Minutes – Executive Policy Committee – September 23, 2015

Report – Standing Policy Committee on Infrastructure Renewal and Public Works – September 21, 2015

Item No. 5 Local Improvements – By-law Amendment for Street Lighting

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

The Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Infrastructure Renewal and Public Works and submitted the following to Council:

1. That amendments be approved to the Local Improvements Regulation By-law (draft amending By-law attached) that will implement the 2010 Local Improvements Audit by:

    A. Ensuring the process used for determining the rates charged for street lighting local improvement projects is the same as the process used for determining the rates charged for other above ground improvements; and

    B. Adding street lighting local improvements to the list of local improvements that cannot be imposed in a new subdivision.

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

Report – Standing Policy Committee on Infrastructure Renewal and Public Works – September 21, 2015

DECISION MAKING HISTORY:

Moved by Councillor Lukes,

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 Lukes,

That the recommendation of the Standing Policy Committee on Infrastructure Renewal and Public Works be concurred in and forwarded to Council.

Carried

STANDING COMMITTEE RECOMMENDATION:

On September 21, 2015, the Standing Policy Committee on Infrastructure Renewal and Public Works concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

ADMINISTRATIVE REPORT

Title: Local Improvements – By-law Amendment for Street Lighting

Critical Path: Standing Policy Committee on Infrastructure Renewal and Public Works - Executive Policy Committee – Council

AUTHORIZATION

Author	Department Head	CFO	CAO/COO
L. Deane, P. Eng.	L. Escobar, P. Eng. PTOE On behalf of B.W. Sacher, P.Eng.	n/a	M. Jack COO

RECOMMENDATIONS

1. That Council approve amendments to the Local Improvements Regulation By-law (draft amending By-law attached) that will implement the 2010 Local Improvements Audit by:
    - Ensuring the process used for determining the rates charged for street lighting local improvement projects is the same as the process used for determining the rates charged for other above ground improvements; and
    - Adding street lighting local improvements to the list of local improvements that cannot be imposed in a new subdivision.

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

REASON FOR THE REPORT

By-law amendments require Council approval.

EXECUTIVE SUMMARY

- This report and proposed amending By-law implements the first Recommendation from the 2010 Local Improvements Audit, which recommended that

    …the Assessment and Taxation Department work with the Public Works Department to recommend to Council that the Local Improvement Regulation By-law be amended so that the method of calculation for rates charged for lighting services be the same as those charged for other above-ground works.

- The 2010 Audit recommended that rates be based on the actual costs of local improvement projects rather than frontage rates established by Council, which sometimes were grossly inadequate to recover the actual costs of projects.

- This report and proposed amending By-law also implements another Recommendation in the 2010 Audit by ensuring that, where a development agreement requires that a developer install street lighting, this cost cannot be recovered from purchasers of properties within the new subdivision through a local improvement levy.

- This report will bring the by-law into conformity with current practice and result in no noticeable change in practice for the general public.

IMPLICATIONS OF THE RECOMMENDATIONS

- In response to the City Auditor's 2010 Report concerning local improvements, this report recommends a new method for calculating rates for street lighting local improvements. The existing approach involves flat per-frontage-foot fee set out in the By-law for three different types of street and lane lighting. The new approach requires that owners of properties that benefit in any given year from similar street lighting projects anywhere in the city pay for the actual costs of those projects. In other words, the actual costs of similar street lighting local improvement projects completed in the same taxation year will be pooled and paid for by the owners of all the benefitting properties throughout the city. The Director of Public Works will decide which projects are similar enough to be pooled and their costs averaged.
- This method will result in the benefitting property owners paying for the full cost of lighting improvements, eliminating the possibility that City tax payers will have to contribute to the costs because the per-frontage-foot fee set out in the By-law is too low. This brings street lighting in line with the process of calculating costs for other above-ground Local Improvements and complies with one of the Audit's primary recommendations.
- Allowing the Director to decide which lighting projects are similar enough to be pooled so that their costs can be averaged eliminates the current distinction between "ornamental street lighting", "wood pole lane lighting" and "ornamental lane lighting". These distinctions have been increasingly difficult to apply as a greater variety of styles of street lighting fixtures become available. Eliminating this distinction also means that the current reduction to the rate payable for lane lighting is no longer available for double frontage lots.
- Administrative procedures were modified several years ago to reflect the intent of this Audit recommendation. The amendments to the Local Improvement By-law proposed by this Report will formally support this procedure. There will be no noticeable change in practice for the general public.
- The proposed by-law amendments also implement another Recommendation of the 2010 Audit. The Audit recommended against the practice of using a local improvement levy to recover from purchasers of properties within a subdivision the costs of street lighting installed by a developer within the subdivision. The proposed attached amending By-law adds street lighting to the list of public works that are not eligible for the application of a local improvement levy within a subdivision where the public work has been required to be installed by a development agreement.
- However, the proposed amendments retain the current rules that apply when lighting is installed on the boundary of a new development. Since this lighting benefits the property owners across the street from the new development, a local improvement is typically initiated by Council to ensure that these property owners pay their share of the lighting costs. These situations sometimes involve installation of more expensive lighting than the standard for that sort of neighbourhood. The By-law provides that, whenever Council initiates a street lighting local improvement, if the lighting is more expensive than the standard lighting used in similar neighbourhoods, the local property owners will only have to pay the costs for standard lighting. The City – or, in most situations involving a development

agreement, the developer – will have to pay the difference between the more expensive lighting and the standard lighting.

HISTORY / DISCUSSION

The City of Winnipeg Charter ("the *Charter*") gives property owners the ability to improve the infrastructure associated with their properties by sharing the construction costs for those improvements, through the Local Improvement process. Property owners are required to pay for these improvements because they directly benefit their property. Improvements can include underground installations (e.g., water mains, wastewater sewers, land drainage sewers) and surface work (e.g., lane pavement, lighting, sidewalks, boulevards). The City pays for the local improvement cost up front, and then recovers the costs from the benefiting property owners through annual local improvement levies billed through the property tax process.

The Local Improvement Audit was completed by the City Auditor July 2010 and presented to Council on March 23, 2011. With respect to lighting services, the Audit recommended that the rate methodology for lighting services be the same as that used for other above-ground works. That is, the benefitting property owners should have to pay the actual costs of a local improvement project without being subsidized by City taxpayers. In particular, the Audit recommended that the current system of recovering the costs through a standard frontage foot rate established by Council should be abandoned.

Subsection 412(2) of The City of Winnipeg Charter requires that local improvement rates for each class of an improvement must be applied uniformly throughout the City. To comply with this, when there is more than one similar lighting project in a calendar year the rates charged to property owners will be calculated by pooling the costs of all similar completed street lighting projects of the same type for the year, and dividing the total costs by the total assessable frontage feet for all similar projects. These rates are analyzed and adjusted at the end of each year and are used to levy local improvement taxes for the projects that have been completed in the year.

As noted, the By-law currently establishes per-frontage-foot rates for three types of street lighting: street ornamental, lane ornamental and wood pole. The rates for wood pole lane lighting and ornamental lane lighting were last changed in 2001; the rates for ornamental street lighting was last changed in 1990.

Although the rates for street lighting local improvement projects have been reviewed several times, it is difficult to determine the fairness of the rates because of unpredictable cost variations. That being said, in three of four recent street lighting local improvement projects, the cost of the project exceeded the revenue generated by the rates set out in the By-law. Moreover, recent cost estimates provided by Manitoba Hydro for specified projects indicate that the current by-law fixed rates are grossly inadequate.

All lighting improvements are constructed by Manitoba Hydro as provided by Section B4; "Single Source Negotiations" of the Materials Management Policy.

FINANCIAL IMPACT

Financial Impact Statemen Date: August 12, 2015

Local Improvements – By-law Amendment for Street Lighting

COMMENTS:
There is no financial impact associated with the recommendations of this report as the full cost of the local improvements for street lighting will be the responsibility of the benefitting property owners.

"Original signed by D. Stewart, CA"
D. Stewart, CA
Manager of Finance & Administration

CONSULTATION

In preparing this report there was consultation with:

Assessment and Taxation Department
Legal Services Department

OURWINNIPEG POLICY ALIGNMENT

The recommended Local Improvement Regulation By-law amendment aligns with Our Winnipeg as follows:

a) Provide efficient and focused civic administration and governance.
b) Create favorable conditions for development that is consistent with the principles and goals of Complete Communities.

SUBMITTED BY

Department: Public Works
Division: Engineering
Prepared by: H. Pheifer, C.E.T.
Date: August 4, 2015

ATTACHMENTS: Appendix A - Local Improvement By-law Amendment

THE CITY OF WINNIPEG

BY-LAW NO.

A By-law of THE CITY OF WINNIPEG to amend the Local Improvement Regulation By-law

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

Local Improvement Regulation By-law amended

1. The Local Improvement Regulation By-law No. 98/72 is amended by this By-law.

Section 2.3 amended

2. Clauses 2.3(viii) and (ix) are replaced with

(viii) street lighting

Section 2.4 amended

3. Subsection 2.4(1) is amended by adding the following immediately after clause (e):

(f) street lighting,

Section 5.1 replaced

3. Section 5.1 is replaced with the following:

5.1 ***STREET LIGHTING***

(1) In this section,

"back lane" *means a roadway which has been designed, constructed and intended to provide access to and service at the rear of places of residence or business and includes alleys having a width of not more than 9 metres;*

"completed"*, in relation to a street lighting local improvement project, means that the street lighting is operational;*

"street" *has the same meaning as in* The City of Winnipeg Charter *and includes a back lane.*

(2) Subject to this By-law, when street lighting has been constructed as a local improvement, local improvement taxes shall be imposed on all parcels of land fronting on a street or lane, or portion of a street or lane, in which the street lighting was constructed or which are otherwise served by the lighting, as determined by this By-law, including parcels of land served by the lighting on their flankage only.

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(3) The local improvement taxes referred to in subsection (2) that are imposed on a parcel of land shall be calculated by multiplying the rate determined in accordance with subsections (4) and (5) against the number of feet of frontage, as determined in accordance with this By-law, of each parcel of land referred to in subsection (2), taking into account any allowances provided by this By-law or variations imposed pursuant to section 13.

(4) Subject to subsection (6), the rate for calculating the local improvement taxes imposed under subsection (2) shall be determined by dividing the actual costs of constructing all similar street lighting local improvement projects completed in that calendar year by the total number of feet of frontage of all parcels of land fronting on similar street lighting local improvement projects, taking into account any allowances provided by this By-law or variations imposed pursuant to section 13.

(5) For the purposes of subsection (4), a determination as to whether two or more street lighting local improvement projects are similar shall be made by the Director of Public Works or his or her delegate on the basis of

(a) whether the street lighting local improvement projects are located on a street or on a back lane; and

(b) the similarity of the bases, standards, and fixtures of the street lighting projects.

(6) Notwithstanding subsection (4), where a street lighting local improvement is proposed by Council rather than by petition, the maximum rate payable shall be determined by dividing the estimated costs of installing a standard street lighting project by the total number of feet of frontage of all parcels of land fronting on that local improvement, taking into account any allowances provided by this By-law or variations imposed pursuant to section 13.

(7) For the purposes of subsection (6),

(a) the costs of a standard street lighting project shall be estimated by the Director of Public Works or his or her delegate; and

(b) a determination of what constitutes a standard street lighting project shall be made by the Director of Public Works or her or her delegate on the basis of the usual or dominant form of street lighting in the community or neighbourhood in which the local improvement is located.

Section 9 amended

4. Section 9 is amended by

(a) adding "*or*" after clause (c); and

(b) replacing clauses 9(1)(d) and (e) with

(d) street lighting,

Section 11 amended
5. Clause 11(c) is repealed.

DONE AND PASSED, this day of , 2015.

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Mayor

_____
City Clerk

Approved as to content:

_____
Director of Public Works

Approved as to form:

_____
For Director of Legal Services/City Solicitor

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