Minute No. 37
Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – November 7, 2017

Item No. 6 Amendment of the Winnipeg Building By-Law No. 4555/87

COUNCIL DECISION:

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

1. That amendments to the Winnipeg Building By-law No. 4555/87 (draft amending by-law is attached as Appendix "A"), be enacted.

2. 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 Property and Development, Heritage and Downtown Development – November 7, 2017

DECISION MAKING HISTORY:

Moved by Councillor Orlikow,

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

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On November 8, 2017, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On November 7, 2017, the Standing Policy Committee on Property and Development, Heritage and Downtown Development concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

ADMINISTRATIVE REPORT

Title: AMENDMENT OF THE WINNIPEG BUILDING BY-LAW NO. 4555/87

Critical Path: Standing Policy Committee on Property and Development, Heritage and Downtown Development – Executive Policy Committee - Council

AUTHORIZATION

Author	Department Head	CFO	CAO
S. Dueck	J. Kiernan	N/A	M. Jack A/CAO

EXECUTIVE SUMMARY

The Public Service is proposing a variety of administrative changes and updates to the Winnipeg Building By-law No. 4555/87 including:

- Changes to what work requires permits.
- Clarifications and updates to reflect current practices.
- New wording to clarify the existing enforcement processes with respect to responsibility of the owner/applicant in terms of time requirements associated with permits and defects, and the requirement that future owners be responsible for obtaining permits where work was done by a previous owner without a permit. Changes reflect current enforcement practice and current application of fees for non-compliance.
- New requirements for permits obtained in stages.
- Assorted other legal/ administrative updates and corrections.

RECOMMENDATIONS

1. That Council enact amendments to the Winnipeg Building By-law No. 4555/87 (draft amending by-law is attached as Appendix “A”).

2. 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

The approval of Council is required to amend the Winnipeg Building By-law No. 4555/87.

IMPLICATIONS OF THE RECOMMENDATIONS

If the recommendations of this report are concurred in, the Winnipeg Building By-law No. 4555/87 will be amended as follows:

1. clarify that permits are required for installing sump pumps and developing previously undeveloped space in buildings, including basements and attics in houses;
2. create clear legal language regarding the responsibilities of future property owners relating to work performed on properties that required a permit but was performed without a permit. Currently, by-law language clearly transfers the code requirements to future owners but proposed language would also make it clear that future owners are responsible for obtaining required permits where work has been completed without a permit, even if that work was completed by a prior owner. This reflects current enforcement practice;
3. update the requirements related to the responsibility of the owner/applicant relating to time requirements associated with permits and defects including charging additional fees. These fees were approved by Council on March 23, 2016, but the proposed by-law updates create an offence for failing to meet these time requirements;
4. specify requirements for applicants who obtain permits in stages, so as to help ensure that their entire projects are completed;
5. remove the requirement for contractor's licenses to terminate at the end of the calendar year; and
6. other minor administrative changes and updates. For example, required language associated with professional certification would now include reference to the new Manitoba Energy Code.

HISTORY/DISCUSSION

In 2012, updates and changes were made to the Winnipeg Building By-law No. 4555/87 (the "By-law"). These changes were mostly associated with the Building Permit Strategy. At the time, the Public Service noted that other administrative changes should also be made to update the By-law. A more comprehensive review of the By-law is still planned, but some changes that required less research, discussion, or were simply more time sensitive were packaged together in this report, and include:

1. Simple updates / corrections

(a) The terms "the authority having jurisdiction" will be replaced with "the designated employee" and the term "Manager of Development and Inspections" will be replaced with "Director" throughout the By-law.

(b) The definition of “Director” will be updated.

It is the City’s current legislative practice to delegate enforcement and administrative authority regarding by-laws to those holding positions no lower than the level of Director, as there are more likely to be changes in the job titles of those positions which are lower than Director positions. The change also clarifies who fits within the definition of Director.

(c) Include the Manitoba Energy Code for Buildings in respect of professional certification requirements. This is an update to reflect the current codes.

(d) Delete any provision which deals with alterations and additions to buildings as these provisions are in the Manitoba Building Code and therefore do not need to be repeated in the By-law.

(e) Provide a designated employee with the authority to request that an applicant for a permit provides an estimate of the value of the work that will be done and also provides supporting information.

2. Clarifications and updates to reflect current enforcement practice

(a) Clarify the responsibilities of current and future owners relating to work done without permit(s).

Clause 5.8.2 of the Winnipeg Building By-law requires that current and subsequent property owners are both responsible to ensure that their buildings meet Code standards that were in place at the time of construction, renovation, or alteration. The mechanism by which the City ensures Code compliance is the permit process. Therefore, when permits have not been taken out at the time of construction, renovation or alteration, the City’s practice has been to require that subsequent owners take out the necessary permits and pay any fees associated with the non-compliance. If subsequent owners were to be responsible to meet the code standards at the time of construction (as is already clearly set out in the By-law), but were not also required to obtain a permit for the work constructed without a permit, it would make the City’s enforcement of code (through determination and evaluation of non-compliance) costly and legally challenging.

This practice provides disincentives for owners who carry out work without obtaining permits from attempting to avoid responsibility for the work by transferring the ownership of their property.

This amendment is required to ensure that the City’s current practice is fully and clearly reflected in the By-law. However, it is important to note that it simply sets out in the By-law the City’s longstanding enforcement expectation and practice.

Making this change ensures that the By-law provides clear and unequivocal expectations for subsequent owners. It also serves as guidance to real estate

agents and lawyers with respect to due diligence, as prospective owners are expected to be aware of any work that was completed in a building, whether that work required a permit, and whether or not the appropriate permit was obtained.

It is important to note that prospective purchasers and the real estate professionals who are advising them can search all construction-related permits issued since Jan 1, 2000 on the City's website at: https://ppdportal.winnipeg.ca/Permits/PropertyPermitSearch/Start.jsp. This tool allows potential purchasers to ensure that permits have been issued and inspection processes completed (which closes the permit). Application for permit records prior to 2000 can also be searched by calling 204-986-7395 or emailing PPD-CentralFiles@Winnipeg.ca.

(b) Clarify the Standing Policy Committee on Property and Development, Heritage and Downtown Development's authority to refer appeals concerning building design and construction, and those appeals of a technical nature, to the Winnipeg Building Commission, as the members of the Winnipeg Building Commission have the technical expertise necessary to deal with complex code matters.

(c) Formalize the current practice of requesting drawings and plans to support permit applications, which allows for increased efficiency in the processing of permit applications.

(d) Formalize the current practice regarding the value of work associated with a building permit to also include professional fees and project management costs.

(e) Update provisions regarding demolitions:

(i) specify time limits for demolitions to be completed after a permit has been obtained (30 days for housing and accessory structures, 60 days for commercial);

(ii) allow for an extension of the demolition time limits by the designated employee; and

(iii) make it an offence to not complete demolitions within the specified time.

Current legislation allows for enforcement when work does not proceed in a timely fashion, but the changes set definitive time frames (allowing for extensions) to assist in enforcing completion of demolition work that has the potential to be hazardous to neighbouring properties, the public generally, and quality of life in terms of aesthetics.

3. Changes to what work requires permits

The amendment will allow the City to require that a permit should be obtained for the installation of sump pits and pumps.

It will also allow the City to require that applicants/owners obtain permits for previously undeveloped space in buildings and for adding or developing bedrooms. Development of previously undeveloped basements had been a longstanding requirement in the by-law prior to 2012 when the City, in an attempt to gain efficiencies, withdrew this requirement. However, this 2012 amendment has proven problematic as housing inspectors investigating for electrical or plumbing permits routinely discover significant code violations associated with traditional building code requirements. However, there is no longer a permit system in order to track and monitor these defects. Additionally, with the introduction of the Provincial Manitoba Energy Code for Buildings, the lack of a current permit requirement makes it difficult for the City to ensure that these basement and attic spaces are developed in a compliant fashion.

4. New requirements related to the responsibility of the owner/applicant to meet specific time requirements associated with permits and defects

Update the responsibilities of owners who make a request for an inspection as work authorized under a permit progresses.

In 2016, administrative fees were introduced pursuant to the comprehensive fee review. These fees included fees associated with failing to call for inspections and failing to inform the City when work commenced. The amendment serves to align the Winnipeg Building By-law requirements with those fees and specifies that a permit holder is required to meet specific time-related deadlines in the following instances:

(i) the applicant/owner does not call for a required inspection or otherwise notify the appropriate branch of the City that work has commenced within 6 months after the permit was issued;

(ii) a defect has been identified during an inspection and the applicant/owner does not call for a re-inspection or request an extension within 1 month of the defect being identified in the case of housing branch building permits, or within 7 business days for commercial projects; or

(iii) the applicant/owner does not close a permit or obtain an extension from the City within 3 years of the permit being issued.

Each of these situations already triggers a fee as per the introduction of these fees in 2016. In the case of the 3 year term of a permit, the By-law already indicates that a permit expires. These changes would introduce a requirement for the applicant/owner/builder to initiate contact with the City within these timelines. Creating an offence for failing to make contact creates a more efficient method of enforcement (and therefore compliance) associated with these issues.

5. Requirements for permits obtained in stages

Update the By-law to require that applicants/owners who are issued permits which represent only stages or parts of a more complete permit/project must either:

(i) complete the permitted stage prior to the staged permit's expiration and obtain all necessary permits for additional stages of the project; or

(ii) remove the structure or the portion of the structure that was authorized by the partial or staged permit and restore the property to the condition it was in prior to the permit having been issued.

This change would better allow the City to enforce in cases where a foundation only permit was issued and the foundation constructed, but then simply capped off and the property left permanently with an incomplete project. It is assumed that the permissions granted on the basis of the stages were not specifically for an end-product partial project, but for the staged portion of the project with a planned final project completion. As such, failure to proceed should result in authority for the City to enforce the removal of the staged, partial project.

6. **Allow for the expiration of contractors' licenses at any time of year based on date of issuance**

The By-law currently requires that contractors' licences be renewed at the end of the calendar year. This timing specificity causes significant resource challenges as the number of contractors licences increase and a small window of time is available for renewal. To level workflow, the proposed amendments will allow a licence to expire at any time of the year and will be based on issuance date rather than the calendar year.

FINANCIAL IMPACT

Financial Impact Statement **Date:** September 11, 2017

Project Name:

AMENDMENT OF THE WINNIPEG BUILDING BY-LAW NO. 4555/87

COMMENTS:

There are no financial implications associated with this report.

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

CONSULTATION

This Report has been prepared in consultation with:
Legal Services (as to legal issues)

OURWINNIPEG POLICY ALIGNMENT

N/A

SUBMITTED BY

Department: Planning, Property and Development
Division: Development and Inspections
Prepared by: Andrea Collins-Fitzpatrick
Date: September 22, 2017
File No:

Attachments:

1) Appendix “A” – Draft Amending By-law

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APPENDIX "A"

– Draft Amending By-law

THE CITY OF WINNIPEG

BY-LAW NO. /2017

A By-law of THE CITY OF WINNIPEG to amend the Winnipeg Building By-law No. 4555/87.

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

Winnipeg Building By-law amended

The Winnipeg Building By-law No. 4555/87 is amended by this By-law.

Terms replaced throughout By-law

The phrase "the *authority having jurisdiction*" is replaced with "*the designated employee*' wherever it appears, except in the heading to Section 8, where it is replaced with "THE CITY".

The term "*Manager of Development and Inspections"* is replaced with "*Director*" wherever it appears.

The terms "*Standing Policy Committee on Property and Development*" and "*Standing Policy Committee on Property and Development, Heritage and Downtown Development*" are replaced with "*the Designated Committee*" wherever they appear.

Section 3.3 amended

Section 3.3 is amended:

(a) by deleting the definition "Authority having jurisdiction";

(b) in the definition "Designated Employee", by replacing "*Manager of Development and Inspections for the City of Winnipeg*" with "*Director*"; and

(c) by adding the following definitions in alphabetical order:

"Designated Committee" *means the Standing Policy Committee on Property and Development, Heritage and Downtown Development.*

"Director" *means the Director of the Planning, Property and Development department of the City of Winnipeg or, if another Department is responsible for the administration and enforcement of this By-law, the head of that Department, and includes an employee acting as the Director on a temporary basis or any specific employee who has been delegated all or some of the powers of the Director under this By-law.*

Section 5.4 replaced

Section 5.4 is replaced with the following:

5.4.1 An owner of property must, prior to commencing work on the property for which a permit, acceptance or approval is required pursuant to this By-law, obtain all necessary permits, acceptances and approvals.

5.4.2 If an owner has failed to obtain a required permit, acceptance or approval prior to commencing work in compliance with sentence 5.4.1, the owner at the time the work was commenced or carried out – and every subsequent owner – is nonetheless required to obtain all permits, acceptances and approvals and to pay all applicable fees despite the fact that the work has already commenced or has been completed. For greater clarity, if work for which a permit, acceptance or approval is required has been commenced or carried out without the required permit, acceptance or approval, the current owner is responsible for obtaining the required permit, acceptance or approval and must pay any fees or penalties associated with the permit, acceptance or approval, including fees for its issuance after the work has been commenced or carried out.

Section 5.5.3 replaced

Section 5.5.3 is replaced with the following:

5.5.3 The owner of property in respect of which a permit has been issued must ensure that a designated employee is notified:

(i) prior to the expiry of the permit as provided in clause 14.1.3(1)(a), unless an extension is granted, that work authorized by the permit has been initiated;

(ii) that work has been completed to the point where an inspection required by this By-law can take place;

(iii) within one month following an inspection during which a defect in the construction of a single family house or duplex was identified, that the defect has been corrected and is ready for re-inspection;

(iv) within seven days following an inspection during which a defect in the construction of any structure other than a single family house or duplex was identified, that the defect has been corrected and is ready for re-inspection;

(v) prior to the expiry of the permit as provided in clause 14.1.3(b) (that is, unless an extension is granted, within three years after the permit has been issued or such longer period as is approved by a designated employee), that work has been completed and is ready for inspection;

(vi) in writing of any change in the ownership or of the address of the owner prior to the issuance of a building occupancy permit; and

(vii) of any other information as required by this By-law or the Code.

Section 5.5.4 replaced

Section 5.5.4 is replaced with the following:

5.5.4 The owner of property with respect to which a permit has been issued must ensure that:

(a) work that is required to be inspected is not covered until the required inspection has taken place; and

(b) where an inspection has revealed a defect that must be remedied prior to continued work, that the defect is not covered until the required re-inspection has taken place.

Section 5.5.5 repealed

Section 5.5.5 is repealed in its entirety.

Section 5.23 added

The following is added after section 5.22:

5.23 If the designated employee has issued a separate permit for the foundation or another aspect or stage of a construction project under subsection 9.5, the owner must ensure that, prior to the expiration of that permit, either

(a) the necessary permits for subsequent stages, or for the completion of the project in its entirety, are obtained; or

(b) the portion of the construction project that has been constructed to that point is demolished and the site on which it is located is returned to the condition it was in prior to construction.

Section 6.3 amended

Section 6.3 is amended by adding "*the Manitoba Energy Code,*" after "*the Manitoba Building Code,*".

Section 10 amended

Section 10 is amended by:

(d) renumbering section 10 as section 10.1; and

(e) adding the following as section 10.2 immediately after section 10.1:

10.2 Where the subject matter of an appeal has to do with building design and construction and is of a technical nature, the Designated Committee may adjourn the appeal and refer the matter to the Winnipeg Building Commission for recommendation.

Section 11 repealed

Section 11 is repealed in its entirety.

Section 14.1.2 amended

Section 14.1.2 is amended by replacing subsection (1) with the following:

(1) Subject to subsection 14.8.2(1), an application for a permit or certificate under this By-law must be in writing in a form prescribed by the Director, and must be made by:

(a) the owner;

(b) an individual authorized in writing by the owner to apply on behalf of the owner; or

(c) a licensed mechanical or plumbing contractor who has been contracted to carry out the work for which the permit or certificate is being sought.

(1.1) The designated employee may require that the application for a permit or certificate submitted in accordance with subsection (1) include drawings or plans which, in the opinion of the designated employee, are reasonably required to review and make a decision in respect of the application.

Subsection 14.2.1(1) amended

Section 14.2.1(1) is amended:

(f) in clause (h), by deleting "*and*";

(g) in clause (i), by replacing "*building area.*" with "*building area;*" ; and

(h) adding the following after clause (i):

(j) the installation of interior subsurface drainage equipment, including sump pits, sump pumps and associated equipment.

Subsection 14.2.1(2.1) amended

Subsection 14.2.1(2.1) is amended by replacing clause (c) with the following:

(c) non-structural work other than:

(i) plumbing construction;

(ii) electrical construction;

(iii) the development of previously undeveloped space within an existing building; or

(iv) the creation of a new bedroom.

Section 14.2.3 amended

Section 14.2.3 is amended:

(i) by replacing subsection (1) with the following:

(1) The designated employee is authorized to determine the value of work for which a permit is sought, whether or not it is necessary to do so in order to determine the applicable permit fee. At the request of the designated employee, the permit applicant must provide a reasonable estimate of the value of the work and any other information available to the applicant that is reasonably required by the designated employee to make that determination.

(j) in subsection (2), by replacing "*materials and other devices entering into and necessary to the prosecution of the work in its completed form*" with "*including the work of designing and managing the project and other professional services,*

(k) *and materials and devices which form part of the work in its completed form*".

(l) Section 14.4.3 amended

Section 14.4.3 is amended by replacing clause (b) with the following:

(b) the demolition be actively carried out thereafter and be completed:

(i) in the case of any building or structure with a commercial occupancy, within 60 days; and

(ii) in the case of any other building or structure, within 30 days

following the date on which the demolition permit is issued, unless an extension of time is requested by the permit holder and approved by the designated employee prior to the expiration of the 30 day or 60 day time limit, as the case may be; and

Subsection 17.5.1(1) amended

Subsection 17.5.1(1) is amended by replacing "*thirty-first day of December on the year of their expiration*" with "*the date indicated on the licence*".

DONE AND PASSED this day of , 2017.

Mayor

City Clerk

Approved as to content:

Director of Planning, Property
and Development

Legally reviewed and certified as to form:

for Director of Legal Services and City Solicitor