Minutes – Executive Policy Committee – June 14, 2017

REPORTS

Item No. 5 By-law enforcement under The Provincial Offences Act and the Municipal By-Law Enforcement Act

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

The Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and recommended to Council:

1. That amendments to twelve by-laws (draft amending by-laws attached as Appendices A to L to this report), which will allow some by-law offences to be enforced under The Municipal By-law Enforcement Act and others to be enforced through tickets issued under The Provincial Offences Act, be enacted.

2. That the Public Service be directed to report back to Council within one year with an implementation plan for administration of screening and adjudication functions for City by-laws enforced under The Municipal By-law Enforcement Act and the collection of all fines and penalties imposed for contraventions of City by-laws under both The Municipal By-law Enforcement Act and The Provincial Offences Act.

3. That, as a temporary measure until such time as a implementation plan referred to in Recommendation 2 is in place, and notwithstanding its Operating Charter, the Winnipeg Parking Authority be authorized to administer screening and adjudication functions for City by-laws enforced under The Municipal By-law Enforcement Act and the collection of all fines and penalties imposed for contraventions of City by-laws under both The Municipal By-law Enforcement Act and The Provincial Offences Act.

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

DECISION MAKING HISTORY:

Moved by Councillor Gilroy,

That the recommendation of the Winnipeg Public Service be concurred in and forwarded to Council.

Carried

ADMINISTRATIVE REPORT

Title: By-law enforcement under The Provincial Offences Act and the Municipal By-Law Enforcement Act

Critical Path: Executive Policy Committee - Council

AUTHORIZATION

Author	Department Head	CFO	CAO
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EXECUTIVE SUMMARY

The Province of Manitoba has enacted the *Provincial Offences Act* (the "POA") and the *Municipal By-Law Enforcement Act* (the "MBEA"). The Province is expected to proclaim the POA into law in the coming months. Once the POA comes into force, the City will no longer be able to use *The Summary Convictions Act (*the "SCA") for by-law enforcement.

Once the POA is proclaimed, the City will have three options for by-law enforcement:

- Enforcement through the MBEA
- Tickets through the POA
- Informations through the POA

Unless by-law changes are made to allow enforcement through the MBEA or by way of POA ticket, the City will only be able to enforce its by-laws by way of Information under the POA.

This report and the attached amending by-laws recommend the addition of almost 600 City by-law offences to be enforced by the MBEA process. In addition, the attached amending by-laws establish preset fines for contraventions of some other by-law provisions. This will allow these offences to be dealt with through the POA ticket process if the enforcing department so chooses.

Through the POA and MBEA, the Province of Manitoba has devolved to the City significant responsibilities that used to be dealt with by the courts system. The City will now be responsible for administering the entire MBEA process as well as collecting fines imposed under the POA. This report recommends that the Public Service prepare a strategy for administration of these aspects of the MBEA and POA. In the meantime, as a temporary measure, this report recommends that the Winnipeg Parking Authority should administer these

aspects of by-law enforcement. Assuming the current volume of tickets continues, the Public Service does not anticipate any net costs to be incurred as a result of this interim measure.

RECOMMENDATIONS

1. That Council enact amendments to twelve by-laws (draft amending by-laws attached as Appendices A to L to this report) which will allow some by-law offences to be enforced under *The Municipal By-law Enforcement Act* and others to be enforced through tickets issued under *The Provincial Offences Act*.

2. That the Public Service be directed to report back to Council within one year with an implementation plan for administration of screening and adjudication functions for City by-laws enforced under *The Municipal By-law Enforcement Act* and the collection of all fines and penalties imposed for contraventions of City by-laws under both *The Municipal By-law Enforcement Act* and *The Provincial Offences Act*.

3. That, as a temporary measure until such time as a implementation plan referred to in Recommendation #2 is in place, and notwithstanding its Operating Charter, the Winnipeg Parking Authority be authorized to administer screening and adjudication functions for City by-laws enforced under *The Municipal By-law Enforcement Act* and the collection of all fines and penalties imposed for contraventions of City by-laws under both *The Municipal By-law Enforcement Act* and *The Provincial Offences Act*.

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

REASON FOR THE REPORT

The Province of Manitoba is expected to proclaim the POA into law within the next few months. Once it comes into force, the City will no longer be able to use the SCA for by-law enforcement, and must decide which of the three enforcement methods will be used for each by-law. Numerous by-law changes are needed in order to accommodate this change. Only Council can enact a by-law.

IMPLICATIONS OF THE RECOMMENDATIONS

Recommendation #1: Enactment of twelve by-laws attached as Appendices A to L to accommodate the proclamation of the POA.

The Province has enacted the MBEA and the POA. The MBEA has already come into force and currently applies to all parking by-law offences. (In May 2016, Council enacted the *Municipal By-law Enforcement Act (MBEA) Enabling By-law* to allow parking offences to be enforced by the MBEA.)

The POA is expected to be proclaimed in the spring of 2017. Once the POA is proclaimed, the City will no longer be able to enforce its by-laws through the SCA. At that point, all City by-law provisions must be enforced via one of three options:

1. Penalty Notice under the MBEA
2. Ticket under the POA
3. Information under the POA.

An explanation of each enforcement process is outlined in Appendix M.

Appendices A to L attached to this report contain twelve amending by-laws that will allow almost 600 additional by-law offences to be enforced through the MBEA and other by-law offences to be enforced via tickets under the POA. All other by-law offences will be enforced through Informations under the POA.

The Public Service recommends that all of these amending by-laws come into force on the same day the POA is proclaimed.

Recommendations #2 and #3:

Through the POA and MBEA, the Province of Manitoba has devolved to the City significant responsibilities that used to be dealt with by the courts system. The City will now be responsible for administering the entire MBEA process, including the screening and adjudication processes. (Although the Province appoints adjudicators, the City is responsible for scheduling and paying the Province for their services.) In addition, the City will now be responsible for the collection of all penalties and fines under both the MBEA and POA. This includes not only receiving early payments from the public but trying to collect outstanding penalties and fines.

This report therefore proposes that the Public Service be directed to develop a long-term plan for administering these aspects of by-law enforcement and report back to Council within a year. However, until a plan is approved and implemented, this report recommends that the Winnipeg Parking Authority administer these aspects of by-law enforcement. Assuming that the current volume of enforcement actions continues in the future, the Winnipeg Parking Authority believes that this can be done without adding additional positions and without additional net expenditures.

HISTORY/DISCUSSION

The MBEA and the POA were enacted to improve the enforcement of municipal and provincial offences in the Province of Manitoba. When the POA is proclaimed, it will replace the SCA for the enforcement of all provincial offences as well as any municipal by-law offences that are not enforced through the MBEA.

The SCA was proclaimed in 1985 and currently applies “to every case in which any person commits, or is suspected of having committed, any offence or act over which the Legislature has legislative authority, and for which that person is liable, on summary conviction, to imprisonment, fine, penalty or other punishment”. The SCA outlines the procedure for provincial and municipal offence enforcement, including the service of tickets, fines, collection of unpaid fines and sentencing.

The MBEA is a new approach to the enforcement of municipal by-law offences, modelled after the municipal by-law enforcement system developed in British Columbia. It is an administrative law system rather than one based on the criminal law, and is administered by municipalities rather than the Province. From the public’s perspective, the key innovation is that anyone who disputes a penalty notice doesn’t need to go to court but rather has a chance to have his or her challenge heard by a screening officer appointed by the City. If they are unsatisfied with the screening officer’s decision they can have the matter heard by an Adjudicator appointed by the Province.

The intent of the MBEA is to keep less serious municipal offences out of the court system. As a result, the MBEA is mandatory for all parking offences. (The City has been dealing with parking offences by way of the MBEA since August 2016.) Municipalities are entitled to have other by-law offences dealt with through the MBEA as well, so long as the offence is punishable by a preset fine of less than $1,000.00. However, in order to have a by-law offence dealt with through the MBEA, the offence must be set out in a by-law. Appendix A to this report contains a draft By-law which adds almost 600 additional by-law offences to the 62 parking offences that are already being dealt with under the MBEA system.

Unlike the SCA, the POA outlines two different methods for prosecution.

Tickets under the POA can only be issued if the offence is punishable by a preset fine. This provides the accused person with a chance to pay the fine without going to court. This report is proposing early payment discounts for some of these offences as well. If the accused person wants to have the fine reduced, they can have their argument heard by a magistrate at the front counter at the Court Office. If they want to challenge the validity of the ticket, they will be entitled to schedule a hearing where the City Prosecutor will be required to prove the City’s case beyond a reasonable doubt.

Informations under the POA involve a more formal process. They must be sworn by enforcement officers and no early payment is possible; the accused person must always attend court. Informations must be used for all offences that do not have a specific fine set out in the by-law as a penalty, although they can also be used when there is a preset fine, so long as the by-law offence hasn’t been designated by by-law as subject to the MBEA.

In anticipation of the proclamation of the POA, the Public Service reviewed twenty three commonly-used by-laws that result in the greatest number of prosecutions. Of these, eleven were considered to have contraventions that were suitable for enforcement through the MBEA. These are:

- The Alarm By-law
- The Doing Business in Winnipeg By-law
- The Neighbourhood Liveability By-law
- The Parks By-law
- The Public Transit By-law
- The Responsible Pet Ownership By-law
- The Streets By-law
- The Vacant Buildings By-law
- The Water By-law
- The Winnipeg Building By-law
- The Winnipeg Zoning By-law

Appendix A to this report contains a By-law which amends the existing *MBEA Enabling By-law* to add provisions from these eleven by-laws to the parking provisions already enforced under the MBEA. The result is a new, expanded schedule of over 600 City by-law provisions that will be dealt with under the MBEA process. The schedule sets out preset fines and, in most cases, early payment discounts for these offences.

Appendices B to L of this report will amend the eleven City by-laws identified above to reference the MBEA process. In addition, for seven of the eleven by-laws, preset fines for other by-law offences will be established. Since these offences will be dealt with under the POA, preset fines will give enforcement officers the option of proceeding by way of either ticket or Information. Again, in some cases, early payment discounts will be offered and may be used by the accused person when charges are initiated.

Any offence that is not punishable by a preset fine must be dealt with by way of an Information under the POA.

In addition to the foregoing, the amending by-laws (Appendices A to L) also make some technical amendments and substantive changes to various by-laws. The substantive changes are as follows:

- The MBEA Enabling By-law is being amended to allow a screening officer or adjudicator to reduce the amount of a winter parking ban ticket if the vehicle's driver lives outside Winnipeg or has recently moved to the City, was not (and couldn't be reasonably expected to be) aware of the parking ban, and has not received a winter parking ban ticket in the previous five years.

- The Neighbourhood Liveability By-law is being amended to create a monetary penalty applicable to offences related to littering and garbage, and another one for unsightly weeds, problematic trees or hedges and other vegetation on property. The monetary penalties, which are in addition to any fines imposed by the courts or under the MBEA process, will allow the City to recover the costs of cleaning up garbage and dealing with problematic vegetation, as well as penalizing property owners and occupants who refuse to take these actions themselves.

- The Vacant Buildings By-law and the Winnipeg Building By-law are being amended to make it a by-law offence to fail to comply with a court order issued as part of a sentence for a conviction under the By-law.

- The Responsible Pet Ownership By-law, the Vacant Buildings By-law and the Winnipeg Building By-law have included new minimum fines.

Both the MBEA and POA shift the costs of administering by-law enforcement to the City. Under the current system, the courts not only administered the judicial process for by-law enforcement but also collected fines and court costs resulting from by-law violations. Under the new system, the City is responsible for collecting all payment of penalties or fines except those voluntarily paid to the Court under the POA. This includes early payment discounts and also fines and penalties that have to be collected through liens and other mechanisms.

In addition, the City is responsible for administering all aspects of the MBEA system, including hiring and paying for screening officers, providing space and paying a per diem to the Province for the time spent by Provincially-appointed adjudicators.

The City already incurred many of these costs prior to August, 2016, when the MBEA began applying to parking offences. The Winnipeg Parking Service has already put into place screening officers and a system for adjudication, as well as processes for receiving voluntary payments and collecting outstanding penalties. As a result, assuming the current volume of by-law offences are enforced in the future, the Public Service does not anticipate significant additional costs associated with adding new by-law offences to the MBEA system.

FINANCIAL IMPACT

Financial Impact Statement **Date:** March 6, 2017

Project Name:

By-law enforcement under The Provincial Offences Act and the Municipal By-Law Enforcement Act

Comments:

1. There are no financial implications related to Recommendations #1, #3, & #4 of this report.

2. Recommendation #2 states that the Public Service be directed to report back to Council within one year with an implementation plan for administration of screening and adjudication functions. The financial impact of this plan will be disclosed at that time.

"Original Signed By"
Ramona Hodges
Manager of Finance (Campus)
Corporate Finance Department

CONSULTATION

In preparing this report there was consultation with:

- The Water and Waste Department (responsible for the enforcement of the *Water By-Law*, the *Sewer By-Law*, the *Solid Waste By-Law* and the *Lot Grading By-Law*);
- The Winnipeg Police Service (responsible for enforcement of sections of the *Streets By-Law,* the *Alarm By-Law*, the *Doing Business in Winnipeg By-Law,* the *Body Modification* By-law, the *Traffic* By-law and the *Neighbourhood Liveability By-Law*);
- Community By-Law Enforcement Services (responsible for enforcement of the *Neighbourhood Liveability By-Law,* the *Vacant Buildings By-Law, Food Service Establishment* By-law, the *Mobile Home Licence* By-Law, *Mosquito Control* By-Law, the *Pesticide Management* By-Law and the *Doing Business in Winnipeg By-Law*);
- The Animal Services Agency (responsible for enforcement of the *Responsible Pet Ownership By-Law*);
- The Fire Paramedic Service (responsible for enforcement of the *Fire Prevention By-Law* and the *Residential Buildings Fire Safety* By-Law);

- The Planning, Property and Development Department (responsible for enforcement of the *Winnipeg Building By-Law,* the *Winnipeg Zoning By-Law*, the *Cemeteries* By-law, the *Winnipeg Electrical* By-Law);
- The Public Works Department (responsible for enforcement of the *Parks* By-Law, the *Streets By-Law*, the *Private Access* By-Law, *Vacant and Derelict Buildings* By-law,
- The Transit Department (responsible for enforcement of the *Public Transit* By-Law);
- Winnipeg Parking Authority

SUBMITTED BY

Department Legal Services
Prepared by: V. Li and H. Dick
Date: May 2, 2017


[2017 04 27]
APPENDIX A - MBEA E


[2017 03 22]
APPENDIX B - Alarm E


[2017 03 22]
APPENDIX C - DBIW E


[2017 03 22]
APPENDIX D - Neighb


[2017 03 22]
APPENDIX E - Parks B


[2017 03 22]
APPENDIX F - RPO By


[2017 03 22]
APPENDIX G - Streets


[2017 03 22]
APPENDIX H - Vacant


[2017 03 22]
APPENDIX I - WATER


[2017 03 22]
APPENDIX J - Building


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APPENDIX K - Winnip


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APPENDIX L - Public T


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APPENDIX M - Explair