has not been fully established. It is clear that the City wants to support and facilitate organizations' and citizens' ability to engage in frozen waterway activities that bring life and energy to our city. However, it needs to provide a mechanism to allow these ventures to take place in a manner that helps ensure safety, and coordinates / respects the interests of a variety of stakeholders such as adjacent property owners or others wishing to utilize the same location.

Only Council can enact and repeal a by-law.

IMPLICATIONS OF THE RECOMMENDATIONS

In recent years, frozen waterways in the City have seen an increased level of recreational and event based activity. This includes the development of the River Trail, the emergence of "pop-up" restaurants, and a variety of special events. Frozen retention ponds, primarily located in suburban developments,

have also been the scene of outdoor recreational activity, including pleasure skating and pick-up hockey games.

All of these activities have given rise to questions about the extent to which these activities are – and should be - monitored and regulated by the City.

The existing Frozen Waterways By-law, administered by the Winnipeg Police Service, requires a permit for the operation of vehicles on frozen waterways. However, this limited scope means that it does not address activities such as the erection of temporary buildings and tents on the ice, and gatherings of large numbers of people. This has raised concerns about the safety of these activities on the ice as well as concerns about noise and nuisance for nearby properties, the effect of the activity on the riverbank, and access by emergency personnel.

The proposed attached By-law recognizes that the City is not attempting to regulate every activity on frozen waterways. There are many activities – such as skating, snowshoeing, skiing, playing hockey and the like - that are not being regulated through this mechanism. People have been building rinks on frozen waterways for many years and this can continue to be left to the good judgment of the people.

On the other hand, there are some activities that most people, including participants, could expect to have some level of oversight and monitoring by the City. For example, the public would likely expect that a pop-up restaurant should be constructed or erected so that it does not pose a danger to patrons and should be located so that it can be accessed by police, fire and ambulance personnel, if required.

The proposed attached By-law therefore will affect only rivers, streams, creeks and retention ponds. It will require permits for four kinds of activities on frozen waterways:

- The construction or erection of a building;
- Operation of a motor vehicle;
- Activities that are likely to attract more than 200 people; and
- Commercial activities.

No other activities on frozen waterways require a permit, although the designated employee may prohibit them or subject them to conditions designed to ensure that they are safe, do not harm the waterway or riverbanks, and do not cause noise or other nuisances.

In issuing permits, the designated employee may impose conditions to ensure issues such as safety, noise and other nuisances, the condition of riverbanks, emergency access and insurance coverage. In addition, if two activities or event conflict, the designated employee is authorized to give priority to events that have been recurring annually.

Appeals from decisions under the By-law would be heard by the Standing Policy Committee on Property and Development.

The draft By-law also requires the removal of all items from frozen waterways prior to breakup of the ice.

Violations of the By-law – including holding events without a permit - are punishable by a minimum fine of $200 for each day the violation continues.

It is proposed that the new By-law will be enforced and administered by the Planning, Property and Development Department. The Zoning and Permits Branch of the Development and Inspections Division will take the lead.

EXECUTIVE SUMMARY

The City would like to celebrate and facilitate most activities that take place on its frozen waterways and recognizes that these activities can contribute significantly to the quality of life of its citizens. The City would also like to help ensure that these activities are safe and do not detract from the enjoyment of others living adjacent to or engaging in activities on the waterways.

The City currently manages activities and vehicle traffic (e.g. for the purposes of accessing riverbanks to engage in riverbank stabilization activity) on frozen waterways via the existing Frozen Waterways By-law (6582/95) and permits issued by the Winnipeg Police Service (WPS).

With the advent of requests for not only activities such as The Fork's sponsored river trail, but the recent temporary restaurant on the river (2013, 2014), it has become clear that the policy and legal framework to respond to these requests for buildings/ structures needs to be more fully developed.

This new By-law could replace the existing Frozen Waterways By-Law (6581/95). The new By-Law is intended to: recognize that the frozen waterways (e.g. ice surfaces) are a public resource with no clear property ownership, zoning permissions or limitations, and government jurisdiction; and, achieve a balance between allowing, facilitating and permitting: the many unregulated ad hoc activities that currently occur (such as skating, cross-country skiing, tobogganing, and the like); annual events and new initiatives such as the river trail and temporary (or pop-up) restaurants; while promoting a basic level of public safety that considers factors such as ice thickness and access for emergency vehicles.

In addition, the new By-Law strives to ensure that the interests of multiple stakeholders - such as adjacent property owners and other activities - are being considered and respected.
The By-law also creates the legal structure to help ensure that materials, structures, and objects are removed, prior to the ice melting, and prevent these items from negatively impacting our river ways.
While the requirements for a permit under this new By-law would remain largely unchanged, enhancements would include: an expanded scope to include commercial activities and buildings / structures; and, more detail regarding when a permit is required for activities on the river (for example large activities expected to attract more than 200 people).

HISTORY

The Frozen Waterways By-law No. 6581/95 was enacted on March 22, 1985.

FINANCIAL IMPACT

Financial Impact Statement Date: May 15, 2014

Project Name:

Frozen Waterways By-law

COMMENTS:

Incremental revenues and expenses resulting from the adoption of the by-law are anticipated to be nominal. As such, there are no financial implications associated with this report.

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

CONSULTATION

In preparing this report there was consultation with:

Winnipeg Police Service
Parks and Open Spaces Division, Public Works Department
Legal Services Department

SUBMITTED BY

Department: Planning, Property and Development
Division: Development and Inspections
Prepared by: Martin Grady
Date: June 16, 2014

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May 26, 2014

THE CITY OF WINNIPEG

BY-LAW NO.

A By-law of THE CITY OF WINNIPEG to regulate activities on the frozen surfaces of waterways.

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

Short title

1 This By-law may be cited as the Frozen Waterways By-law.

Definitions

2 In this By-law

"building" has the same meaning as in *The City of Winnipeg Charter*;

"construction" has the same meaning as in *The City of Winnipeg Charter*;

"designated employee" means the Director of Planning, Property and Development of the City of Winnipeg and any other City employee whom the Director authorized to enforce or administer all or part of this By-law;

"motor vehicle" has the same meaning as in *The Highway Traffic Act*;

"waterway" means a river, stream, creek, or retention pond and includes the Red River, the Assiniboine River, the Seine River, Sturgeon Creek, and Omand's Creek;

Designated employee may prohibit activities on waterways

3 A designated employee may prohibit any or specific activities, or may impose conditions on any or specified activities, on all or specified waterways or portions of waterways within the boundaries of the City of Winnipeg and, in doing so, may take into account

(a) the risk of harm to individuals;

(b) the risk of harm to the environment, including the waterway, riverbanks and other areas adjacent to the waterway;

(c) noise or other nuisances likely to be suffered at nearby properties; and

(d) other relevant factors.

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Activities requiring permits

4(1) No person may engage in, or direct anyone else to engage in, the following activities on a frozen waterway unless a designated employee has issued a permit authorizing the activity:

(a) construction of a building that would be subject to the Winnipeg Building By-law if it took place on land;

(b) operation of a motor vehicle or heavy equipment;

(c) activities that are expected to attract more than 200 people to one place on the river;

(d) any commercial activity, including any activity for which admission is charged and any activity for which a permit is required under *The Liquor Control Act*.

4(2) A designated employee must not issue a permit under subsection (1) until any applicable fee imposed by Council, or by an individual or body authorized by Council to do so, has been paid.

Conditions on permits

5(1) A designated employee may impose any conditions that he or she considers appropriate on a permit issued under section 4. Without restricting the generality of this power, the designated employee may impose the following conditions:

(a) a requirement that the applicant provide evidence that the thickness and quality of the ice is sufficient for the activity or purpose for which a permit is sought, including, if considered appropriate by a designated employee, a statement to this effect sealed by an engineer qualified to practice in the Province of Manitoba;

(b) a requirement that the applicant continue to have the ice monitored during the activity for which a permit is sought, including, if considered appropriate by a designated employee, a requirement that the applicant provide occasional or regular statements sealed by an engineer qualified to practice in the Province of Manitoba that the thickness and quality of the ice continues to be sufficient for the activity or purpose for which the permit has been issued;

(c) a requirement that adequate provision be made for emergency access and assistance to participants in the activity for which a permit is sought;

(d) in the case of a building, a requirement that it comply with relevant requirements of the Winnipeg Building By-law, the Winnipeg Electrical By-law, the Fire Prevention By-law and other relevant by-laws;

(e) a requirement that no damage or harm be done to riverbanks or other land near the waterway and conditions that are designed to reduce the risk of damage or harm;

(f) a requirement that the activity not cause noise or other forms of nuisance for occupants of nearby properties;

(g) a requirement that the applicant remove a building or structure from the frozen waterway

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by a certain date;

(h) a requirement that the permit holder provide indemnities and obtain insurance at a level sufficient to protect the City and others from harm or damage resulting from the activity;

(i) a requirement that the applicant provide a letter of credit or otherwise post a surety to ensure compliance with any conditions imposed.

5(2) Where any condition imposed on a permit is contravened, the permit is null and void.

Recurring activities priorized

6 Where permits are sought for activities that will interfere or conflict with one another, the designated employee may give priority to activities that have taken place annually in preceding years.

Removal of objects from waterways mandatory

7(1) Any person who places or installs an object on a waterway must ensure that it is removed before the ice on the waterway breaks up.

7(2) For the purposes of this section, "object" includes a building or structure, furniture, vehicles, trees, and straw bales.

Powers of designated employees

8 Designated employees may conduct inspections and take steps to administer and enforce this By-law or remedy a contravention of this By-law and to provide services or do work in accordance with *The City of Winnipeg Charter* and, for these purposes, have the powers of a "designated employee" under *The City of Winnipeg Charter*.

Penalties for violations of by-law

9 A person who contravenes this By-law is guilty of an offence and on summary conviction is subject to a minimum fine of $200.00 for each day the offence continues.

Appeals of decisions

10(1) Subject to this section, where an appeal from an order or decision under this By-law is authorized by *The City of Winnipeg Charter*, the appeal may be made to the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management in accordance with *The City of Winnipeg Charter*.

10(2) Subject to subsections (3) and (4), an administration fee in an amount established by Council or by an individual or body authorized by Council to do so is hereby imposed for an appeal made under this section. An appeal may not be accepted by the City Clerk until the fee imposed by this subsection has been paid to the City Clerk.

10(3) The Standing Policy Committee on Protection and Community Services, after hearing the appeal, may order the administration fee referred to in subsection (2) to be refunded to the appellant if the appeal has been made in good faith and has some merit.

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Repeal of By-law No. 6581/95
11 The Frozen Waterways By-law No. 6581/95 is hereby repealed.

DONE AND PASSED, this day of , 2014.

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Mayor

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City Clerk

Approved as to content:

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Chief Administrative Officer

Approved as to form:

_____
For Director of Legal Services/City Solicitor

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