Minute No. 287
Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – April 1, 2019

Item No. 11 New Encroachment By-law 12/2019

COUNCIL DECISION:

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

1. That Encroachment By-law No. 692/74 be repealed and the new Encroachment By-law No. 12/2019 be enacted (draft by-law attached as Appendix A to this report).

2. That the fees relating to encroachments, attached as Appendix B, be approved.

3. 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 – April 1, 2019

DECISION MAKING HISTORY:

Moved by Councillor Mayes,

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 April 16, 2019, 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 April 1, 2019, 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: New Encroachment By-law 12/2019

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

AUTHORIZATION

Author	Department Head	CFO	CAO
M. Pittet	J. Kiernan	N/A	D. McNeil

EXECUTIVE SUMMARY

The Encroachment By-law No. 692 /74 (the "Old By-law") was adopted by Council in 1974 and is confusing, deficient, outdated ,and no longer reflects the current needs of Winnipeg's citizenry or business community. As such, the Public Service recommends that Council enact By-law No. 12/2019 (the "New By-law") to replace the Old By-law. A draft of the New By-law is attached as Appendix A to this report.

The Public Service further recommends amending the fees relating to encroachments to align with the New By-law. The proposed fees are attached as Appendix B to this report.

RECOMMENDATIONS

1 That Encroachment By-law No. 692/74 be repealed and the new Encroachment By-law No. 12/2019 be enacted (draft by-law attached as Appendix A to this report).

1. That the fees relating to encroachments, attached as Appendix B, be approved.

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

On July 3, 1974 Council adopted Encroachment By-law No. 692/74. Council approval is necessary to repeal and enact by-laws.

IMPLICATIONS OF THE RECOMMENDATIONS

If the recommendations of this report are concurred in:

- Encroachment By-law No. 692/74 will be repealed and the new Encroachment By-law No. 12/2019 will be enacted;
- the fees relating to encroachments will be removed from the Planning, Development and Building Fees By-law No. 66/2016; and
- the document preparation fees charged by Legal Services will be based on the type of encroachment rather than on the complexity of the Encroachment Agreement in respect of the encroachment.

The encroachment fees listed in Appendix B include several categories which are better suited to the encroachment use and replace the single "catch-all" fee that previously existed. In situations where the catch-all fee simply wasn't appropriate, the Public Service established rental rates through appraisals. Implementation of the encroachment fees listed in Appendix B will improve transparency and turnaround times, reduce internal costs and provide equitable rent to all licensees. In a sense Appendix B is cost neutral, but the adoption of the encroachment fees will allow for revenue to be collected in an expedient fashion at a lower cost to the Public Service. Consistent with past practice, all expired licenses will be subject to rental increases, if required.

Historically, certain encroachments licensed through the Encroachment By-law No. 692/74 required Council approval. However, clause 11(m) of the City Organizational By-law No. 7100/97 delegated the authority to approve encroachments to the Standing Policy Committee on Property and Development, Heritage and Downtown Development. This delegation under By-law No. 7100/97 is reflected in the new Encroachment By-law No. 12/2019.

HISTORY/DISCUSSION

Encroachment By-law

On July 3, 1974 Council enacted Encroachment By-law No. 692/74 (the "Old By-law"), which governs all encroachments into City right-of-ways (i.e. streets, sidewalks).

The Old By-law, amended numerous times throughout the years, is confusing, deficient, outdated, and no longer meets the needs of Winnipeg's citizens or business community. For example, the Old By-law provides for more rigorous standards and various exceptions for encroachments of "an unusual or commercial nature" without actually defining what constitutes an unusual or commercial nature. This has led to confusion and uncertainty on the part of both the Public Service and the public; to mitigate this, the Public Service is recommending that Council enact a new Encroachment By-law No. 12/2019.

Rather than separating out encroachments of an unusual or commercial nature, the New By-law defines those encroachments that would be considered "simple encroachments", effectively creating two categories: simple encroachments and everything else.

Under the New By-law, every encroachment license (with a few exceptions as listed in s. 7(2) of the New By-law) will need to be approved by the appropriate approving authority. The designated employee (being the Director of Planning, Property and Development, the "Director") is authorized to approve and issue licenses in respect of simple encroachments and patios; every other encroachment will need to be approved by the Standing Policy Committee on Property and Development, Heritage and Downtown Development (the "Designated Committee"). It is important to note that the Director may refer an application for a simple encroachment to the Designated Committee for consideration and approval where the Director feels it is warranted. The New By-law also sets out conditions that need to be met before the Director or the Designated Committee can approve an application for an encroachment license.

Under the New By-law, in addition to obtaining an encroachment license, the owner of any encroachment that is not a simple encroachment will also be required to enter into an encroachment agreement with the City. The Director will be authorized to negotiate and approve encroachment agreements for patios, and the Designated Committee will need to authorize every other encroachment agreement. The Public Service intends that administrative reports dealing with encroachment applications will provide for both the license and the agreement for expediency's sake.

Finally, the new By-law will include specific criteria for the approval of overhead pedestrian walkways, or "skywalks", for which there is currently no provision in the Old By-law.

The City's Planning, Property and Development Department will continue to administer and enforce the New By-law.

Encroachment Fees

Under the Old By-law, all fees relating to encroachments were imposed under the Planning, Development and Building Fees By-law. The fees currently charged for encroachments are attached as Appendix C to this report. The New By-law removes these fees from the Planning, Development and Building Fees By-law and, going forward, the fees will be imposed by way of Council Resolution should Council concur in the recommendations contained in this report. While the structure of some of the fees is changing, the quantum of the fees is largely unchanged, with the exception of the document preparation fees charged by the City's Legal Services Department.

Under the Old By-law, Legal Services charged different fees based on whether a particular encroachment agreement was classified as a "simple" vs. a "complex" agreement. The difficulty with this approach is that it is often difficult at the outset to determine whether a simple or complex agreement will be required, which makes it difficult for an applicant to estimate the true costs associated with a particular encroachment application.

Under the New By-law, the Public Service recommends charging document preparation fees based on the type of encroachment being applied for rather than the complexity of the eventual encroachment agreement in respect of that encroachment. This provides the applicant with certainty around what fees they are required to pay and improves transparency. The Planning,

Property and Development Department will continue to collect the document preparation fees at the time of application. In the event that the applicant elects to withdraw their application or simply abandons their application, the document preparation fees may be refunded in accordance with provisions outlined the New By-law.

The new document preparation fees being proposed, which can be found in Appendix B, are as follows:

- Encroachment Agreement Fees:
    - Simple Encroachments - **$1,190.00** (this is currently the amount charged for encroachments that required “simple” agreements)
    - Overhead Pedestrian Walkways - **$5,950.00** (this is the current amount charged for skywalks)
    - All Other Encroachments - **$2,980.00** (this is currently the amount charged for encroachments that require “complex” agreements)
- Agreements for Assignment of or Amendments to Encroachment Agreements:
    - Simple Encroachments - **$250.00** (new fee being proposed)
    - Overhead Pedestrian Walkways - **$1,190.00** (this is the current amount charged for assignment of skywalks)
    - All Other Encroachments - **$595.00** (this is the amount currently charged for assignment of a lease)

As with the Old By-law, document preparation fees will not be charged for patio encroachments.

FINANCIAL IMPACT

Financial Impact Statement Date: March 5, 2019

Project Name:

New Encroachment By-law

COMMENTS:

There are no direct financial implications associated with this report. However, the adoption of the encroachment fees by-law will allow for revenue to be collected more expediently and at a lower cost to the taxpayer.

"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

01-1a Direction 1: Develop and apply direction strategies- Ensure effective implementation efforts through integration, partnerships and collaboration across the City of Winnipeg organizational structure and with external organizations

01-3 Direction 1: Provide efficient and focused civic administration and governance- Provide a predictable property and business assessment process that is efficient, effective and equitable.

01-3 Direction 2: Provide a predictable and cost effective business environment that promotes investment and growth- Sustain the cost-effective delivery of services essential in supporting economic success in order to pursue objective-based revenues and revenue diversity

SUBMITTED BY

Department: Planning, Property and Development
Division: Real Estate and Land Development
Prepared by: Nolan Winters, Property Administrator
Date: March 11, 2019
File No:

Attachments:

Appendix A – Draft Encroachment By-law No. 12/2019

Appendix B – Proposed Encroachment Fees

Appendix C – Encroachment Fees under Encroachment By-law No. 692/74