Agenda – Council – July 15, 2015

Report – Executive Policy Committee – July 8, 2015

Item No. 2 Implementation of the Municipal By-Law Enforcement Act (MBEA)

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On July 8, 2015, the Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and submitted the following to Council:

1. That the Chief Administrative Officer be authorized to put forward to appropriate Provincial officials positions that best serve the interests of the City of Winnipeg with respect to the Municipal By-Law Enforcement Act (MBEA), associated regulations and other administrative arrangements, for the prosecution of by-law offences, including the following:

    A. That the qualifications for adjudicators should include the requirement that they must have graduated from a law school and practiced law; and
    B. That the City should not be charged for costs associated with maintaining a roster of adjudicators; and
    C. That the Province appoint a representative to work with the Public Service, on an as required basis, to facilitate transition planning efforts relating to the legislative changes.

2. That the Winnipeg Parking Authority be authorized to spend up to $660,857 on renovations and Information Technology hardware and software in 2015, as included in the Agency's 2015 business plan.

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

Report – Executive Policy Committee – July 8, 2015

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On July 8, 2015, the Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and submitted the matter to Council.

ADMINISTRATIVE REPORT

Title: **Implementation of the Municipal By-Law Enforcement Act (MBEA)**

Critical Path: **Executive Policy Committee - Council**

AUTHORIZATION

Author	Department Head	CFO	CAO/COO
A.Williams/C.Stewart	R. Topolniski WPA COO	B. Holsten Boyer	M. Jack COO

RECOMMENDATIONS

1. That Council authorize the Chief Administrative Officer to put forward to appropriate Provincial officials positions that best serve the interests of the City of Winnipeg with respect to the Municipal By-Law Enforcement Act (MBEA), associated regulations and other administrative arrangements, for the prosecution of by-law offences, including the following:

    a) That the qualifications for adjudicators should include the requirement that they must have graduated from a law school and practiced law; and
    b) That the City should not be charged for costs associated with maintaining a roster of adjudicators; and
    c) That the Province appoint a representative to work with the Public Service, on an as required basis, to facilitate transition planning efforts relating to the legislative changes.

2. That the Winnipeg Parking Authority be authorized to spend up to $660,857 on renovations and Information Technology hardware and software in 2015, as included in the Agency's 2015 business plan.

3. That the proper officers of the City do all things necessary to implement the intent of the foregoing.

REASON FOR THE REPORT

The City Organization By-law reserves for Council authority to make final decisions with respect to "policies affecting inter-governmental relations, including requests for Legislation".

The Winnipeg Parking Authority's 2015 business plan, currently pending approval from Council, requests budget approval for all MBEA budget items detailed in Appendix A and addressed in this report and requests approval of the addition of up to 5 FTEs screening officer positions relating to the MBEA. The business plan also identified that the Agency would submit a separate report to Council detailing the implications of the MBEA prior to spending any funds relating to the project.

EXECUTIVE SUMMARY

In December, 2013, the Province of Manitoba enacted *The Municipal By-law Enforcement Act* (MBEA).

When it comes into force, the new Act will change the way in which the Winnipeg Parking Authority By-laws are prosecuted as ultimately the Act will become mandatory for prosecution of parking violations. Until Council decides otherwise, however, all other municipal by-laws will continue to be prosecuted in the same manner as they are currently are.

Staff from the Province of Manitoba recently advised that they would like to proclaim the MBEA into law shortly. If so, it appears that they will do so in a way that – at least initially – allows municipalities to 'opt-in' to utilize the new legislation rather than being required to use it for parking offences. However, at some point in the near future, the Province will insist that the MBEA apply to all parking tickets issued by the Winnipeg Parking Authority.

The change in legislation has financial and human resourcing impacts on the Winnipeg Parking Authority as noted in this report.

The statute creates a new option for prosecution (described in Schedule A).

IMPLICATIONS OF THE RECOMMENDATIONS

When utilized by the City, the MBEA will remove all parking tickets from the court system. It permits people who receive tickets to challenge them by having them reviewed by screening officers and allows an appeal to a Provincially-appointed adjudicator, both paid for by the City.

Recommendation #1– City Positions to Put Forward to the Province:

(a) That the qualifications for adjudicators should include the requirement that they must have graduated from a law school and practiced law.

One of the concerns about the MBEA from the Parking Authority's perspective is that it authorizes an adjudicator to ignore a set fine established by Council in "exceptional circumstances". Under current legislation governing parking violations, similar language has

resulted in substantially reduced set fines for parking-related by law violations on the basis of unsupported statements alleged by the vehicle owner. There is concern that vehicle owners will similarly use the hearing before the adjudicator to seek leniency on the basis of fabricated or exaggerated claims.

The “exceptional circumstances” discretionary provision is not available to adjudicators in British Columbia who follow a similar model; the adjudicator can eliminate a fine only if he or she concludes that the offence never took place, which is anticipated to reduce the amount of adjudications held. The Parking Authority would have preferred this model over the one that will be implemented in Manitoba, both because minimizing the number of adjudications saves money for taxpayers and because communication about parking by-law compliance is undermined when fines established by Council are routinely reduced or eliminated.

The Winnipeg Parking Authority will monitor the extent to which the “exceptional circumstances” discretion is used inappropriately to excuse vehicle owners from the consequences of illegal parking. However, in addition, this report proposes that adjudicators should be trained and experienced in the law. It is hoped that this training and experience will increase the likelihood that decisions made by adjudicators reflect the law and minimize the number of unsubstantiated and irrelevant “facts” that have been used to justify reduced fines in the past.

(b) That the City should not be charged for costs associated with maintaining a roster of adjudicators.

On the basis of recent discussions, it appears that the Province will appoint a roster of adjudicators that would be provided to the City for all adjudications arising from City by-law offences. However, the City would be responsible for managing the day-to-day scheduling of these adjudicators by dealing directly with them. As such, the City should not be charged for costs associated with maintaining a roster of adjudicators.

(c) That the Province appoint a representative to work with the City’s Public Service on an as-required basis to facilitate transition planning efforts relating to the legislative changes introduced by the Province.

Requesting the Province to appoint a representative to work with the Public Service, on an as required basis, as the City transitions to the MBEA for parking by-laws, will enable resolution to technical and regulatory items, identify and formalize any contractual requirements for use of Provincially-appointed adjudicators and ensure a more seamless transition to new legislative requirements. The Public Service will also update the Provincial representative when a formal ‘opt-in’ date is established for the Parking Authority’s utilization of the MBEA for parking related by-laws.

Recommendation #2- Expenditure of Funds

The Winnipeg Parking Authority will, in the near future, be required to have all parking by-law violations prosecuted under the MBEA. As some project items require sufficient lead time to complete, the WPA needs to continue preparations for the MBEA in advance of the mandatory requirements in order to be properly prepared for the legislative change. Recommendation #2 in this report is requesting that in 2015 the Agency spend $491,732 on office renovations required to accommodate the MBEA and $169,125 on information technology hardware and software requirements to support the new legislation. These costs were included in the 2015 business plan as expected expenditures. However, the business plans specified that, prior to

the funds being expended a separate report would be submitted to Council to identify implications of the new MBEA legislation.

The office renovations to be completed in 2015 relate to physical building improvements to the existing lease spaced occupied by Winnipeg Parking Authority. This includes but is not limited to construction of a new screening officer area and two adjudication offices, carpet replacements, furniture purchases, as well as demolition, mechanical and electrical work. The Winnipeg Parking Authority currently occupies a building space not owned by the City of Winnipeg and the renovations to accommodate the MBEA would be made to this leased space. The City has commissioned an outside consultant to assess if there is any opportunity for the Agency to occupy a City-owned building space in the longer term. In order to accommodate a move to such as space in the future, ideally, planned renovations would be removable, so that the front counter screening officer area and adjudication rooms could be dissembled and moved to any new location. The Class 3 budget estimate provided by the City's Property Planning and Development Department for this renovation is $491,732, which includes provisions for the removable system.

The Class 3 budget estimate relating to the Information Technology requirements for 2015 amounts to $169,125 and includes security cameras, microphones to record customer interactions, display screens, a queue management system and customization to the Agency's current parking management software system to accommodate the MBEA. Most of the information technology hardware, with exception of the queue management system is currently in place at the Agency, but is being upgraded as it has reached its useful life.

Two other main budgetary items for the MBEA project, outside of renovations and information technology requirements, relate to hiring screening officers and paying for provincially-appointed adjudicators as described below. Funds related to these other budgetary items will be expended as soon as the WPA 'opts-in' and begins utilizing the MBEA. This is not expected to begin any earlier than the first quarter of 2016, due to timelines required to complete office construction renovations.

Screening Officers-

- The screening officer positions will be filled by City employees. These individuals will be the first level of interaction a customer has with the WPA to contest a parking ticket. If the customer does not agree with the final decision of the screening officer they can schedule a hearing with a provincially-appointed adjudicator.
- The Agency anticipates it will be required to hire up to five screening officers. This projection is based on historical patterns of challenges to parking tickets.
- These positions have not yet been rated by Compensation & Classification and as such are subject to change.
- The approval to add these permanent screening officer positions to the WPA FTE complement was included in the 2015 WPA business plan.
- The budget estimate for the screening officers is $400,000 annually and is a Class 3 estimate.

Adjudicators-

- The Provincially-appointed adjudicators are the second and last opportunity a customer has to have their parking citations reviewed.
- The Province will appoint the adjudicators and they will operate out of the WPA offices and be paid for by the City.

- The budget for the adjudicators and associated adjudicator expenses is estimated at $151,536 annually and is a Class 3 estimate.

Other Impacts:

- The MBEA will inevitably affect the Winnipeg Parking Authority at some point after it is proclaimed by the Province. However, the City has the option of using the enforcement mechanisms of the MBEA for enforcement of other by-law that are the responsibility of other departments and agencies. The departments and agencies that could review the possibility of utilizing the MBEA in the future include:
    - Animal Services Agency (Responsible Pet Ownership By-law)
    - By-law Enforcement Unit (Neighbourhood Liveability By-law, Residential Buildings Fire Safety By-law, Vacant Buildings By-law)
    - Licencing Branch (Doing Business in Winnipeg By-law)
    - Housing and Existing Buildings Branch (Vacant Buildings By-law, Winnipeg Building By-law)
    - Fire Prevention Branch (Fire Prevention By-law)
    - Streets Constables (Traffic By-law, Streets By-law)
    - Transit Department (Transit By-law)
    - Water and Waste Department (Sewer By-law, Water Works By-law, Lot Grading By-law)
- Unless the Province acts earlier to proclaim provisions that require that the MBEA applies to all parking offences, Council will need to enact a by-law that designates the MBEA as applying to parking offences within the City.
- Similarly, before other City enforcement units can use the MBEA to enforce the by-law for which they are responsible, Council will have to enact a by-law designating the specific offences as being subject to the MBEA.

HISTORY

SCHEDULE A

Under the MBEA a new option exists for prosecution of municipal by laws as described below.

The MBEA will at some point be mandatory for all parking offences but will be optional for other by-law offences which have a preset (standard) fine lower than a sum that will be set out in regulation (likely $500 or $1000). It permits a review of the penalty notice (at the defendant's request) by a screening officer employed by the City. If the defendant is unable to reach an agreement with a screening officer, the defendant can request a hearing by an adjudicator appointed by the Province.

Advantages over current system:

- Limitation period of 1 year (rather than 6 months) to initiate prosecution
- City can design penalty notice, subject to regulations
- Service by mail (rather than personal service) is possible
- Faster resolution of the matter
- Civil standard of proof (balance of probabilities) rather than beyond reasonable doubt

Disadvantages over current system

- City pays all the costs (including screening officers and adjudicators) and is extremely limited in having these costs defrayed by the defendant ($25 maximum fee to be paid by the defendant, which can be refunded by the adjudicator if the defendant is “successful”)
- Adjudicator is appointed by the Province and has more latitude to go below the preset penalty than adjudicators in the BC model
- City cannot appeal any decision by an adjudicator, but can still request a judicial review

Appendix A- MBEA Budget

Basis of Estimate

Project: Municipal By-Law Enforcement Act
Estimate Date: 6-May-15
Class of Estimate: 3
Inflationary Rate 2%

Description of Costs	2015	2016	2017	Assumptions & Notes
Construction Costs				
Architectural, Mechanical & Electrical	$ 139,770	$ -	$ -	Preliminary drawings are complete.
Front Counter & Adjudication Area	$ 162,572	$ -	$ -	All front counter and adjudication areas can be moved to any new office location in the future.
Office Furniture	$ 84,240	$ -	$ -	The WPA is currently renting furniture at $13,000 per year, which will be returned in favor of purchased furniture.
Contingency	$ 77,316	$ -	$ -	20% contingency applied.
PP&D Charge Back	$ 27,834	$ -	$ -	PP&D to coordinate renovations through a charge back to WPA at 6% of the project cost.
sub-total	**$ 491,732**	**$ -**	**$ -**	
Staffing				
Adjudicator (year round)	$ -	$ 90,240	$ 92,045	Cost for 188 days of adjudication (equivalent to 3,008 adjudications) at a cost of $400 per day. Approximately 3,000 tickets are currently sent to Provincial Court annually. 20% contingency applied.
Adjudicator (seasonal)	$ -	$ 57,600	$ 58,752	Cost for 120 days of adjudication (equivalent to 1,920 adjudications) to manage increased ticket volumes from January to April. A single winter parking ban can result in 5,500 tickets per event. 20% contingency applied.
Adjudicator Expenses	$ -	$ 3,696	$ 3,770	The Act identifies that the City is also responsible for other costs associated with adjudication such as parking. The cost reflects $10 per day for parking. 20% contingency applied.
Screening Officers	$ -	$400,000	$ 408,000	Five screening officers positions at $80,000 per position. The position is not yet rated. The number of screening officers required is based on historical customer service staffing requirements.
sub-total	**$ -**	**$551,536**	**$ 562,567**	
Information Technology				
Hardware	$ 144,125	$ -	$ -	Install security cameras & microphones to record customer interactions, display screens, computers for screening officers & adjudicators, new queue management system. Contingencies of 20-30% applied.
Software Customization	$ 25,000	$ -	$ -	The current parking management software utilized by the Agency will be utilized to accommodate the MBEA. Current vendor indicates this will be at no cost, however $25K being applied as a contingency for customizations.
sub-total	**$ 169,125**	**$ -**	**$ -**	
Total Project Cost	**$ 660,857**	**$551,536**	**$ 562,567**	

FINANCIAL IMPACT

Financial Impact Statement

Date: May 19, 2015

Project Name:

Implementation of the Municipal By-Law Enforcement Act (MBEA)

First Year of Program 2015

	2015	2016	2017	2018	2019
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	$ 660,857	$ 551,536	$ 562,567	$ 573,818	$ 585,294
Less: Incremental Revenue/Recovery	-	-	-	-	-
Net Cost/(Benefit)	$ 660,857	$ 551,536	$ 562,567	$ 573,818	$ 585,294
Less: Existing Budget Amounts	660,857	551,536	562,567	573,818	585,294
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: The above analysis represents the Winnipeg Parking Authority's best estimate of the financial impact associated with the new Provincial Legislation for By-law Prosecution at this time. The estimate has been included in the WPA 2015 business plan submission.The FIS represents the Financial Impact on the WPA only, and not any City wide impacts of the MBEA process should the City decide to implement the MBEA to any other City Depts/SOAs.

original signed by

Joseph Chammartin, CGA
Manager of Finance

CONSULTATION

Legal Services
Property Planning and Development
Corporate Support Services

OURWINNIPEG POLICY ALIGNMENT

N/A

SUBMITTED BY

Department: Winnipeg Parking Authority
Division:
Prepared by: A.Williams/C.Stewart
File No. WPA-012-2015
Date: May 19, 2015